



## The 2% Tax for Eritreans in the diaspora

Facts, figures and experiences in seven European countries



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The research team

# Background

On 30 June 2016, the majority of the Dutch parliament adopted a resolution in which the Minister of Foreign Affairs was asked to research the Recovery and Rehabilitation Tax on members of the Eritrean diaspora in Europe (Tweede Kamer der Staten-Generaal, 2016). In response, the Ministry of Foreign Affairs commissioned the Amsterdam-based research bureau DSP-groep to conduct a study on the levying and collection of the tax in seven European countries.

This research was conducted between January and June 2017. The research team consisted of Dr Wendy Buysse and Paul van Soomeren (DSP-groep) and Prof. Dr Mirjam van Reisen (Tilburg University), assisted by Lena Reim and a team of interviewers from Europe External Policy Advisors (EEPA). This report is the result of this research.

# Acronyms

AIV	Council of Foreign Affairs in the Netherlands
COI	Commission of Inquiry
IBFD	International Bureau of Fiscal Documentation
ELF	Eritrean Liberation Front
EPLF	Eritrean People's Liberation Front
NCEW	National Confederation of Eritrean Workers
NUEW	National Union of Eritrean Women
NUEYS	National Union of Eritrean Youth and Students (also known as NUEY and NUES)
PFDJ	People's Front for Democracy and Justice
RRT	Rehabilitation and Recovery Tax
SEMG	Monitoring Group on Somalia and Eritrea
UNHRC	United Nations Human Rights Council
UNHCR	United Nations High Commissioner for Refugees
YPFDJ	Young People's Front for Democracy and Justice

# Executive Summary

## Introduction

In the Netherlands the Eritrean community – and particularly Eritrean migrants – have received considerable attention in the media resulting in a series of parliamentary questions, some of which concerned the 2% Tax (levied on the Eritrean diaspora. This tax is also known as the ‘Diaspora Tax’ or the ‘Recovery and Rehabilitation Tax’. On 30 June 2016 the majority of the Dutch parliament adopted a resolution in which the Minister of Foreign Affairs was asked to investigate the Recovery and Rehabilitation Tax in Europe (Tweede Kamer der Staten-Generaal, 2016). In response the Ministry of Foreign Affairs commissioned a research study into the levying and collection of the tax in seven European countries. This research was conducted between January and June 2017.

The research was carried out in seven European countries: Belgium, Italy, Germany, the Netherlands, Norway, Sweden and the United Kingdom. Over one hundred interviews and eight qualitative questionnaires were conducted for this research; in addition, interviews were also used that had been carried out for a previous study for the Dutch Government on Eritrean diaspora organisations in the Netherlands, ‘Nothing is What it Seems’ (Niets is wat het lijkt; DSP-groep & Tilburg University, 2016). Finally, an extensive literature review was conducted.

## The 2% Tax on Eritreans in the diaspora and its legal basis

The Eritrean government levies a 2% Tax on Eritreans in the diaspora. The 2% Tax is an income tax and its legal basis are two Eritrean Proclamations<sup>1</sup>. However, on investigation it appears that the 1991 proclamation is intended for people living in Eritrea (not the diaspora) and the 1995 proclamation, although intended for people living in the diaspora, contains no clearly stated objective. Furthermore, according to the Eritrean constitution, which was ratified in 1997, only the National Assembly has the authority to impose taxes. However, the constitution never became operational and the National Assembly has not met since 1998. Therefore, the 2% Tax has an uncertain legal basis.

*“The exercise of taxing powers operates on the basis of connecting factors, which are based on personal and factual circumstances, i.e. related to where the person resides or has the nationality (personal connecting factors), or where he has derived income (territorial-based taxation)”* (IBFD, personal communication 2017).

While it lies within the sovereign power of a state to levy taxes, including on members of the diaspora, international law sets limits to the ways in which diaspora tax may be levied, and in particular, collected. Prof Nollkaemper (Prof. of Public International Law at the University of Amsterdam) stated in 2016 in his advisory opinion to the Dutch Minister of Foreign Affairs, Bert Koenders, that:

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<sup>1</sup> Proclamation No. 17/1991: Proclamation to Provide for the Collection of Rehabilitation Tax (10 December 1991) and Proclamation No. 67/1995: Proclamation to Provide for the Collection of Tax from Eritreans who Earn Income while Living Abroad (10 February 1995)



*International law does, however, set limits to the ways in which diaspora tax may be levied and, in particular, collected [...] the answer to the question of whether the Netherlands can prohibit the levying and/or collection of such a tax depends in part on how such levying and/or collection takes place. (Nollkaemper, 2016, p. 1<sup>2</sup>)*

In order to assess the legality of the collection of the 2% Tax, the rule of law needs to be considered. Rule of law – according to the International Bureau of Fiscal Documentation (IBFD) – is the basis of any legitimate tax system. Rule of law protects taxpayers from being arbitrarily deprived of their possessions. This is in line with human rights standards, particularly those that relate to the protection of property.

Nollkaemper (2016) identified several main issues that are relevant to a discussion of the legality of the levying and collection of the 2% Tax on members of the Eritrean diaspora under international law:

- ③ **UN Security Council Resolution 2023**, which stipulates that *“Eritrea should cease using extortion, threats of violence, fraud and other illicit means to collect taxes outside of Eritrea from its nationals or other individuals of Eritrean descent (paragraph 11),”* with particular reference to the mode of collection of the 2% Tax. *“The resolution implies that, if an investigation were to show that Eritrea uses ‘extortion, threats of violence, fraud and other illicit means to collect the tax’, the Netherlands [UN member states] would undoubtedly be have the authority to prohibit it from doing so”.*
- ③ **Destabilisation in the Horn of Africa** region related to UN Security Council Resolutions 1907 (2009) *armed opposition groups or providing any services or financial transfers provided directly or indirectly to such groups, as outlined in the findings of the Somalia/Eritrea Monitoring Group in its 18 July 2011 report (S/2011/433)” (paragraph 10).* UN member states *have the authority to prohibit the collection of such Tax if it can be satisfactorily established that the tax is being levied for one of the purposes referred to in paragraph 10”.*
- ③ **The Vienna Convention on Diplomatic Relations (1961)** and the **Vienna Convention on Consular Relations (1963)** require the Government of Eritrea to respect the rule of law in domestic jurisdictions, and its diplomatic and consular staff are also required *“to respect the laws and regulations of the receiving State [and] have a duty not to interfere in the internal affairs of that State (art. 41, paragraph 1).* Eritrea and the countries involved in this study are signatories to both conventions. Countries that are party to these conventions, therefore, *if it were established that the way in which Eritrea levies and/or collects taxes contravenes with the criminal or other law of the receiving state, Eritrea would be acting contrary to its international obligations to the receiving state. In that case the receiving state would undoubtedly have the authority to prohibit Eritrea from levying and/or collecting such taxes”.*

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<sup>2</sup> Translation by Dutch Ministry of Foreign Affairs.

## Analysis 1 – research questions and results

This research study aims to gather empirical evidence on the 2% Tax, including on : (i) taxable persons, (ii) its object, (iii) identification of the taxable event, (iv) procedures, (v) enforcement and (vi) other consequences. The purpose of this research is to understand the nature and extent of the levying and collection of the 2% Tax by the Eritrean government on Eritreans living in various European countries. This translates into the following research questions:

- Q.1 What is the nature (including legal basis) and extent of the 2% Tax levied and collected by the Eritrean government in the seven European countries studied (Belgium, Germany, Italy, the Netherlands, Norway, Sweden and UK)?
- Q.1a Is the 2% Tax levied and collected in more or less the same way in the seven European countries studied (Belgium, Germany, Italy, the Netherlands, Norway, Sweden and UK) or are there (large) differences? If so what explains these differences?
- Q.1b What are the reasons for the differences in the level of political and media attention on the 2% Tax in the different countries studied? Can this be explained by the modus operandi of the Eritrean government (and its representatives) in collection of the 2% Tax or by the media/politics of the country?
- Q.2 What are the experiences and opinions of members of the Eritrean diaspora living in the selected European countries in relation to the way the 2% Tax is levied and collected? Is pressure or coercion used to levy/collect the 2% Tax, and is this pressure or coercion related to the (perceived) benefits and penalties associated with the 2% Tax? What is the role of the media in raising certain issues about the 2% Tax?
- Q.3 What is the role of the different Eritrean government agencies and organisations in levying and collecting the 2% Tax in the selected European countries studied?

## Results

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*This research found that the 2% Tax is perceived as mandatory by Eritreans in the diaspora and that non-compliance may result in a range of consequences, such as denial of consular services and punishment by association of relatives in Eritrea, including human rights violations. The research also found that the tax is potentially illegal in its application in practice, and concluded, inter alia, that it is collected using coercion and intimidation.*

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The research questions on the nature and extent of the 2% Tax are addressed in **chapter 9** of this study and the researchers conclude:

- 🕒 The 2% Tax lacks legal clarity and consistency in all aspects that were considered in this research: (i) the taxable persons, (ii) its object, (iii) the identification of the taxable event, (iv) procedures, (v) enforcement and (vi) other consequences. In all of these aspects critical elements of rule of law are not in place;

- ③ The 2% Tax is collected in a context in which there is a gross lack of financial management, accountability and transparency. It therefore can be regarded as a fungible resource. Its use can therefore not be established (including whether or not it is compliant with UN SCR 1907 and 2023);
- ③ The 2% Tax is collected as a critical part of a system of surveillance, with specific references to coercion in view of mental and social pressure, extortion, intimidation, fraud and/or blackmail. The specific organisation and modalities relate specifically to the diaspora, but also involves family members by association;
- ③ The 2% Tax is levied and collected by the Government of Eritrea through the Embassies of Eritrea and the organ of the PFDJ, including its branches in the seven countries in this study. How it is levied and collected differs in the seven countries studies (but also variations can be found within the countries studied).

## Analysis 2 – The legality of the tax

The levying and the collection of the 2% Tax is analysed through a set of parameters, which are based on the research questions (see above) as well as the criteria for compliance with the rule of law. Below we summarize the research findings using this set of five criteria (also derived from Nollkaemper (2016)).

### 1. Clarity and consistency

*The clarity and consistency of the 2% Tax, how it is levied and the mechanism supporting its collection*

As regards the first criterion the study found the following:

- ③ The legal basis of the 2% Tax is not clear (it is unclear which Proclamation it is based on).
- ③ The National Assembly of Eritrea – the sole authority mandated to collect taxes – has not met since 1998; hence the 2% Tax is not approved under a system of rule of law, with associated checks and balances. This strongly undermines the legal basis for the collection of the tax.
- ③ It is unclear whether or not the 2% Tax is mandatory.
- ③ The penalties for non-payment are not clear.
- ③ The definition of taxable person is not clear and is inconsistent in practice.
- ③ The assessment of the amount payable under the 2% Tax is subject to the discretion of the embassy staff.
- ③ The 2% Tax is arbitrary in its application and is reported to be collected using fear and coercion.
- ③ There is a lack of transparency regarding the use of the revenue generated by the tax.

The legality of the 2% Tax is further affected by its violation of key legal principles. Concern has been raised about the following elements of the collection of the 2% Tax:

- ③ **Discrimination:** The collection method discriminates against people in the diaspora who are not regarded as loyal.

- ③ **Favouritism:** Members of the diaspora who are regarded as loyal (even if they may not have paid the 2% Tax) may receive privileges, including privileges for their relatives in Eritrea.
- ③ **Self-incrimination:** The collection method forces refugees (including young people) to incriminate themselves by pressuring them to sign a 'regret form'.
- ③ **Punishment by association:** Relatives living in Eritrea of people in the diaspora who are considered disloyal (including by virtue of non-payment of the 2% Tax) may be punished in a variety of ways and the measures taken can have severe consequences for their lives and livelihoods – and can even constitute serious human rights violations. This is of particular concern, especially given the lack of protection of human rights in Eritrea, the risk of being subjected to torture and the lack of opportunity to live a life of dignity (see UNHRC, 2015a, 2015b, 2016a, 2016b).

**Hence the researchers conclude** that the 2% Tax lacks a clear and consistent basis in law and is levied without respect for the rule of law. Given the lack of official information about the tax (from the Government of Eritrea) and the fact that the information that is available is contradictory, the levy of the 2% Tax can be described as arbitrary in nature. This is supported by the fact that there is no consistent understanding of the tax among Eritreans on the basis of their own experience. This situation is exacerbated by the lack of clarity about whether payment of the 2% Tax is voluntary or mandatory. The embassies of Eritrea seem to have discretionary power in relation to the assessment of the amount of tax payable, and these assessments also seem inconsistent and arbitrary. Furthermore, there is no transparent financial management of the revenue generated by the 2% Tax. Nor are there any statistics on how much is generated.

## 2. Modus operandi of collection

*The modus operandi of the Government of Eritrea (and its representatives) in the collection of the 2% Tax and whether or not coercion is an inherent part of collection practices*

The modus operandi of the Government of Eritrea in levying and collecting the 2% Tax has changed over time and varies between the various countries studied in this research. While the tax is consistently levied and calculated by the embassies, the role of the embassies in collecting the tax has shifted, especially in countries where questions have been raised as to the legality of the tax. In such countries the 2% Tax is still levied and collected, but the payments are made in different ways.

The methods used (modus operandi) for the collection of payments include:

- ③ Cash payment to the embassy.
- ③ Cash payment to an agent in the local Mahbere Com who transfers it to the embassy.
- ③ Cash payment in Asmara (in person or through a courier).
- ③ Sending cash with a trusted person who travels to Asmara to deposit the payment.
- ③ Transferring to a bank account in the country of residence.
- ③ Transferring to a bank account in Dubai.
- ③ Sending cash with a trusted person who travels to Dubai to deposit the payment in a bank.

- ③ Payment in Sudan, by refugees, who travel to the Eritrean Embassy in Khartoum, where various papers can be obtained.
- ③ Payment of the 2% Tax is always levied and collected in foreign currency, whether it is paid abroad or in Eritrea.

The penalties associated with non-payment of the tax include the following:

- ③ Denial of access to consular services in the embassy.
- ③ Denial of access to services or rights in Eritrea for self or family members.
- ③ Denial of access to food vouchers for family members in Eritrea; services not granted.
- ③ Family members are imprisoned or threatened if their children have fled, particularly if the fine of 50,000 nakfa for relatives who fled has not been paid and if the refugee has not signed a regret form and paid the 2% Tax.
- ③ Denial of access to sending remittances and packages to family members.
- ③ Social exclusion and vilification.

On the other hand, those who pay the 2% Tax may receive favours for themselves or for their family members (see Chapter 6 for an exhaustive list of consequences, both positive and negative). Hence the researchers conclude that the 2% Tax is levied and collected using intimidation and coercion, including mental, social and emotional pressure, extortion and blackmail, sometimes combined with fraud. If you need services from the embassy or have family or property in Eritrea (which most Eritreans in the diaspora do), the 2% Tax is in effect mandatory as people who do not pay will have to suffer the consequences,.

### 3. Compliance with Vienna Conventions

#### *Compliance of the collection of the 2% Tax with the Vienna Conventions on Diplomatic Relations and Consular Cooperation*

The 2% Tax is levied, and also collected by, (some of) the Eritrean embassies in the countries studied. To the researchers' best knowledge there is no other tax regime in the world that is organised in this way and the UN Security Council has questioned whether the levying of the 2% Tax by the embassies is in compliance with the Vienna Conventions on Diplomatic Relations and Consular Cooperation. Of particular concern is the fact that there is no clear distinction between the embassy and the organ of the PFDJ (the party), so the 2% Tax is perceived as being a mechanism by which the PFDJ exerts control over the diaspora in Eritrea (see point 5 below).

### 4. Impact on destabilising the Horn of Africa region

#### *The indirect impact of the collection of the 2% Tax on destabilising the Horn of Africa region (e.g., the use of the tax to fund military equipment or operations)*

The lack of financial management and transparency (Eritrea has not published a budget since 2002) means that the revenue generated by the 2% Tax is fungible. The study indicates that the 2% Tax generates a slush fund, which may or may not even reach Eritrea. In the absence of proper financial management and transparency the 2% Tax revenue may, and it is suggested that it probably does, end up being spent on the

activities of the Eritrean government abroad, thus potentially violating the conditions imposed by the UN Security Council Resolutions (1907 and 2023). It is, after all, the responsibility of the Eritrean Government to demonstrate the purpose for which the 2% Tax is levied and how it is used.

##### **5. Respect for the rule of law and use of the tax to control the diaspora**

*Respect for the rule of law by the Government of Eritrea (and its representatives) in countries in which members of the Eritrean diaspora reside and in which the 2% Tax is levied, whether or not the levying and collection of the 2% Tax is used as a mechanism to control diaspora communities (e.g. as a form of intelligence gathering)*

The report by the Council of Foreign Affairs in the Netherlands (AIV), 'The will of the People? Erosion of the democratic rule of law in Europe' (Council of International Relations, forthcoming 2017) lists the following (non-exhaustive) qualifying criteria, based on the standards of the Venice Mission of the Council of Europe, for states governed by the 'rule of law' (the so-called 'rule of law checklist').

This 'rule of law checklist' perfectly summarises the conclusions of this study:

**The principle of legality:** The principle of legality is not satisfied.

**Legal certainty:** There is scant information available about the 2% Tax, and what is available is inconsistent. Although the information available about the penalties for non-compliance with the 2% Tax is inconsistent and contradictory, in practice the main immediate penalty (imposed by the embassy) is the withholding of all administrative and consular services, including the issuing of an ID card, which is a prerequisite for obtaining other services. In addition, a range of broader punitive measures may result from non-payment of the 2% Tax; these are imposed on the individuals in the diaspora as well as on their relatives in Eritrea.

**Prohibition on arbitrariness:** The 2% Tax collection procedure allows for arbitrary decision-making.

**Access to an independent and impartial judge:** There is no information available on access to a complaints procedure or an independent or impartial legal review of decisions made about the tax.

**Respect for human rights relating to the previous criteria:** Eritreans in the diaspora do not have access to administrative, legal or consular services unless they have an ID card. To obtain an ID card they need to have paid the 2% Tax, even if they hold the nationality of, or have a passport issued by, the host country. An ID card is also only available to many after they sign a regret form.

**Non-discrimination and equality of the law:** The application of the law differs in the different countries where members of the Eritrean diaspora live, as do the procedures for payment of the tax (e.g. whether the tax is paid in Eritrea or at the embassy in the host country).

**Separation of powers and checks and balances:** There is no separation of powers in Eritrea: the President appoints the judges and there is no legislature as such (the National Assembly has not met since Eritrea went to war with Ethiopia in 1998). All of these functions (and powers) are concentrated in the hands of the executive government, with no regulation by any other body. The PFDJ branches in foreign countries control the work of the embassies.

**Respect for human rights in a broad sense:** The UN Commission of Inquiry on Eritrea has found that crimes against humanity have taken place in Eritrea and are still being carried out and has referred this to the international community (UNHRC, 2016a; UNHRC Resolution, 2016). The consequences for those who

resist the regime, for example by non-payment of the 2% Tax, must be understood: they and their families risk severe punishment and will no longer enjoy protection.

In response to the research results IBFD concluded the following regarding the legality of the 2% Tax:

*There are significant problems if, in the absence of international agreements of mutual assistance in the collection of taxes, people formally or informally representing the interest of Eritrea undertake actions on the territory of another State to force people to pay an Eritrean tax. We consider this as unprecedented in international tax law and as a violation of the sovereignty of the Netherlands [or another European country] from a public international law perspective. [IBFD, concluding remarks commenting on the final draft of this report , email, 21 June 2017]*

# 1 Introduction

The Eritrean government levies a 2% income tax on its nationals living abroad. This tax is collected in various ways, including through its consular and diplomatic offices. Referred to as the '2% Tax', 'Diaspora Tax', or 'Recovery and Rehabilitation Tax', it has raised significant concerns in the international community, prompting the United Nations to condemn the use of the tax in certain circumstances (UN Security Council, 2011b). This research elaborates on some of the critical technical issues related to the tax and how it is raised to determine its legality. The study is supported by technical analysis by authoritative international tax organisations and experts<sup>3</sup> and is based on empirical evidence gathered in seven European countries: Belgium, Germany, Italy, the Netherlands, Norway, Sweden and the United Kingdom.

The research aims to interpret the technical gap identified by Prof. Dr Nollkaemper, special advisor to the Dutch Minister of Foreign Affairs, Bert Koenders, on international law, who previously advised on the levying and collection of the 2% Tax in the Netherlands (Nollkaemper, 2016). "*The exercise of taxing powers operates on the basis of connecting factors, which are based on personal and factual circumstances, i.e. related to where the person resides or has the nationality (personal connecting factors), or where he has derived income (territorial-based taxation)*" (International Bureau of Fiscal Documentation (IBFD), personal communication 2017). The 2% Tax raises significant concerns, specifically regarding: (i) taxable persons, (ii) its object, (iii) the identification of the taxable event, (iv) procedures, (v) enforcement and (vi) other consequences. The empirical evidence has been processed and analysed within the technical categories of taxation and public international law, with a view to highlighting a possible approach that countries may adopt to the levying of the 2% Tax within their territories.

The UN Security Council Resolution 2023/2011 is an important reference for determining the regularity of the 2% Tax collected by Eritrea in host countries. The resolution condemns the use of the tax to destabilize the Horn of Africa and states that Eritrea shall not use extortion, threats, or fraud to collect the tax:

*10. Condemns the use of the "Diaspora tax" on Eritrean diaspora by the Eritrean Government to destabilize the Horn of Africa region or violate relevant resolutions, including 1844 (2008), 1862 (2009) and 1907 (2009), including for purposes such as procuring arms and related materiel for transfer to armed opposition groups or providing any services or financial transfers provided directly or indirectly to such groups, as outlined in the findings of the Somalia/Eritrea Monitoring Group in its 18 July 2011 report (S/2011/433), and decides that Eritrea shall cease these practices;*

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<sup>3</sup> The International Bureau of Fiscal Documentation (IBFD) was one of the organisations interviewed for this research (Prof. Dr Pasquale Pistone, Academic Chairman of IBFD, and Jan Maarten Slagter, CEO of IBFD, were interviewed on 28 March 2017). IBFD is recognised as the world's foremost authority on cross-border taxation. We also thank Prof. Dr Behrens, Prof. Dr T Bender, Prof. Dr S Douma, Prof. Dr L van de Herik, Prof. Dr Hirsch Ballin, Prof. Dr PA Nollkaemper and Prof. Dr J Ouwerkerk for their advice on international taxation law and international criminal law.



11. Decides that Eritrea shall cease using extortion, threats of violence, fraud and other illicit means to collect taxes outside of Eritrea from its nationals or other individuals of Eritrean descent, decides further that States shall undertake appropriate measures to hold accountable, consistent with international law, those S/RES/2023 (2011) 4 11-62278 individuals on their territory who are acting, officially or unofficially, on behalf of the Eritrean government or the PFDJ contrary to the prohibitions imposed in this paragraph and the laws of the States concerned, and calls upon States to take such action as may be appropriate consistent with their domestic law and international relevant instruments, including the 1961 Vienna Convention on Diplomatic Relations and the 1963 Vienna Convention on Consular Relations, to prevent such individuals from facilitating further violations; (UN Security Council, 2011b)

In his advisory opinion to the Dutch Minister of Foreign Affairs, Prof. Dr Nollkaemper concludes that:

*The UN Security Council Resolution implies that, if an investigation were to show that Eritrea uses 'extortion, threats of violence, fraud and other illicit means' to collect the tax, the Netherlands would undoubtedly be have the authority to prohibit it from doing so. Whether the measures actually being applied can be qualified in these terms can only be established on the basis of further, factual analysis. (Nollkaemper, 2016, translated by the Ministry of Foreign Affairs, p. 2)*

This research examines the technical evidence as to whether or not the levying and collection of the 2% Tax complies with taxation law and international law and with the obligations of UN Member States in relation to UN Security Council Resolution 2023. The research is based on a qualitative analysis of more than 100 interviews, specifically carried out for this research, with interviewees from the seven selected countries and interviewees based in some other countries. An additional hundred interviews undertaken for another study published on the Eritrean diaspora, '*Nothing is What it Seems*' (DSP-groep & Tilburg University, 2016), were also analysed for relevant technical information. To supplement these interviews, a questionnaire was sent out and experts were interviewed on technical aspects of the report. Earlier drafts of this report were circulated to various resource persons to receive feedback on the content.

All references to the data have been coded and data anonymised, depersonalised, and referenced so that respondents cannot be traced. The authors invite readers to send comments on the content of the report to DSP-groep.

## 1.1 Context: Eritrea and the diaspora

### 1.1.1 The Eritrean diaspora

The 2% Tax is levied on all Eritreans living in the diaspora, who comprise a significant number, although it is difficult to determine exactly how many. Some estimate that more Eritrean citizens are living outside the

country than inside. Notwithstanding the relatively small size of the population inside Eritrea (between 3.5 and 6.5 million people; a more accurate figure is not available; Plaut, 2016a), the number of refugees and migrants from Eritrea is large and Eritreans are among the largest groups of refugees reaching Europe. The UN estimates that 5,000 people are leaving the country every month (UNHCR, 2015b). United Nations High Commissioner for Refugees (UNHCR) reported that there were 411,300 Eritrean refugees and asylum seekers worldwide by the end of 2015 (UNHCR, 2016c). This is more than double the number in 2008. Eurostat reported that between 2008 and 2017 approximately 200,500 Eritrean refugees applied for asylum in Europe (Eurostat, 2017). In total, it is estimated that approximately 250,000 Eritreans have arrived in Europe since 1980, in three subsequent waves (Table 1.1).

However, these figures are likely to be conservative, because most Eritreans leave Eritrea illegally and many are never registered with the United Nations High Commissioner for Refugees. The exact number in the diaspora is also difficult to know, because people who were born in Eritrea before independence were registered as Ethiopian in many diaspora countries. Furthermore, the number of second and third generation refugees in the diaspora (born of first generation refugees) is also increasing. They often hold the nationality of the country they live in.

### **Box 1.1 Terminology**

#### **2% Tax**

The subject of the research is what is referred to in the Eritrean vernacular as the '2% Tax' (also called the 'Eritrean Diaspora Income Tax', the 'Recovery and Rehabilitation Tax', the 'Recovery and Reconstruction Tax' or the 'Diaspora Tax'). Even officials of the Eritrean government and staff of embassies use different names for this tax. For the purposes of this report, it will be referred to as the 2% Tax, which refers to the 2% of the income that has to be paid. Furthermore a distinction is made between the levying (i.e., how the tax is imposed) and collection (i.e., how the tax is paid) of the tax.

#### **Member of the Eritrean diaspora**

For the purpose of this research, we use a broad definition of Eritrean diaspora, which includes citizens of European countries of Eritrean descent. This is based on the strong community bond among descendants from Eritrea. It is also informed by the fact that the Government of Eritrea views all members of Eritrean descent as Eritrean citizens, including those with foreign passports.

#### **Embassy**

Within this report, the term embassy is used to refer to any diplomatic mission, as this has been identified as the common vernacular among our respondents. However, where necessary, we differentiate between embassies and consulates.

## 1.1.2 Eritrea

### Box 1.2 History of Eritrea

Until 1869:	Pre-colonial period
1890–1941:	Italian colony
1941–1952:	British protectorate
1952–1962	Annexation by Ethiopia
1962–1991:	War of independence against Ethiopia, first by Eritrean Liberation Front (ELF) and afterwards by the Eritrean People’s Liberation Front (EPLF), led by the current President of Eritrea, Isaias Afewerki
1991:	De facto Independence from Ethiopia
1993:	Independence following a referendum and official recognition of Eritrea by the international community
1993–1998	Building of the new state of Eritrea
1994:	EPLF becomes People’s Front for Democracy and Justice (PFDJ), the only political party allowed in Eritrea
1998–2000	Border conflict with Ethiopia
2000–2001	Internal political crackdown
2009	The UN Security Council imposes sanctions on Eritrea (an arms embargo)
2000–now	Dictatorial regime (constitution of 1997 never became formally operational)

Source: UNHRC, 2015a

The second report of the UN Commission of Inquiry (COI) on Human Rights in Eritrea (hereafter called the ‘Second COI Report’) concluded in 2016 that “Crimes against humanity have been committed in a widespread and systematic manner in Eritrean detention facilities, military training camps and other locations across the country over the past 25 years” and “that these crimes are still occurring today” (UNHRC, 2016a). Some high-ranking Eritrean government officials now risk prosecution before the International Criminal Court (ICC), with UN Security Council referral of the matter to the ICC being a possibility in accordance with the Rome Statutes.

The UN General Assembly Human Rights Council has adopted resolution A/HRC/32/L.5/Rev.1 (28 June 2016), in which it emphasizes the need for accountability:

*Noting the commission’s identification of individual suspects and careful maintenance of relevant information that may assist future accountability efforts, [the Human Rights Council];*

*Welcomes with appreciation the report of the commission of inquiry on human rights in Eritrea,<sup>1</sup> stresses the importance of the work of the commission of inquiry and the*

*information it has collected in support of future accountability, and urges the Government of Eritrea to take immediate and concrete steps to implement its recommendations (art. 1);*

*Takes note of the commission's conclusion that a regional mechanism could be created to address accountability in Eritrea, given the commission's assertion that neither a hybrid tribunal nor a truth commission would be a viable option in the current circumstances (art. 8);*

*Requests the General Assembly to submit the report and the oral updates of the commission of inquiry to the Security Council for its consideration and appropriate action, including that those responsible for human rights violations, including those that may amount to crimes against humanity, be held accountable. (art 17). (UN General Assembly Human Rights Council, 2016)*

The resolution also urges the international community “to strengthen efforts and collaboration to ensure the protection of those fleeing from Eritrea, in particular unaccompanied children (art. 13)” (*Ibid.*).

The European Parliament stated that:

*...the UN Commission of Inquiry on Human Rights in Eritrea has found that the violations in the areas of extrajudicial executions, torture (including sexual torture and sexual slavery), national service as a form of slavery, forced labour and the shoot-to-kill policy at the border may constitute crimes against humanity. (European Parliament, 2016a)*

And, adopted a resolution in 2016, it went on to refer to Eritrea as a country that:

*...has one of the worst human rights records in the world, with routine human rights violations taking place every day and no improvement recorded in recent years; whereas many young people have fled the country to escape the repressive government and mandatory military conscription, which often starts at a very young age, whereas the statute of an 18-month period of service is often flouted, with most Eritreans serving indefinitely, and whereas such an extended mandatory military conscription inhibits the country's potential economic growth; whereas any increase in the national service salary is meaningless as the recent devaluation of the nakfa and bank restrictions have led to a current deficiency in the country; whereas many conscripts are used as forced labour and given civilian duties; whereas the majority of those in national service remain in a situation of slavery, in which any work, job applications and the possibility of having a family life are controlled; whereas freedom of worship and conscience, freedom of the media and freedom of expression are not guaranteed. (European Parliament, 2016a)*

Eritrea is ruled by one of the most repressive regimes in the world. Marc Tarabella, a Belgium Member of the EU Parliament (Parti Socialiste), set the scene cogently: “The State of Eritrea is organised like a military detention centre under the absolute rule of Isaias Afewerki, a liberation hero turned a bloody despot” (Tarabella, 2014). The Eritrean president acts as if the country is still at war, and government policy and practice are regimented using strict military discipline orchestrated by the president (*ibid.*).

Eritrea adopted its first post-independence constitution in 1997, but it has never been implemented. In fact, the Eritrean president declared it “a dead document” in a public pronouncement made on Eritrean television on 30 December 2014 (Eri-TV, 2014). In this sense, Eritrea is a classic example of a country in a constitutional legal crisis (see Mekonnen, 2016). Eritrea is the only country in the world ruled without any constitution (written or unwritten).

In addition to the absence of a working constitution or an effective constitutional framework, several other factors distinguish Eritrea from other countries. For example, Eritrea does not have an opposition political party and has not seen free and fair elections since its *de facto* independence from Ethiopia in 1991. It has had no functioning parliament since February 2002 and it does not have an officially-published national budget. Furthermore, most civil society organisations are not allowed (or cannot function) and there is not a single privately-owned media outlet, be it newspaper, radio, TV or Internet. All media outlets inside the country are owned by the government, which means that the flow of information is strictly controlled. As noted in the first report of the UN Commission of Inquiry on Human Rights in Eritrea (hereafter called the ‘First COI Report’), “[i]t is not law that rules Eritreans, but fear” (UNHRC, 2015b, p. 8). A deeply-entrenched politico-legal crisis in Eritrea, coupled with a spiralling economic meltdown, has persisted for the last 16 to 18 years (Mekonnen, 2015). In terms of the protection of fundamental rights and freedoms and the rule of law (including orderly constitutional governance), there is no forum for accountability in Eritrea. Rule of law – which, according to the International Bureau of Fiscal Documentation (IBFD) is the basis of any legitimate tax system – is absent in Eritrea (Van Reisen & Mawere, 2017; Plaut, 2016a; Mekonnen & Tronvol, 2014).

It is against these rather unique features that the 2% Tax is levied, and any legal appraisal of this tax needs to take this context into account.

### 1.1.3 Refugees in the diaspora

The migration of Eritreans to Europe took place in roughly three waves (see Table 1.1). These waves are similar in all of the European countries studied, although the absolute and relative size of the different waves of refugees might differ. However, in general, in all of the countries studied, the largest group consists of the recent influx since 2010 (the third wave). The percentages in Table 1.1 are estimates only to indicate the proportion of each wave within the Eritrean diaspora community (for more on the different countries studied see Chapter 7).

Table 1.1 Migration waves of Eritrean refugees

Migration wave	Migration context
First wave (1980–1998) Approx. 5–10%	A: 1980–1991 Fleeing the independence war, members of the ELF and later the EPLF (the predecessor of the PFDJ, the party of the regime) B. 1991–1998 Fleeing during the reconstruction of Eritrea due to various reasons
Second wave (1998–2010) Approx. 25–30%	Since the border conflict with Ethiopia Fleeing the current regime
Third wave (2010–present) Approx. 60–65%	Fleeing the current regime

Source: Adapted from DSP-groep & Tilburg University (2016), p. 7

The Eritreans in the diaspora can be divided into the following groups:

- ① 'Permanent exiles', mostly ELF veterans and their children, who did not return to Eritrea after liberation due to fear of persecution.
- ② Supporters of the EPLF/PFDJ who are still supporting the current Eritrean government and are members of the PFDJ and Young People's Front for Democracy and Justice (YFPDJ) in the diaspora.
- ③ The quiet mass, a large group without, or with loose, political affiliations, who do not openly speak against the present government.
- ④ Former members of EPLF/PFDJ who have joined the opposition.
- ⑤ Exiled (former) members of the present government, which is run by the PFDJ.
- ⑥ New refugees, a large group of mostly young refugees who left the country illegally, mainly as draft deserters.

The mass organisations of the Eritrean regime – the PFDJ and its sister organisations, the YFPDJ, the National Union of Eritrean Women (NUEW), National Union of Eritrean Youth and Students (NUEYS) – are present in the diaspora and execute control over Eritreans living in the diaspora. The UN Commission of Inquiry (first COI report) concluded that there is a lot of fear among the Eritrean population in Eritrea, but also in the diaspora, because of the system of surveillance used by the Eritrean government against the diaspora (UNHRC, 2015a). This was confirmed by research conducted by DSP-groep & Tilburg University (2016) concerning the Eritrean community in the Netherlands. [More information](#) and an English [summary](#) of the research can be found at [www.dsp-groep.nl](http://www.dsp-groep.nl).

## 1.2 Objective and research questions

The purpose of this research is to understand the nature and extent of the levying and collection of the 2% Tax by the Eritrean government on Eritreans living in various European countries. This translates into the following research questions:

- Q.1 What is the nature (including legal basis) and extent of the 2% Tax levied and collected by the Eritrean government in the seven European countries studied (Belgium, Germany, Italy, the Netherlands, Norway, Sweden and UK)?
  - Q.1a Is the 2% Tax levied and collected in more or less the same way in the seven European countries studied (Belgium, Germany, Italy, the Netherlands, Norway, Sweden and UK) or are there (large) differences? If so what explains these differences?
  - Q.1b What are the reasons for the differences in the level of political and media attention on the 2% Tax in the different countries studied? Can this be explained by the modus operandi of the Eritrean government (and its representatives) in collection of the 2% Tax or by the media/politics of the country?
- Q.2 What are the experiences and opinions of members of the Eritrean diaspora living in the selected European countries in relation to the way the 2% Tax is levied and collected? Is pressure or coercion used to levy/collect the 2% Tax, and is this pressure or coercion related to the (perceived) benefits and penalties associated with the 2% Tax? What is the role of the media in raising certain issues about the 2% Tax?
- Q.3 What is the role of the different Eritrean government agencies and organisations in levying and collecting the 2% Tax in the selected European countries studied?

## 1.3 Research approach and criteria

In his advice to the Dutch Minister of Foreign Affairs, Bert Koenders, international law expert, Prof. Dr Nollkaemper, concluded that:

*The factual background to the diaspora tax and how it is levied and/or collected by Eritrea in the Netherlands is unclear. This lack of clarity presents a significant obstacle to providing a specific answer. After all, the answer to the question of whether the Netherlands can prohibit the levying and/or collection of such a tax depends in part on how such levying and/or collection takes place.. (Nollkaemper, 2016, p. 1)*

The current research aims to address the gap in our understanding of how the 2% Tax is levied and collected. It focuses on clarifying the modus operandi of the Eritrean government (and its representatives) in the collection of the 2% Tax. Although it does not aim to present a full legal analysis, in order to understand the nature of the tax, it is important to look at its legal basis and to assess whether or not the way the tax is levied and collected is legal. This assessment is carried out within an understanding of the legal parameters that have been set on the topic of the 2% Tax.

In his advice to the Dutch government, Prof. Dr Nollkaemper states:

*International law does, however, set limits to the ways in which diaspora tax may be levied and, in particular, collected. (Nollkaemper, 2016, p. 2)*

Prof. Dr Nollkaemper (2016) identifies several main issues relevant to a discussion of the legality of the levy and collection of the 2% Tax on members of the Eritrean diaspora under international law:

- ③ **UN Security Council Resolution 2023**, which stipulates that “*Eritrea should cease using extortion, threats of violence, fraud and other illicit means to collect taxes outside of Eritrea from its nationals or other individuals of Eritrean descent (paragraph 11),*” with particular reference to the mode of collection of the 2% Tax. “*The resolution implies that, if an investigation were to show that Eritrea uses ‘extortion, threats of violence, fraud and other illicit means to collect the tax’, the Netherlands [UN member states] would undoubtedly be have the authority to prohibit it from doing so*”.
- ③ **Destabilisation in the Horn of Africa** region related to UN Security Council Resolutions 1907 (2009) *armed opposition groups or providing any services or financial transfers provided directly or indirectly to such groups, as outlined in the findings of the Somalia/Eritrea Monitoring Group in its 18 July 2011 report (S/2011/433)*” (paragraph 10). UN member states *have the authority to prohibit the collection of such Tax if it can be satisfactorily established that the tax is being levied for one of the purposes referred to in paragraph 10*”.
- ③ **The Vienna Convention on Diplomatic Relations (1961)** and the **Vienna Convention on Consular Relations (1963)** require the Government of Eritrea to respect the rule of law in domestic jurisdictions, and its diplomatic and consular staff are also required “*to respect the laws and regulations of the receiving State [and] have a duty not to interfere in the internal affairs of that State (art. 41, paragraph 1)*. Eritrea and the countries involved in this study are signatories to both conventions. Countries that are party to these conventions, therefore, *if it were established that the way in which Eritrea levies and/or collects taxes contravenes with the criminal or other law of the receiving state, Eritrea would be acting contrary to its international obligations to the receiving state. In that case the receiving state would undoubtedly have the authority to prohibit Eritrea from levying and/or collecting such taxes*”.

The original proposal for this study contained a draft set of criteria for assessing the legality of the 2% Tax, which have been adapted as provided in Box 1.1 based on Nollkaemper (2016).

Additionally, in order to assess the legality of the levying and collection of the 2% Tax, the rule of law needs to be considered. Rule of law – according IBFD - is the basis of any legitimate tax system. Rule of law is a basic principle for of taxation throughout the world and it is an achievement that protects taxpayers from being arbitrarily deprived of their possessions. This is in line with the standard for protection of human rights and in particular the right to property (IBFD, personal communication 2017).



In the report of the Council of Foreign Affairs in the Netherlands (AIV), *'The will of the People? Erosion of the democratic rule of law in Europe'* (Council of International Relations, forthcoming 2017), the following (non-exhaustive) elements are listed, based on the standards of the Venice Mission of the Council of Europe to qualify a state as a state that is governed by the 'rule of law' (the so-called 'rule of law checklist'):

1. **The principle of legality:** individuals as well as public and private authorities must behave in conformity with the law. Authorities can only act based on authority that has been granted. No-one can be punished unless this person has violated the law. Violations of the law are punished.
2. **Legal certainty:** the texts of laws are easily accessible, the state respects the laws, and applies them in a predictable and consistent manner. Laws should be formulated in a sufficiently precise manner.
3. **Prohibition on arbitrariness:** arbitrary action is action based on personal preferences and the whim of the moment. Arbitrary decisions are those that are not set out in a decision or according to criteria that are determined in a legal regulation.
4. **Access to an independent and impartial judge:** there should be an honest and public proceeding, within a reasonable time period.
5. **Respect for human rights relating to the previous criteria:** access to the law, the right to a competent judge, the right to be heard, and the presumption of innocence.
6. **Non-discrimination and equality of the law:** the law is the same for all citizens and all citizens are subject to the same laws.

The AIV adds two additional criteria:

7. **Separation of powers and checks and balances:** to avoid concentration of power and to prevent arbitrary execution of power. This mainly means that the executive and legislative functions of the government are separate, and the judiciary is independent.
8. **Respect for human rights in a broad sense:** respect for civil and political rights and social economic and cultural rights, respect for the rights of minorities, respect for human dignity and respect for the equality of every human being.

This criteria will be considered when discussing the rule of law in relation to the levying and collection of the 2% Tax.

### Box 1.3 Parameters for study

The levying and the collection of the 2% Tax is analysed through a set of parameters, which are based on the research questions and the criteria for compliance with the rule of law. These are:

1. The clarity and consistency of the 2% Tax, how it is levied and the mechanisms supporting its collection; whether or not it is collected with arbitrariness.
2. The modus operandi of the Government of Eritrea (and its representatives) in the collection of the 2% Tax and whether or not coercion, extortion or intimidation are integral to the collection practices.
3. The compliance of the collection of the 2% Tax with the Vienna Convention on Diplomatic Relations and Consular Cooperation.
4. The indirect impact of the collection of the 2% Tax on destabilising the Horn of Africa region (e.g., by use of the tax to fund military equipment or operations) that are in contravention of the relevant UN Security Council resolutions (UN Security Council Resolution 1907 [2009] and 2023 [2011]).
5. Respect for the rule of law by the Government of Eritrea (and its representatives) in countries where members of the Eritrean diaspora are residing and where the 2% Tax is levied, and whether or not the levying and collection of the 2% Tax is a mechanism to control the diaspora communities (e.g., as a form of intelligence gathering).

## 1.4 Methodology

Seven countries were selected for this study to ensure a representative sample and to capture any diversity in the stance taken by the different countries on the 2% Tax. The situation in six of the countries studied was compared, taking the following variables into account: size of the diaspora (small or large), existence of a fully-operating Eritrean embassy or not, and the strength of pro-Eritrean government organisations in the country. Various methods were used to answer the research questions: review and analysis of documents, literature and online information; interviews and in-depth interviews; informal communication through various media and face-to-face; and a structured questionnaire.

### 1.4.1 Document, literature and online information review and analysis

The document, literature and online information review and analysis consisted of the following:

- 🕒 An analysis of the legal underpinnings of the 2% Tax in Eritrea by Daniel Rezene Mekonnen, an international lawyer of Eritrean descent, who compared the various relevant legal documents available in Tigrinya, translated these and examined them.
- 🕒 A document analysis to provide an overview of the available information on the 2% Tax, as presented by various relevant actors, including the Eritrean government and its representatives, the United Nations, and English-speaking scholars.<sup>4</sup>

<sup>4</sup> The information was organised using coded labels (e.g., 'tax purpose', 'collection procedure' and 'use of coercion'). Relevant statements from a particular actor group were transferred chronologically into Excel and colour-coded based on these coding labels.

- ③ A secondary analysis of the 101 interviews carried out for the research on the integration of Eritreans in the Netherlands and Eritrean organisations in the fall of 2016 for the Ministry of Social Affairs and Employment in the Netherlands (DSP-groep & Tilburg University, 2016). In these interviews, individuals who are pro, neutral or in opposition to the Eritrean government were represented.
- ③ A document search in Tigrinya and English on information available online about the 2% Tax (search words: Eritrea embassy, Diaspora Tax, Rehabilitation Tax, 2% Tax). This included analyses made available and forms provided online by Eritrean embassies.

## 1.4.2 Interviews and informal communication through various media and face-to-face

Interviews and informal communications were conducted with:

- ③ (International) experts in law, taxation, finance and administration in Eritrea.
- ③ Representatives of the government of the countries studied (policy advisors).
- ③ Experts on Eritrea (including members of the Eritrean diaspora).
- ③ Other members of the Eritrean diaspora (representing a diverse array of opinions concerning the present government in Eritrea and having different periods of residence in the European country).

The respondents were selected from among the researchers' network as well as the network of the Dutch Ministry of Foreign Affairs and Dutch embassies in the countries studied. Respondents were asked to suggest new names in their own network (snowballing technique). In five of the six European countries studied (other than the Netherlands), interviews were conducted with one or two government officials of the countries studied. In one country, no response was received from these officials, despite multiple attempts to get in contact. The snowballing technique was used with the Eritrean respondents. Some core respondents interviewed two or three more respondents themselves.

The research topic was experienced as sensitive and some respondents were reluctant to discuss it. The following strategies were employed:

- ③ Rigorous anonymity and depersonalization of information was emphasized as a means of fully protecting the respondents. In the report, sources are referred to with codes in the form of numbers in order to ensure that information is not traceable to respondents.
- ③ Eritrean respondents were first asked to provide general circumstantial information before asking about their personal circumstances in relation to the 2% Tax.
- ③ Indirect questions were included in the questionnaire, such as: "do you know people who have paid 2% Tax?".
- ③ Interviews and personal conversations were conducted through intermediaries (trusted Eritrean members of the diaspora).

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Statements relevant to each code were then transferred into a separate column. Lastly, each coding-specific column was analysed separately and a summary with key points and contradictions was created for each of them.

Notwithstanding these measures, some respondents declined to participate. In relation to the snowballing technique, some groups were more willing to participate than others. It was more difficult to find respondents from among the first wave of migrants (especially those who are still paying the tax) and from among the third wave of recently-arrived refugees, who were very reluctant to discuss the topic. The impression of the interviewers was that fear was one of the reasons for this reluctance. Nevertheless, the research team was still able to carry out interviews with persons who have paid or are still paying the 2% Tax in the selected countries.

In-depth interviews and follow-up interviews for further clarification were carried out with key resource persons and these interviews were audio-recorded. Key resource persons received the draft text to provide comments on the text.

### 1.4.3 Questionnaires

The contacts provided by the Dutch Ministry of Foreign Affairs were sent questionnaires with the same questions as in the interviews. Eighteen respondents ( Eritreans and experts) identified in this way were contacted by email to complete the questionnaire. Eight of them provided information through the questionnaire. Two respondents replied that they did not have sufficient time to reply and one that he did not have knowledge of the subject. All of the six Eritrean embassies in the countries studied received a written questionnaire by email or regular mail. None of them replied to the email, even after a reminder.

### 1.4.4 Number of respondents

In total, 34 experts and 107 Eritreans were interviewed for this research. Diversity was sought among the Eritrean respondents concerning gender, age, payment of the 2% Tax (people who pay, no longer pay or have never paid), migration wave (first, second or third), and their political position in relation to the Eritrean government (pro, neutral, opposition). All three political positions (pro, neutral and opposition) were represented.

**Table 1.2 Number of respondents per country**

Country of residence of Eritrean respondents	Number of experts or officials	Number of members of the Eritrean community
The Netherlands	5	35
Belgium	2	11
Germany	5	9
Italy	2	15
Norway	1	14
Sweden	1	8
United Kingdom	3	7
Eritreans other countries of residence		4
<b>International (experts) and experts on law and taxation</b>	<b>15</b>	<b>4</b>
Total	34	107

## 1.5 Structure of the report

Chapter 2 provides a general description of the 2% Tax and its legal basis under Eritrean law. It looks at the specific proclamations pertaining to the 2% Tax, its purpose and the penalties prescribed for non-payment under domestic law. Finally, the chapter sets out the information provided to members of the Eritrean diaspora on the tax. This chapter is based on desk research and a literature review.

Chapter 3 sets out the international legal framework for the assessment of the 2% Tax. It identifies the international norms in general terms (Vienna Conventions on Diplomatic and Consular Relations) and as specifically defined in the context of Eritrea (UN Security Council Resolutions; the EU Council Decision on Eritrea; and Resolution of the European Parliament). It also looks at the reports of the UN Monitoring Group on Somalia and Eritrea and UN Commission of Inquiry on Human Rights in Eritrea. Finally, it identifies the response of some UN members states to these international law instruments relating to the 2% Tax. This chapter is based on the literature review and interviews with international experts.

Chapter 4 sets out the origins and volume of the 2% Tax. This chapter is based mainly on interviews, including with former diplomats and officials in the Eritrean administration.

Chapter 5 identifies the lines of responsibility and authority for the levying and collection of the 2% Tax. This chapter describes the organs involved in the collection of the 2% Tax. This chapter is based on interviews and literature review.

Chapter 6 sets out the procedures for the tax collection, including its enforcement. Chapter 7 provides a comparative assessment of the practices between the countries. Both chapters are generated from the

analysis of the interviews and questionnaires with Eritreans and resource persons in the countries studied, as well as the document analysis .

In Chapter 8 looks at the perceptions of the 2% Tax among members of the diaspora community in the European countries studied, as well as the consequences of non-payment.

In Chapter 9, conclusions are drawn in relation to the research questions presented in Chapter 1 and the findings on the legality of the tax, based on the criteria established in Chapter 3.

## 2 Legal Basis

This chapter looks at the basis of the 2% Tax in terms of its legal underpinnings in Eritrea. It first looks at the Constitution of Eritrea, before identifying the specific proclamations pertaining to the 2% Tax, its purpose and the penalties prescribed for non-payment under domestic law. Finally, the chapter sets out the information provided to members of the Eritrean diaspora on the tax, online and through the Eritrean embassies.

### 2.1 Constitution

The incumbent government in Eritrea came to power in 1991 as part of the liberation movement by the Eritrean People's Liberation Front (EPLF), which was later renamed the People's Front for Democracy and Justice (PFDJ). One of the first things the EPLF did after liberating Eritrea was to establish itself as a provisional government through a number of essential laws that were promulgated by the EPLF unilaterally, without any form of popular consultation. The EPLF formally established itself as a provisional government on 22 May 1992, by Proclamation No. 23/1992, known as the *Proclamation to Provide for the Establishment, Powers and Functions of the Provisional Government of Eritrea*. (see Appendix H)

Seven months before this, about four months after the *de facto* liberation of Eritrea from Ethiopia in May 1991, the EPLF proclaimed several other laws (Proclamations 1, 2, 3, 4, 5, 6, 7, and 8 of 1991), which came into force on 15 September 1991. These laws set in motion Eritrea's major transitional codes, namely: the Civil Code, the Civil Procedure Code, the Penal Code, the Penal Procedure Code, the Commercial Code, the Maritime Code and the Labour Code). With the exception of the Labour Code, all of these codes were inherited from Ethiopia, with superficial amendments.

In establishing the EPLF as the Provisional Government of Eritrea, Proclamation No. 23/1992 also laid out a roadmap for the envisaged provisional period. According to the Preamble of this proclamation, these provisional measures were to serve until the country could conduct a national referendum on the issue of independence from Ethiopia, draft and ratify its first post-independence constitution, conduct free and fair elections, and establish a democratically-elected government.

Proclamation No. 23/1992 (later repealed and replaced by Proclamation No. 37/1993) can rightly be described as forming the 'interim constitution' or the 'interim constitutional framework' of Eritrea (Mekonnen, 2016). Together with the other basic laws that were promulgated on 15 September 1991, Proclamations No. 23/1992 and 37/1993 formed the core of Eritrea's transitional constitutional order. As already noted, all of the above laws were promulgated without formal consultation with the Eritrean people. The EPLF's motivation in doing so is explained, to a certain degree, in the last part of the Preamble of

Proclamation No. 23/1992:

*Recognising that in this transitional period, the Eritrean People's Liberation Front (EPLF) continues to shoulder the duty it assumed to achieve the liberation of Eritrea, and that having achieved the liberation, it is inevitable that the EPLF proclaims the establishment of a provisional government. The establishment of the Provisional Government of Eritrea (PGE) is hereby promulgated.<sup>5</sup>*

Therefore, it appears that the provisional government drew its legitimacy from its historic role in achieving Eritrea's liberation from Ethiopia and the assumed mandate from the people resulting from this. At that time, pragmatically speaking, the EPLF was the only viable political force that could have led the nation to its intended transition to democracy on a provisional basis, as envisaged by Proclamation No. 23/1992.

The timespan defined for the provisional/transitional government of the EPLF was clearly spelt out in Proclamation 37/1993 (see Appendix H) . Article 3 of this law limited the tenure of the transitional government to four years: "The tenure of the Regime should be for a maximum of four years".<sup>6</sup> Read in conjunction with the Preamble of Proclamation No. 37/1993, the law clearly obliged the transitional government to draft and ratify a constitution and conduct national elections pursuant to such a constitution by the end of this term, at the very latest. Accordingly, the tenure of the transitional government effectively ended in May 1997, exactly four years after the promulgation of Proclamation No. 37/1993. Hence, it is clear that the government formed by of the EPLF was transitional in nature and temporary in tenure. This transitional government had successfully finalised the core tasks that were envisaged by Proclamation No. 37/1993, namely: a referendum on national independence was conducted in April 1993 and the drafting and ratification of a new constitution was finalised in May 1997.

Since then, for the past 20 years (1997–2017), the Government of Eritrea has been ruling Eritrea under a *de facto* state of emergency. However, there is no state of emergency in Eritrea, according to a strict legal understanding of the term in the relevant body of international law (Mekonnen, note to authors, 2017). Hence, the actual legitimacy of the government's hold on power is questionable, although a full examination of this issue is beyond the scope of this research.

The more relevant question for the purpose of this report is which authority in Eritrea has the power to tax. For this we must look to the Eritrean constitution, which was ratified in 1997. The constitution identifies the powers and duties of the National Assembly (Article 32) as including, inter alia, the approval of the national budget and the imposition of taxes. It is, therefore, only the National Assembly which has the authority to

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<sup>5</sup> The proclamation appears only in Tigrinya and Arabic. The original Tigrinya version of the Preamble cited above reads as follows: ኣብዚ መሰጋገሪ መድረሻ፡ ህዝባዊ ግንባር ኣርነት ኤርትራ (ሀ.ግ.ሓ.ኤ.) ንኣርነታዊ ቃልሲ ኤርትራ ብዓወት ንምምዝዛም ዝተሰከሞ ሓላፍነት ብምቕጻል፡ ድሕሪ ኣርነት ግዚያዊ መንግስቲ ኤርትራ ክእውጅን ክቕውምን ግድን ምንባሩ ብምርግጋጽ፣ ናይ ግዚያዊ መንግስቲ ኤርትራ (ግ.መ.ኤ.) ኣቃዋሚ ስልጣንን ዕማማትን ብኸምዚ ዝስዕብ ይእውጅ ኣሎ።-After promulgation/publication, all Eritrean laws are publicly available in Eritrea through what is known as the 'Gazette of Eritrean Law', the official government outlet for proclamations and legal notices. We normally cite only the number and year of publication of the proclamation or legal notice, if it is already published in the Gazette of Eritrean Laws. All laws cited in the report have been published in the Gazette of Eritrean Laws (see Appendix H).

<sup>6</sup> The Tigrinya version reads: "ዕድመ መንግስቲ ኤርትራ እንተነውሐ ኣርባዕተ ዓመት ይኸውን።"



impose taxes in Eritrea. However, the constitution never became operational and the National Assembly has not met since the 1998 border conflict. The lack of approval of the 2% Tax by the National Assembly under a system in which there is rule of law and checks and balances in place, strongly undermines the legal basis for the collection of taxes, including from the diaspora. Together with the fact that there is no constitution in place in Eritrea, the first criterion of rule of law (the principle of legality) is not met.

## 2.2 Proclamation 67/1995

Due its long history of armed conflict, Eritrea has one of the largest diaspora communities in the world. By the time the EPLF had advanced to power in 1991, there was already a well-known history of voluntary contributions and donations from Eritrean diaspora communities to the EPLF (see Chapter 4, section 4.1 for more details). However, in its commitment to re-build the Eritrean economy, the EPLF did not want to rely solely on voluntary contributions. For that purpose, various compulsory payments were imposed on members of the Eritrean diaspora. Because of their structural features, such payments can be characterized as taxes. In order to give full effect to its commitment to re-build the national economy, the transitional government promulgated several tax laws to support its revenue generating capacity.

Some of the most well-known tax laws promulgated in the early 1990s include the following:

- ③ **Proclamation No. 17/1991: Proclamation to Provide for the Collection of Rehabilitation Tax (10 December 1991)** (see Appendix H)
- ③ Proclamation No. 41/1993: Proclamation to Provide for Payment of Income Tax on Petroleum Operations (1 July 1993)
- ③ Proclamation No. 62/1994: Proclamation to Provide for Payment of Income Tax (5 October 1994)
- ③ Proclamation No. 63/1994: Proclamation to Provide for the Payment of Rural Agricultural Income Tax and Cattle Tax (5 October 1994)
- ③ Proclamation No. 64/1994: Sales and Excise Tax Proclamation (5 October 1994)
- ③ Proclamation No. 65/1994: Proclamation to Provide for Payment of Stamp Duty (20 March 1995).
- ③ **Proclamation No. 67/1995: Proclamation to Provide for the Collection of Tax from Eritreans who Earn Income while Living Abroad (10 February 1995)** (see Appendix H); and
- ③ Proclamation No. 69/1995: Proclamation to Provide for Payment of Tax on Income from Mining Operation (20 March 1995)

The Government of Eritrea bases the 2% Tax on Proclamations No. 17/1991 and No. 67/1995, “which applies to all citizens living abroad and is levied from their income”, even though Proclamation No 17/1991 does not specifically refer to tax collection among Eritreans abroad (Embassy of the State of Eritrea Brussels, 2016). The 2% Tax on the diaspora is referred to simply as the ‘2% Tax’ (*‘kilte kab mi’Eti*) or the ‘Diaspora Tax’. However, there are concerns about how the tax is levied, specifically pertaining to: (i) taxable persons, (ii) its object, (iii) the identification of the taxable event, (iv) procedures, (v) enforcement and (vi) other consequences.

In relation to the taxable event, Proclamation No.67/1995 states that 2% is to be levied on the annual income of Eritreans living abroad. Annual income is defined in Article 2 of Proclamation 67/1995 as: “income from employment, rental of moveable or immovable property, or any other commercial, professional or service-rendering activity or employment” (Proclamation No. 67/1995). However, there is confusion about whether or not the 2% Tax applies to all income, including from state social security benefits, and to low income (if there is a threshold beneath which the tax would not apply) (see Chapter 6, sections 6.1 and 6.2 for a full discussion of this). Although not stated in the proclamation, it appears that the tax applied retrospectively on all income after the taxpayer leaves Eritrea, back as far as 1991 (or the last time the taxpayer paid)<sup>7</sup> (see section 6.2). Furthermore, the timing of when the tax is levied (annually, or when services are requested) is not defined and seems to vary in practice, although (from the interviews and transcripts of conversations with embassies) often it seems to coincide with the need to obtain an ID card and other services from an embassy (see Chapter 6, section 6.3).

The purpose of the 2% Tax under Proclamation No. 67/1995 is not identified. However, an objective can be deduced from other similar Eritrean tax laws, particularly Proclamation No. 62/1994: *Proclamation to Provide for Payment of Income Tax* (5 October 1994), which states, in its Preamble, that the primary objectives of Eritrea’s tax laws, including the 2% Tax law, are to stimulate the devastated national economy of Eritrea and to provide a tax regime conducive to investment.

In practice, different purposes of the 2% Tax are given by the Government of Eritrea. In 2013, the Permanent Mission in New York said that the tax is levied “for developmental programmes” (Permanent Mission New York, 2013), whereas in 2016 it stated that the tax is “properly and effectively utilized for supporting Martyr’s families and war disabled veterans” (Asmeron, 2016). The Ambassador of Eritrea to the Netherlands stated that Eritreans in the diaspora should be responsible and contribute to Eritrea, stated (DSP-groep & Tilburg University, 2016, p. 89).

The Embassy in Brussels refers to the tax as a Recovery and Rehabilitation Tax (RRT) and says that the tax is “a burden sharing responsibility in national development. The focus is also on social security challenges which mainly focus in supporting families of martyrs, war disabled fighters, vulnerable groups and victims of natural disasters” (Embassy of the State of Eritrea in Brussels, 2016). However, according to the text of Proclamation No. 17/1991, the Rehabilitation and Recovery Tax is aimed only at generating revenue in support of disabled freedom fighters, members of the families of disabled freedom fighters and fallen heroes (martyrs), and those members of society who have sustained injury due to a natural disaster. Furthermore, Proclamation No.17/1991 does not make explicit reference to Eritreans living abroad and there is no clarity in the law or in other regulations as to how and why this tax would be applied to Eritreans living abroad. And, while this tax is applicable within Eritrea, there is no evidence of it currently being collected from Eritreans residing within Eritrea. In its document to the UN Security Council in response to the United Nations Monitoring Group on Somalia and Eritrea (SEMG), the Permanent Mission of Eritrea to

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<sup>7</sup> There is a general rule that laws should not be applied retrospectively. This law was drafted in 1995, but *in practice* is applied retrospectively back to 1991. The practice of applying the law retrospectively could be challenged on this basis, especially as there is nothing in the letter of the law to say that it shall be applied retrospectively.

the United Nations in New York identifies that the Rehabilitation and Recovery Tax is only levied on persons abroad (Permanent Mission of Eritrea to the United Nations, New York, 2015 in UN Security Council, 2015).

Proclamation No. 67/1995 identifies the taxable persons as follows:

*Any person who lives outside of Eritrea and who earns income from employment, rental of moveable or immovable property, or any other commercial, professional or service-rendering activity or employment, shall pay a two per cent (2%) tax from his net income on a monthly or yearly basis, depending on the circumstances. (Proclamation No. 67/1995)*

However, the proclamation does not identify in detail which persons living outside Eritrea are subject to this tax regime. The age, marital status, nationality and other criteria for those liable to pay the tax are not stipulated. It is also not clear whether the 2% Tax is applied to Eritreans with a foreign residential base and nationality who also serve within the government's administration. However, it appears from the interviews, that the understanding is that all persons of Eritrean descent living outside of Eritrea are required, or have a duty, to pay this tax, even if they happen to be citizens (naturalized or by birth) of other countries (see more on this in Chapter 6, section 6.1).

The Proclamation identifies the Ministry of Foreign Affairs of Eritrea as in charge of levying the tax through the consular and ambassadorial mission and establishes that the tax is payable to the Ministry of Finance through diplomatic missions:

*The Ministry of Foreign Affairs has an obligation to collect the tax stipulated in Article 2 of this Proclamation, by monitoring the implementation plan through its diplomatic and consular offices, and ensuring that the tax is directly deposited in the treasury account of the Ministry of Finance and Development. (Proclamation No. 67/1995)*

However, Proclamation No. 67/1995 does not stipulate how diplomatic missions are to collect the tax, nor does it set out what sanctions are available to the Ministry of Foreign Affairs in case of failure to comply (see next section on possible penalties). Hence, the second criterion of rule of law (legal certainty) – that laws are sufficiently precise – is not satisfied (see more on the administrative structure of the tax in Chapter 5).

## 2.3 Penalties for non-payment

It is not clear from Proclamation 67/1995 if payment of the 2% Tax is voluntary or mandatory.

The proclamation clearly identifies that the tax is mandatory and that "any person living outside Eritrea" is obliged to pay the 2% Tax (Article 2). The Eritrean government states that the 2% Tax constitutes a fiscal obligation (Permanent Mission of Eritrea to the United Nations, New York, 2014), that Eritreans living abroad are required to pay the tax (Ministry of Foreign Affairs of the State of Eritrea, 2011), and that administrative enforcement mechanisms exist in case of failure to pay (Permanent Mission of Eritrea to the United Nations, New York, 2014).

The Government of Eritrea also claims that the tax is levied voluntarily. According to the Permanent Mission of Eritrea to the United Nations in New York, the existence of administrative enforcement measures does not mean that the tax is not paid voluntarily (2014, para. 10).

A statement made in 2015 attributed to the Eritrean Embassy in London said that Eritreans residing abroad are not bound by the 2% Tax (Jones, 2015). This is also the information provided by Eritrean Embassy in the Netherlands to a visitor. In the recording the staff explains that the procedure to pay the 2% Tax is voluntary. (video-recording, [700], see 4.3.2).

A statement from the Eritrean Embassy in Brussels (Embassy of the State of Eritrea in Brussels, 2016) identified that “Those who fulfil their duties see it as part of their responsibility and obligation to support the people and the nation”.

If the tax is understood as mandatory, it is relevant to look at what penalties apply for non-payment. The scope for penalisation can be construed from the relevant provisions of the Eritrean Penal Code, specifically Title IV of the code, which is about ‘Offenses against the Fiscal and the Economic Interests of the State’. The most important provision is Article 360 of the Penal Code (see Appendix H), cited in full below:

*Art. 360. – Unlawful Refusal to pay Public Taxes and Dues.*

*(1) Whosoever, being duly ordered to pay the taxes or dues prescribed by law and validly accessed by the competent authority, refuses to discharge his obligation though able to do so, whether it be payment of a due in kind, of real property tax, of tax capital or income, or any other due or tax whatsoever, is punishable with simple imprisonment or fine.*

*(2) Where the refusal is accompanied by threats, violence, or assault, by the display or use of arms, or by disorder or revolt, the punishment may be aggravated in accordance with the relevant provision of this Code. (Article 82)*

The most authoritative law on this issue, namely the Penal Code of Eritrea, identifies only two possible sanctions in case of non-compliance: imprisonment or a fine. However, the information provided by the Eritrean mission in Brussels explicitly excludes imprisonment and fines as forms of penalisation for non-payment, but fails to identify any specific sanctions:

*Eritreans are neither detained nor denied from visiting the country because of not complying with the RRT [2% Tax]. In fact they do not require entry visa as they use the Eritrean ID to enter the country. But failing to fulfil their obligation under the RRT [2% Tax] has administrative consequences including on land entitlement and some related services that have legal implications inside the country. Furthermore, it has to be noted that late payment is not punishable by interest rate increment or any other means. Hence, the enforcement measures are not and cannot be considered “extortion, coercion”, intimidation etc. (Embassy of the State of Eritrea Brussels, 2016)*

From the interviews, it appears that in practice a wide range of penalties are applied for non-payment – to the taxpayer and his/her relatives (see also Chapters 6, section 6.6).

In addition, some Eritreans living abroad are also required to pay other taxes (for example, Eritreans who have property or businesses in Eritrea [67]), however, they are only entitled to do so if the 2% Tax has been paid to the satisfaction of the handling embassy (see Chapters 5 and 6). This condition of having paid the 2% Tax and the ability to comply with taxes inside the country not only affects Eritreans residing abroad, but also their relatives, including those living within Eritrea (see Chapter 6, section 6.6). It is also necessary for family members who live abroad to pay the 2% Tax if their relatives want to leave Eritrea legally [see Chapter 6, section 6.6).

A key feature is the lack of consistency with which they are applied. As one of the interviewed experts explained:

*The whole legal system of Eritrea is completely non-existent and completely arbitrary. [...] This is done just to create fear and mistrust and in the diaspora this is the same. Some may get along without paying the tax, others may get reprisals on their relatives, others may not and there is no certainty. That makes people insecure. [22]*

The penalties have an implicit and ambiguous nature which is not described in the law. This is further elaborated under 'enforcement' in section 6.5.

## 2.4 Information provided to Eritreans on their obligations

### 2.4.1 Online

There is no online Tigrinya or English information available from the Government of Eritrea on the obligations of the Eritreans in the diaspora to pay the 2% Tax. The official website of the Government of Eritrea, Shabait.com, does not offer such information. A google search (4 June 2017) using search words 'Eritrea Rehabilitation Tax', 'Eritrea 2% Tax' and 'Diaspora Tax' did not generate any information on the 2% Tax. This is explained by a former employee of the Ministry of Information as follows: "They only post what they are sure is legal. Most people ask other people what the current procedures are" [95]. However, information for Eritreans in the diaspora is published on the websites of some of the Eritrean embassies. The most extensive information is found on the websites of the Eritrean Embassy in Canada and the US (two countries which are not the focus of this study). The following information is available online:

## Canada

The official website of the Eritrean Embassy in Toronto (Canada) has extensive information, available in Tigrinya only, providing the following information:

*Each visitor [looking for services from the consulate] should fill their address in English.*

*They should also fill in other information like age, telephone number, etc. ID number means Eritrean identity card number.*

*Every visitor who wants the services of the consulate should come with three witnesses who have Eritrean identity cards. If you live near the Eritrean consulate in Toronto, you can send us a signed copy of the witnesses' testimonies.*

*The witnesses should have a clear knowledge of the issue they testify on.*

*It will take seven days for the consulate to process your application.*

*60 CAD is paid as fees for such services, if you want your papers sent to Eritrea by fax you will pay an additional 10 CAD.*

*Any citizen who hasn't paid the 2% rehabilitation tax from their income cannot be allowed to get these services. Thus, you need to send your revival tax documents to Eritrea however it is convenient to you to do so.*

*All fees for services such as guardianship documents, marital status, etc. are paid through money In order to Consulate General of the State of Eritrea.*

(translation by authors)

The Eritrean Embassy in Canada states that in order to request consular services the 2% rehabilitation tax (the 2% Tax) must be paid, this includes obtaining a new ID card. Payment of the tax is also required to receive documents on guardianship and marital status, etc. – documents that are often needed for family reunification procedures. The payment of the 2% Tax is not a service charge, given that in addition to the 2% Tax, the embassy also requests the payment of CAD 60 as a service charge. The website also state that forms will be sent to Eritrea to be processed. The Eritrean Embassy in Toronto facilitates the process.

## Washington DC

The website of the Eritrean Embassy in Washington DC identifies a form to request a new ID card (see Appendix F). Application for a new ID form attracts a fee of USD 80, which is payable by money order. The form is available in Tigrinya and states that one of the prerequisites for acquiring the replacement ID card is payment of the 2% Tax. The third bullet point on the forms states that “Documents need to be provided, showing payment of rehabilitation tax from 1992 to present, and other contributions to the country” (see Appendix F<sup>8</sup>, translation by authors).

## Eritrean embassies in Europe

None of the Eritrean embassies of the European countries studied (Belgium, Germany, Italy, the Netherlands, Sweden, Norway and Switzerland and the UK) provide any information for members of the

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<sup>8</sup> [http://www.embassyeritrea.org/consular/PDF-docs/Application\\_Form\\_For\\_Replacement\\_of\\_Eritrean\\_ID\\_Tigrigna-j.pdf](http://www.embassyeritrea.org/consular/PDF-docs/Application_Form_For_Replacement_of_Eritrean_ID_Tigrigna-j.pdf)

Eritrean community in Tigrinya or in any other language ('Embassy of the State', n.d.; EmbassyPages.com, 2017; EmbassyRome.com, 2017; Embassy-Paris.com, n.d.; VisaHQ.com, 2017; www.botschaft-eritrea.de; www.embassyeritrea.org; www.eritrean-embassy.se).

## 2.4.2 At the embassy

Transcripts were received of audio/video-recorded visits of members of the diaspora to Eritrean embassies.<sup>9</sup> In one transcript it appears that a student who had legally left Eritrea was required to pay the 2% Tax (payable in Sweden), as well as sign a regret form (a form admitting to wrongdoing for leaving the country for refugees of the 2<sup>nd</sup> and third wave<sup>10</sup>, see Appendix E), in order to receive an ID card and a passport (Transcript of video recording, face-to-face communication between Eritrean student and Eritrean Embassy Sweden, published 5 March 2012). In a secretly-recorded conversation with a staff member in the Eritrean Embassy in the UK in 2013, the member of the diaspora was told that the 2% Tax should be paid in Asmara.

*EE: OK from 1996–2004 what were you doing? Were you working, studying, you have to bring proof. Anyway, even if you were a student, £50/year is paid by everyone. For the rest, until 2013 you have to provide proof of income. Before 1996, you don't need to. However, after and until 2013 you need to bring a payslip, a P60 or anything that indicates your income. When you come with all these documents, then you can pay the 2% Tax.*

*XX: Do I have to pay it all at once?*

*EE: No you don't have to pay it all at once; you can break it down and pay in Eritrea.*

*XX: So do I have to pay it in Eritrea?*

*EE: Yes you have to pay it in Eritrea.*

*XX: But do I have to go myself? How can I?*

*EE: You can send it.*

*XX: OK, so it has to be paid there in pounds?*

*EE: Yes in pounds.*

*EE: However, if you have anything to do there any query, e.g., power of attorney (wekelena), or anything to do there, you will have to pay it all and get clearance. You will not be able to do anything without clearance.*

(Transcript of audio recording, face-to-face communication between member of Eritrean diaspora and Eritrean Embassy in London, 18 December 2013)

This transcript shows that the 2% Tax is raised when a member of the Eritrean diaspora contacts an embassy to arrange certain administrative papers and a starting point is that the person needs to have an ID card. This is in stark contrast with the information provided by the Embassy of Eritrea in Brussels which stated:

*Eritreans are neither detained nor denied from visiting the country because of not complying with the RRT. In fact they do not require entry visa as they use the Eritrean ID to enter the country.*

(Embassy of the State of Eritrea in Brussels, 2016)

<sup>9</sup> These transcripts are held by the authors. See for two published examples Appendix A.

<sup>10</sup> Refugees of the first wave who left Eritrea before independence do not have to sign a regret form.

This information conceals the fact that the ID card can only be obtained if the 2% Tax is paid. The Eritrean government is started to replace Eritrean ID cards. As all Eritreans are required to obtain a new card to replace the old ID, a logical conclusion is that it is not possible to travel to Eritrea unless the 2% Tax has been paid.

In a 2014 transcript between an embassy staff member and a member of the Eritrean diaspora in Toronto it was stated that the person would have to pay the whole amount of the 2% Tax in Asmara, a procedure for which the Embassy in Toronto takes no responsibility. The caller was advised that the money needs to be sent from Canada in hard currency cash with a person who can enter the country, so that the money can be paid in Asmara.

*K: It is the way it is. You can work it out.*

*W: So..HMMMM I don't know what to do...deep breath...It is way too much. Is there any way that I can pay by instalment?*

*K: No...No...there is no way. All the payment is done in Asmara. All the monies have to be paid in Asmara.*

*[...]*

*W: Ok...so if I find someone who can pay for me the 2% Tax then I will get the receipt from Asmara?*

*K: Yes. You need to advise the person who is paying for you in Asmara to e-mail you a scanned copy of the receipt or send you by facsimile immediately. Consequently, you send a copy of your receipt and your passport to Teklit (consulate staff) for renewal. [...]*

*K: So inform to the person who is paying on behalf of you in Asmara and let me know so that I will send your file to Asmara.*

*W: The payment is to be made in Canadian dollars, isn't it?*

*K: Yes, it must be paid in Canadian currency. [...]*

*K: They can accept in Canadian. Just send it with someone who travels to Asmara. If you send it with someone travelling to Asmara, they can get it in Canadian dollars.*

*W: Oh...but where can I find a person who will take my money with him. I don't know anyone who travels to Asmara. It is hard to look for someone who travels to Asmara and give my money to the person to give it to the person in Asmara who will pay on behalf of me.*

*K: Everybody is doing what I am telling you to do. People [Eritrean Canadians] are either sending Canadian dollars or asking families to pay for them in Canadian currency in Asmara if they have Canadian currency locally. Either way it is the person's [Eritrean Canadian's] responsibility on finding ways of making the payment. We are here to solicit and calculate the 2% Tax. And inform accordingly.*

*W: K...then I don't know what to do.*

*K: It is your onus to make the payments. Look for a person who travels to Asmara or ask means of sending/transferring the money.*



*W: ...I don't know what to do.*

*K: Let me know your status in the course of time. The office in Asmara will ask for your file so we have to send your file in order for the local office in Asmara process your payment.*

(Transcript of audio recording, telephone conversation between member of Eritrean diaspora and an official from the Consulate General of Eritrea in Toronto, Canada, May 2014)

The transcripts from Toronto and London state that the 2% Tax must be paid in Asmara. According to a former official from the Eritrean Ministry of Information, it is common knowledge that the 2% Tax is collected at the Immigration Office of the Ministry of Foreign Affairs in Asmara.

*People living in countries that don't allow Eritrean embassies to collect 2% can send the money to the Immigration Office of the Ministry of Foreign Affairs in Asmara or the payers can pay in person at the Immigration Office when they visit. It's public knowledge in Asmara. People call and ask relatives and friends to pay the cash for them to deliver it. Most can do it when they visit. this means that nationals living in countries which don't allow the collection of the 2% Tax still don't get any consular services unless they send the money to Eritrea or go there and pay themselves. [95]*

In another transcript from a telephone conversation in 2016 between an embassy staff member and an Eritrean living in Sweden, the caller was told that the 2% Tax is paid in Sweden. In this transcript it seems to be possible to negotiate the volume of the tax. According to this transcript, a person on social welfare must also pay the 2% Tax. This is part of the recording of the conversation:

*A: In addition, when the permission is granted, you'll have to pay at least half of 2%.*

*Caller: Where? Do I tell my family to pay 2% of my income in Eritrea?*

*A: No, you'll pay it here. From the time you got papers here. You send your income statement and then they'll look at the documentation and they'll tell you how much you need to pay.*

*Caller: I am not employed. I am on social welfare.*

(Transcript of audio recording, telephone conversation between member of Eritrean diaspora and Embassy of Sweden, 29 July 2016, available at:

<https://www.youtube.com/watch?v=KLBen0bbbHc&feature=youtu.be>)

The forms and transcripts identify that the 2% Tax needs to be paid in addition to other fees and duties. In some cases it is stated that it is possible to pay in instalments, in other cases this does not appear to be possible.

## 2.5 Conclusion

The 2% Tax is a tax regime for Eritreans living abroad. Eritrea's Proclamations No. 17/1991 and 67/1995 are referred as the legal basis for the 2% Tax, however, Proclamation No. 17/1991 (Rehabilitation and Reconstruction Tax) is intended for persons living within Eritrea and Proclamation No. 67/1995, although intended for people living in the diaspora, contains no stated objective for the levying of this tax. Furthermore, taxation can only be levied by the National Assembly of Eritrea, which has not met since the border conflict in 1998, hence, the proclamations lack constitutionality. Therefore, the 2% Tax has an uncertain legal basis.

The penalties for non-compliance are not provided in the proclamations, but can be found in the Penal Code, which provides for two penalties: imprisonment and fines. However, these penalties are not applied in practice; the penalty for non-compliance with payment of the 2% Tax in practice appears to be denial of access to consular and administrative services (and other sanctions, as will be discussed in Chapter 6 and 8).

The official information does not clarify in unequivocal terms whether or not the 2% Tax is a voluntary or mandatory contribution. In official papers provided by the representations of the Government of Eritrea the 2% tax is sometimes presented as mandatory and at other times presented as voluntary. In one transcript of a recorded visit to the Embassy of Eritrea in the Netherlands the visitor was told the 2% Tax was voluntary. This adds to the uncertainty of the basis of the 2% tax.

There is scant information available on the 2% Tax and the information that is available is not consistent. Procedures for the collection and payment of the tax differ among countries. Eritreans depend largely on information received at the embassy, when they visit it, through agents or by words of mouth (this will be discussed in more detail in chapter 5).

# 3 International Legal Setting and Response by UN Member States

This chapter examines the international legal setting for the 2% Tax levied by the Government of Eritrea on Eritreans living in the diaspora. It is widely recognised in international law that a sovereign state, such as Eritrea, can determine its regime for the taxation of nationals, including those residing outside the country. There are various examples of other countries that have imposed personal income tax on their diaspora, including the United States of America, the Philippines and North Korea (see, for example, McKinnon, 2012). However, the collection of the 2% Tax is not supported by reciprocal tax arrangements—not with the seven countries included in this study, and not with any other country. This chapter examines the relevant international laws in more detail to help set the criteria for the assessment of the legality of the levying and collection of 2% Tax. Finally, it identifies the response of some UN member states to these international law instruments relating to the 2% Tax.

## 3.1 The Vienna Conventions on Diplomatic and Consular Relations

Do Eritrean embassies have the right to collect taxes from Eritreans in foreign lands? The UN Security Council Resolution 2023 refers to the Vienna Conventions on Diplomatic and Consular Relations, as does Nollkaemper (2016). In reference to the Security Council Resolution, Nollkaemper states:

*[...] international law protects Eritrean nationals abroad. It could be the case that the way in which the tax is being levied and/or collected contravenes Eritrea's corresponding obligations. For instance, refusing Eritrean nationals consular services could lead to a conflict with people's right to leave any country (article 12 of the International Covenant on Civil and Political Rights). Whether or not there is an actual conflict with international law in this sense or any other sense will depend on the specific sanctions imposed on persons who refuse to pay the diaspora tax..*

*{...} a conflict with international law (Security Council resolution 2023 or the conventions on diplomatic and consular relations) will, in principle, only arise if Eritrea levies and collects the diaspora tax itself, through its own bodies (for instance consular officials). The actions of other persons cannot, in principle, be attributed to Eritrea, even if those persons have Eritrean nationality. If, however, an investigation were to show that the tax is being 'collected' by persons who do not represent an official body of Eritrea, but are in some way being directed by Eritrea, it could be the case that Eritrea is acting contrary to its above-mentioned international obligations. (Nollkaemper, 2016)*

Contravention of international obligations may include, specifically, refusing administrative and consular services as well as failing to protect the citizens of Eritrea abroad. The refusal to provide critical administrative and consular services may constitute a serious breach of core human rights, as these may result in failure to protect asylum seekers (who may need administrative documents), children (for whom parents or guardians may need administrative documents for procedures in the host country), the right to a family life (when refugees are dependent upon administrative procedures for family reunification), and the right to freedom of movement (for Eritreans with passports from host countries). If relatives in Eritrea are punished (see Chapter 8, section 8.3) for failure of a member of the diaspora to pay the 2% Tax by denial of critical administrative procedures to secure their livelihoods, this could also be regarded as a violation of basic human rights through punishment by association.

Furthermore, there is no precedent for the collection of international personal income tax through diplomatic missions. Nollkaemper states that:

*Eritrea must abide by the provisions of Dutch law. This requirement also applies to diplomatic and consular staff. Under the 1961 Vienna Convention on Diplomatic Relations, it is the duty of all persons who enjoy privileges and immunities under that convention 'to respect the laws and regulations of the receiving State. They also have a duty not to interfere in the internal affairs of that State' (article 41, paragraph 1). Article 55 of the 1963 Vienna Convention on Consular Relations contains an identical clause. The Netherlands and Eritrea are signatories to both conventions. (Nollkaemper, 2016)*

## 3.2 UN Security Council resolutions

The UN Security Council has adopted a number of resolutions of relevance to the Eritrean 2% Tax. In December 2009, the Security Council, acting under Chapter VII of the UN Charter, adopted Resolution 1907 (2009). This resolution imposes sanctions on the Eritrean regime, and its political and military leadership. The resolution makes reference to a number of previous Security Council resolutions concerning Eritrea, and was prompted by Eritrea's allegedly belligerent actions in Somalia and Djibouti. The major motive for this resolution is Eritrea's alleged support of Al-Shabaab, which the Security Council considered as constituting a threat to international peace and security.

A unique feature of Resolution 1907 is that it was adopted upon the recommendation of the African Union (AU), which in turn acted upon the request of the Inter-Governmental Authority on Development (IGAD), the regional multilateral organisation for countries in the Horn of Africa. Thus, Eritrea is the first African country since South Africa during apartheid and the era of the Organization of African Unity (OAU) to be the subject of UN Security Council sanctions on the explicit recommendation of the AU.

The resolution was borne out of concern that Eritrea is destabilising the region and the measures agreed are designed to address the threat Eritrea poses to security in the region. The resolution states that the UN Security Council:

*...decides further that all Member States shall ensure that no funds, financial assets or economic resources are made available by their nationals or by any individuals or entities within their territories to or for the benefit of such individuals or entities. (UNSCR 1907)*

In December 2011, the UN Security Council adopted Resolution 2023 (of 2011) tightening the measures adopted in Resolution 1907 (of 2009). The initial measures under Resolution 1907 included an arms embargo on the Eritrean government and a travel ban and asset freeze against certain Eritrean individuals and entities yet to be designated by the Security Council.

Resolution 2023 expands on this to include specific decisions regarding the 2% Tax. The 2% Tax was included in the resolution on two grounds. Firstly, Eritrea has been accused of pursuing a foreign policy which destabilises the region through the support of armed groups (2011, 2012, 2013, 2014, 2015, 2016). Among others, Eritrea has previously been accused of having ties with Al-Shabaab, which has been designated as a terrorist group in Somalia (2011, 2013). These allegations provided the basis for Resolution 1907 and 2023, and gave rise to the explicit prohibition to use the 2% Tax revenue “to destabilize the Horn of Africa region or violate relevant resolutions, including 1844 (2008), 1862 (2009) and 1907 (2009)” (UN Resolution 2023, para. 10).

Secondly, the UN Security Council holds that the 2% Tax may not be imposed coercively<sup>11</sup> on Eritreans living abroad and may not be collected using illicit methods, including intimidation, harassment and blackmail, which would give it the distinctive character of extortion. Using its powers under Chapter VII of the UN Charter, the UN Security Council, in adopting the two resolutions (1907 and 2023), obliges all UN member states to take appropriate national measures to give effect to the measures adopted in the resolutions. Such measures may include prohibiting Eritrean diplomatic missions from collecting the controversial 2% Tax by coercive means, as is prohibited under the Dutch regulation (see more on this regulation in section 3.7 of this chapter) (Ministerie van Buitenlandse Zaken, 2016).

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<sup>11</sup> Acts of coercion can include mental and social pressure, extortion, intimidation, fraud or blackmail. Coercion qualifies the responsibility of the person or party who is coerced, as well as the person or party exercising the coercion for illegal practices or crimes committed related to the coercion.

### 3.3 EU Council Decision 2010/127/CFSP concerning restrictive measures against Eritrea

In 2010, the European Council adopted a decision to implement sanctions on Eritrea in order to comply with UNSCR 1907 (2009). The Council Decision followed an earlier common position adopted by member states 2009/138/CFSP. The restrictive measures that were imposed highlight the need to comply with the arms embargo and to avoid any financial or other support being given to those who block peaceful political activity. The EU member states are obliged to implement these measures.

### 3.4 UN Monitoring Group on Somalia and Eritrea

The United Nations Monitoring Group on Eritrea and Somalia (SEMG) has verified that Eritrea operates an international system of revenue collection among Eritrean citizens and foreign nationals of Eritrean descent. As well as the collection of informal donations and contributions, Eritrea collects a 2% Tax from Eritreans living in the diaspora. According to the SEMG, one key feature of this system has been its diverse and changing nature and ever-increasing informality. In 2012, the SEMG explained that:

*Eritrean embassies and consulates no longer offer receipts for payment of the tax. Regret letters are retained by embassies, without copies being provided to the signatories. Movement of funds has shifted further away from official bank accounts into hard currency cash payments handled by PFDJ agents and activists via designated private bank accounts outside Eritrea. Cairo and Dubai continue to be routinely cited as key PFDJ financial hubs, but Kampala and Juba are both rapidly gaining in importance. (UN Security Council, 2012, para. 107, footnote omitted)*

Until 2014, the SEMG found that embassies collect the tax and that local PFDJ agents and activist act as tax collectors when there is no embassy in reach. The involvement of both actor groups has been criticised by the SEMG (inter alia, as in violation of the Vienna Convention on Consular Relations) and has called for action be taken by the UN member states:

*National Governments should demand that the Government of Eritrea cease to violate the Vienna Convention on Consular Relations through the collection of extraterritorial taxes by its diplomats, and should examine domestic legislation to determine whether the collection of funds by party agents or community “wardens” in their territories is in fact legal—especially where it is accompanied by intimidation or coercion—and, if not, instruct law enforcement authorities to take appropriate action; [...] (UN Security Council, 2011a, para. 453, c)*

While the embassies of Eritrea continue to facilitate tax payments, the SEMG has recognised a recent shift in payments, which are increasingly being made directly in Asmara, the capital of Eritrea. Apart from sending tax money with family members, the Group had been told that members of the diaspora can now “wire the amount through designated money transfer organizations (hawalas)” (UN Security Council, 2014, para. 107).

The SEMG also found that “Eritrean officials and party agents routinely resort to threats, intimidation and coercive measures in order to elicit payment” (UN Security Council, 2012, para. 91; see also UN Security Council, 2011a, 2013 & 2014), and that these practices also target family members in Eritrea (UN Security Council, 2011a & 2012). The SEMG further consistently reports that the 2% Tax is a prerequisite for accessing government and consular services (UN Security Council, 2011a, 2012, 2013, 2014, 2015 & 2016). In 2012, the Monitoring Group described the consequences of non-payment as follows:

*95. The Monitoring Group has collected numerous testimonies from diaspora Eritreans and host country authorities describing the various techniques employed by Eritrean embassy personnel and PFDJ representatives to elicit payment. According to a recent Royal Canadian Mounted Police assessment, which is consistent with the Monitoring Group’s own findings, refusal to pay the tax often results in denial of service or threats against, or harassment of, family members still residing in Eritrea, or possible arrest of the individual should they travel to Eritrea without paying the taxes alleged to be owing.*

*96. For diaspora Eritreans, payment of 2 per cent income tax is a prerequisite for obtaining any government service, and is retroactive to the date of the last payment of the tax. Any contact with an Eritrean embassy or consulate, whether for renewal of a passport, issuance of a visa, family reunification, or inheritance matters, automatically triggers a demand for retroactive payment of taxes. (UN Security Council, 2012, footnotes omitted)*

While the Eritrean government has only verified the use of administrative measures, such as “the denial of a business licence, land entitlement and other services”, the SEMG asserts that even these measures are “an indirect way of using fear to control the process of collecting the tax” (UN Security Council, 2015, para. 82). In this regard it explained:

*As stated in previous reports, the Government has created a culture of fear and intimidation among its citizens abroad. Most sources interviewed by the Group have expressed their constant fear of reporting any intimidation or coercion to the local authorities for fear of reprisal by networks of individuals sympathetic to the Government. The Group has interviewed multiple sources who have confirmed the existence of a network of sympathizers and a culture of intimidation that it has instilled in the diaspora. (Ibid. para. 82)*

The existence of such a system was also supported in the Dutch Country of Origin Report of 2015, which states:

*The previous Country of Origin Report stated that the Eritrean government had a network of informants abroad. Members of the diaspora who did not participate in political and cultural events and fundraising abroad would be reportedly blacklisted. Non-loyal members of the diaspora would be the target of organized government campaigns.* (Ministerie van Buitenlandse Zaken, Netherlands, 2015, p. 16 translated by authors)

In 2016, the SEMG confirmed that paying the 2% Tax continues to be a prerequisite for receiving government services. However, it also explained that “this in itself does not constitute a violation of the sanctions measures [and that] [t]he Monitoring Group has not found evidence that Eritrea has collected the tax using the methods prohibited under paragraph 11 of resolution 2023 (2011)”, namely, the use of “extortion, threats of violence, fraud and other illicit means to collect taxes” (UN Security Council, 2016, para. 85).

However, according to the SEMG, the 2% Tax system is defined by a lack of financial transparency. In 2011, the SEMG explained that “hard currency deposits are not, as supposed, managed by a hard currency oversight board”, but by the Director of the PFDJ Economic Affairs Department, Hagos Gebrehiwet (also known as Hagos ‘Kisha’) and that, therefore, “the Department exercises de facto control over the hard currency raised by Eritrean embassies abroad from diaspora taxes [...]” (UN Security Council, 2011a, para. 376). This lack of financial transparency is particularly worrisome given the allegations that Eritrea has (at least in the past) supported armed groups in the region. In 2016, the SEMG explained that: “The lack of transparency with regard to government revenue and expenditure and the non-cooperation on this matter by the Government limit the ability of the Monitoring Group to assess whether the Government is financially supporting armed groups operating within its borders or breaching the arms embargo” (UN Security Council, 2016, para. 84).

The observation that PFDJ Economic Affairs Department coordinates all revenue from within the President’s office and without oversight of government ministries (such as the Ministry of Finance) is extensively described in Van Reisen and Estefanos (2017) as well as by respondents with thorough inside knowledge [19, 47, 49, 87, 95, 97, 105].

## 3.5 UN Commission of Inquiry

The UN Commission of Inquiry on Eritrea (COI) issued two detailed reports on the human rights situation in Eritrea, in 2015 and 2016. The Commission described the 2% Tax as a ‘Diaspora Tax’ “levied of Eritrean citizens abroad by the Government of Eritrea, through its local embassies” (UNHRC, 2015a, p. 94). The UN Commission of Inquiry identifies the 2% Tax as a tool used by the Government of Eritrea to carry out surveillance and control over the diaspora communities. It describes the tax as follows:



348. *The spying web has its outposts outside Eritrea, used to control the Eritrean population in the various countries where they reside. Eritrean representations in foreign countries recruit spies to conduct surveillance of Eritreans in the diaspora. Allegedly, Government operatives are active in almost every other place Eritreans live. Information obtained by the Commission indicates that, to conduct spying activities on their behalf, embassies often approach individuals from within the Eritrean communities abroad, in particular those who pay the 2 per cent Rehabilitation Tax as this is perceived as a form of support to the Government. (UNHRC, 2015a, para. 348)*<sup>12</sup>

The UN Commission of Inquiry associates the 2% Tax with intelligence gathering. In the context of the 2% Tax it is alleged that the Eritrean government spies on people of Eritrean descent in the diaspora through the collection of the tax (ibid., para 348). The UN Commission of Inquiry further identified that the 2% Tax was used as a precondition for the enjoyment of the rights of members of the diaspora to participate in the economic life of the country, stating that:

*The Commission received also testimony showing that the payment of the 2% Rehabilitation Tax by Eritreans abroad is also required for the renewal of business licenses and access to land in Eritrea. The payment of the 2% Rehabilitation Tax is, therefore, a prerequisite for the enjoyment of the right to property and to engage in economic activity for members of the diaspora. (UNHRC, 2015ab, p. 117)*

## 3.6 Resolution of the European Parliament

In the European Parliament, parliamentary questions have been asked about the 2% Tax and other related topics, including the granting of EU aid to Eritrea (European Parliament, 2016b). The European Parliament has described the 2% Tax as undesirable and illegal, identifying it as tool for the Eritrean government to control and coerce members of the diaspora in foreign countries as a form of intelligence gathering. The European Parliament resolution states that:

*whereas the regime extends its totalitarian grip to the Eritrean diaspora, extorting funds from its members via a 2% Tax on expatriate incomes, spying on them and targeting family members who have remained in Eritrea on the grounds of perceived wrongdoing. (European Parliament, 2016a preamble)*

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<sup>12</sup> The COI 2015 report (UNHCR, 2015a, p. 94) cites: "One witness who reported having been a spy for an Eritrean embassy told the Commission that 'In 1997, Mr. [A], the consul in [a foreign country]... called me for a meeting joined by other spies. They told us we should continue our struggle in [a foreign country]. He introduced us to each other and started meeting us individually. There was an organization ... We were assigned to this organization, not to work but to ensure the PFDJ was represented in every organization. They wanted me to join the board. I refused, arguing I was too young and inexperienced. Later, Mr. A told me he had a job for me. He told me I should work for them as a security agent in [city Z]. He said this would only be between him and me. Later, he gave me appointments and said I would always be able to enter the consulate, without needing permission and without having to wait for an appointment. Even the people at the consulate were not allowed to ask us any questions. I received a schedule for the entire week. I was asked to go every day to different hotels or restaurants. There were three shifts per day. We were asked to chat with people who came to those places and report on what we heard. Every day, I had to report back to the consul in person. I believed this was the right thing to do ... We had to observe every religious group. Those working in the religious groups are church members and PFDJ members at the same time ... We did not know who was an agent and who was not. The work was organized by the consul alone, not with others. Now they have people who don't trust each other. At the time, it was different ... I decided to discontinue my work with them.'"

The European Parliament condemned the 2% Tax in strong terms, describing it once more as a means of extortion for illegal purposes, referring to the UN Security Council resolutions:

*The European Parliament] condemns the use by the Eritrean Government of the 'Diaspora tax', which is collected by extortion and other illegal means from Eritreans outside of Eritrea and is used in violation of UN resolutions to fund armed groups in neighbouring countries and thus destabilise the region; urges the government to end the 'guilt-by-association' policies that target family members of those who evade national service, seek to flee Eritrea or fail to pay the 2% income tax imposed by the government on Eritrean expatriates. (European Parliament, 2016a, para. 13)*

The European Parliament urged EU member states to end the 2% Tax in the context of their obligation to the Geneva Conventions to protect refugees:

*...to investigate the role of the PFDJ and its various wings, including the youth wing, and to prohibit all forms of association and activity that directly support control and surveillance exercises in Europe, undermine democratic principles and the rule of law, and create patterns of intimidation and extortion; urges the Member States to act to end the diaspora tax and to investigate the financial transactions related to any other 'contributions' raised by Regime-linked associations abroad, and to fully protect the asylum rights of all Eritrean refugees in Europe. (European Parliament, 2016a, para. 16)*

The European Parliament identified the 2% Tax as a tool for the extraterritorial intimidation and coercion of Eritrean refugees (European Parliament, 2016a).

### 3.7 Responses by UN member states

Under Chapter VII of the UN Charter, all UN member states have an obligation to give full effect to the measures stipulated in Security Council Resolutions 1907 and 2023. Resolution 2023, in particular, calls on Eritrean diplomatic missions to “cease using threats of violence, fraud and other illicit means to collect taxes outside of Eritrea”. Moreover, money collected in this way has been used (UN Security Council, 2012) to train, arm and support armed groups designated by the UN as terrorists in the past. Thus, the collection of taxes by Eritrean diplomatic missions must be monitored strictly. In the domestic jurisdictions of UN member states a variety of positions have been developed since the adoption of these UN Security Council resolutions. An overview, which does not claim to be exhaustive, is provided here and includes some relevant information with regards to countries outside the focus of this study, who have been proactively engaging with regards to the 2% Tax, as relevant to understanding the response by the international community more broadly.

## Canada

In Canada, systematic work has been carried out by the Eritrean-Canadian Human Rights Group, resulting in rigorous media coverage. The group routinely monitors the unlawful practice of forcibly collecting the 2% Tax by the Eritrean diplomatic mission in Canada. In Canada, national directives were adopted in 2010 and, subsequently, the Government of Canada gave repeated warnings to the Eritrean Consulate General in Ottawa to stop collecting the 'diaspora income tax' using illicit methods. As a result of non-compliance, Eritrean Consul Semere Ghebremariam O Micael was declared a *persona non grata* on 29 May 2013 and ordered to leave Canada within 24 hours. When expelling the Eritrean diplomat, Canadian officials said they had ample evidence that the 2% Tax was collected in ways that appear to be in contravention of the stipulations contained in Resolution 2023 of the Security Council; hence, they expelled the diplomat for engaging in illicit activity.

## The Netherlands

In the Netherlands, a regulation was adopted in 2011 to implement the UN Security Council sanctions against Eritrea. In recent years, the payment of the 2% Tax has received a lot of media attention and was the subject of parliamentary questions. In 2016, on the occasion of a visit by the Eritrean Minister of Foreign Affairs, Dutch Foreign Minister Koenders explained the position of the Netherlands on the levying of the 2% Tax. Thereafter, the 2011 regulation was amended by the Minister of Foreign Affairs on 26 of October 2016 to specifically address the 2% Tax. This new article to the regulation prohibits the collection of the 2% Tax by means of coercion, extortion, fraud or another illegal mean and the collection of taxes and contributions in violation of UN Security Council Resolution 1907 (2009), Resolution 2023 (2011) and the arms embargo of the European Union (2010/127/CSFP) (Ministerie van Buitenlandse Zaken, 2016). The Dutch government adopted the conclusions of the Advisor in International Law of Minister of Foreign Affairs, Bert Koenders, and stated in a letter to the Dutch Parliament:

*It is common practice that diplomatic representations will maintain contacts with members of and organisations within their diaspora. Citizens in The Netherlands should be able to organise in freedom, freely be member of a certain organisation and in freedom form their opinion about the country they originate from. It is unacceptable if foreign governments try to influence such choices openly or covertly. The Eritrean authorities must orientate themselves to the interstate relations to the Dutch government and not put any pressure on choices that people of Eritrean background make. Voluntarism should be the point of departure for all contacts of Eritreans with the Eritrean embassy or authorities. The exercise of pressure, coercion or extortion is prohibited.” (Tweede Kamer der Staten Generaal, 2016: 4, translated by authors)*

In this spirit, the Dutch government also stated:

*The levying of the 2% Diaspora tax by the Eritrean embassy is an example of institutionalised influence. The levying of the diaspora tax is in and of itself not illegal. However it can be prosecuted when the levying happens with coercion or intimidation. (Ministerie Buitenlandse Zaken, 2016, translated by authors)*

The Dutch government follows the advice of Prof. Dr Nollkaemper in asserting that the critical factor in determining the legality of the levying of the tax is whether it is levied with coercion or intimidation; if the latter is the case, it could be prosecuted. However, the Dutch government adds that prosecution is dependent upon the availability of police reports of coercion or intimidation.

### Germany

As a reaction to questions posed by the *Bundestag*, the German government explained that the tax was not illegal on its own, but that UN Security Resolution 2023 would be violated if the tax was used to destabilise the Horn of Africa region, or if it was collected by use of extortion, harassment or other illegal means (Deutscher Bundestag, 2015). In addition, the German government communicated several times with the Eritrean diplomatic mission to ensure that the mission ceased to be involved in the collection of the 2% Tax. In this regard, the government explained:

*... the Federal Government considers the use of privileged embassy accounts for this purpose [namely collecting the tax,] as not permitted under public international law, because it interferes with the fiscal sovereign right of the receiving State. (Ibid., p. 8, translated by author)*

The German government asked the Eritrean Embassy recently about the 2% Tax and more specifically on whom the Tax is levied. The response by the Eritrean Embassy was that elderly, disabled people and students who do not have an income do not have to pay. The response confirmed that the tax is still levied and collected. The response also confirmed that the payment of the 2% Tax is a condition for consular services, and that it is the role of the Embassy to control that. No information was given about how the tax is collected [20].<sup>13</sup>

### United Kingdom

The United Kingdom has taken a similar position to Germany. In 2011, the British government called upon the Eritrean authorities to inform it about “aspects of the collection of the 2 per cent tax [that] may be unlawful and in breach of the Vienna Convention on Diplomatic Relations” (UN Security Council, 2011a, para. 92). Based on this, the Eritrean Embassy in London was told to suspend all activities relating to the collection of the 2% Tax.

### Sweden

In Sweden, the parliament rejected a ban on the 2% Tax, even though it agreed that the tax was illegal under domestic law. The parliament further confirmed that “current Swedish law was sufficient to stop any practices of collecting the tax by means of extortion, threat or blackmail” and that “any Swedish-Eritrean national that was subjected to coercion and/or threats in paying the tax, should report the issue to local law enforcement authorities” (UN Security Council, 2014, para. 110). In Sweden a ‘top-diplomat’ from the

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<sup>13</sup> Information on this verbatim was provided by source: by January the 27<sup>th</sup> 2017 Foreign affairs has sent an official letter to the Eritrean Embassy asking about the tax and received an official answer from the Eritrean Embassy the 8<sup>th</sup> of February 2017.[20]

Eritrean Embassy was expelled from Sweden after a range of illegal activities carried out by the embassy associated with community organisations and meetings organised by the PFDJ and YPFDJ were reported.

### Norway

Norway was host to an office to collect 2% Tax, which reported to the Embassy of Eritrea in Sweden. In 2012 the Norwegian Parliament, Storting, denounced the office. In 2016, this office was closed by the Ministry of Foreign Affairs in Norway as a diplomatic mission (which it was not) [131, 156] (Plaut, 2017). While the office continues to exist as an Interest Office for Eritreans, it has been officially prohibited from calling itself an embassy and from collecting taxes from among the Eritrean diaspora in Norway. Eritreans in Norway have demanded that the 'Information Office' is closed, a group – 'Mothers for Peace' – handed in a dossier of fresh information to the Norwegian police giving evidence about this extortion (Plaut, 2017).

### Belgium

In Belgium, a parliamentary question was asked about the collection of the 2% Tax in 2016 (Belgium Parliament, Belgische Kamer van Volksvertegenwoordigers, 2016). The Belgian Minister of Foreign Affairs replied that the Embassy would be contacted to request information about the collection of the 2% Tax. Belgium prefers action on the collection of the 2% Tax, if necessary, to be taken on a European level, because of the small number of Eritreans residing in Belgium. These parliamentary questions have not led to any national legal regulations or policies.

### Italy

In Italy, Parliamentary questions were asked about the legality of the levy and collection of the 2% Tax in the country in June 2013 (Atto Camera Italia, 2013). This has not led to any known action by the Italian government.

## 3.8 Conclusion

The international legal framework recognises the right of states to levy taxes abroad. The levying and collection of such taxes must comply with international law. In the case of Eritrea, these are qualified by UN Security Council Resolution 2023 on Eritrea, which sets out restrictive measures related specifically to the 2% Tax and its collection, and the earlier Resolution 1907, which imposes sanctions on Eritrea and an arms embargo.

Security Council Resolution 2023 specifically focuses on two elements: first, the fungibility of financial resources collected through the tax (in other words, the potential of the 2% Tax collection to establish a slush fund, due to lack of rule of law and financial management) and the potential for such a fund to be used to *destabilising the Horn of Africa* region and, second, *coercive practices* associated with the collection of the tax.

The European Union has transcribed the UN Security Council Resolutions in a European Council Decision (2010/127/CFSP). In addition the European Parliament has raised serious reservations about the 2% Tax, associating its collection with coercive practices.

The UN Commission of Inquiry on Eritrea has also raised concerns about the collection of the 2% Tax as a form of intelligence gathering and control over Eritrean people living in the diaspora. This intelligence gathering can be seen as creating the conditions for coercion.

Measures have been taken in several national jurisdictions by UN member states to prohibit the collection of the 2% Tax or to condition its collection on criteria in line with the UN Security Council resolutions.

In some national jurisdictions, questions have been raised over the compliance of the manner of collection of the 2% Tax (by diplomatic missions of Eritrea) with the Vienna Conventions on Diplomatic and Consular Relations. In many jurisdictions it has explicitly declared that the 2% Tax can only be raised with non-coercive methods of collection.

Prof. Dr Nollkaemper identifies that if the 2% Tax is levied and collected through persons directed by Eritrea operating outside Eritrean government organs, Eritrea is responsible for breaches under international law.

# 4 Origins and Volume

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*The volume of the 2% Tax is estimated at USD 100 million annually. [47]*

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This chapter looks at the origins of the 2% Tax, the estimated volume of tax revenue generated by it and the administrative structures in place for its levying and collection. The information in this chapter is based on interviews with former diplomats and former officials in the Eritrean administration, including former Eritrean Deputy Minister of Finance, Kubrom Dafla Hosabay, who has asylum in the Netherlands [19, 47, 48, 49, 81, 95, 96, 97].

## 4.1 Origins

This section is based on information provided by former Deputy Minister of Finance, Kubrom Dafla Hosabay (in an interview in 2017 and in an unpublished document prepared for this report in 2017). Dafla Hosabay was responsible for the EPLF office in Rome in the 1980s and for establishing a financial system for the EPLF. He was subsequently involved in the creation of the transfer company Himbol, head of the Treasury Department, CEO of Eritrea Airways and Deputy Minister of Finance.

Before the country gained independence in 1991, the EPLF offices were important places from where Eritreans in the diaspora could receive support. During the liberation struggle, the EPLF had its own finance office. Among other things, EPLF offices in the diaspora helped Eritreans send money home.<sup>14</sup> This was a direct person-to-person transaction service, carried out for a service charge. The system worked through telexes; the names of the recipients and amounts were listed and payment would be made by the EPLF finance office, where it was accounted for.<sup>15</sup> At this time, a culture developed of members of the Eritrean diaspora contributing 'to the struggle', to support the goals of the liberation and the fighters ('martyrs') on the frontline.

Only EPLF members paid these contributions, which were considered a voluntary duty. At festivals, such as the Bologna festival, money was raised 'for the struggle'. People also paid for particular projects when they were requested to contribute. The mass organisations of the regime – the National Union of Eritrean Women (NUEW), the National Union of Eritrean Workers (NUEW), which is now the National Confederation of Eritrean Workers (NCEW) and the National Union of Eritrean Youth/Students (NUEY/NUES or NUEYS) – were the central pillars of the structure, and the NUES was particularly seen as the breeding place for future leaders of the PFDJ.

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<sup>14</sup> Through the Khartoum EPLF offices; at that time there were 5 EPLF offices in Khartoum.

<sup>15</sup> It should be remembered that at this time phone communication was difficult, if possible at all.

After independence, the transfers of remittances continued and, after liberation in May 1991, the volume increased as people wanted to send money home to celebrate and contribute to the reconstruction, recovery and rehabilitation of the new country. The Rome financial unit of the EPLF was a centre for international remittances and transactions. In Asmara, a unit was set up for remittances in the Commercial Bank of Ethiopia, where a telex was placed. The administration of these remittances and contributions was done through central lists and through the EPLF party structures. The lists identified whom should be paid, by whom and gave a receipt number. The services of the Rome office included the booking and payment of flights and the organisation of charters for special occasions. A bank account was opened for the government with the Banca National Lavoro (BNL) in Rome, and new sources of income started to be generated (such as port tariffs and air traffic fees), which were transferred to this Rome bank account, as Eritrea did not yet have a banking system. In addition hawala exchanges (remittances) and money exchange services (through 'samsonite' agents) were flourishing within Eritrea, and between Eritrea and the diaspora, as the country was engaging with the outside world in many new ways. The EPLF and government finances were not necessarily clearly separated.

Following the transformation of the EPLF into the PFDJ in 1994, the PFDJ took over the finances of the EPLF. The finances of the party and the Government of Eritrea were initially separated through account 4062 of the Commercial Bank of Eritrea (CBE), which became the principal account for the PFDJ. However, in years that followed, this separation became increasingly obfuscated (World Bank 2012 cited in Van Reisen & Estefanos, 2017).

The EPLF offices were transformed into diplomatic missions and embassies. The hawala system remained active within the EPLF/PFDJ account, but the system was refined with codes for each transaction and printed receipts were provided to people by the embassies. People were trained in the hawala transaction system, which was administered by what were now diplomatic missions. The information collected when money was remitted included the details of the persons place of residence and of their family in Eritrea, among other things. The person-to-person remittances were organised through 'Himbol', a fund for transactions, which had no legal status and no licence to carry out commercial remittances. In 1997, the Himbol fund had an estimated turnover of USD 130 million, according to Dafla Hosabay. Account 4062 was controlled by the Eritrean exchange office. The exchange rate with the nakfa currency became a key determinant of the value of the Himbol fund in foreign exchange.

In 1994/1995 a team was selected by President Isaias Afewerki, to help strengthen the central coordination of finances and otherwise by the President's Office. The team included Hagos Gebrehiwet ('Kisha') and Yemane Gebreab ('Monkey'). Account 4062 stayed with the PFDJ and Yemane Gebreab was assigned as the political head of the PFDJ (Head of Political Affairs of the PFDJ), while Hagos Gebrehiwet was assigned to the finances (Head of the Economic Affairs of the PFDJ), both with direct lines to the President. Remittances were transferred by the embassies and each embassy had an account for remittances. Remittance agents collected foreign exchange, which was exchanged for nakfa in the Asmara office. Account 4062 turned into



a revolving fund, with central bank accounts in Italy (BNL) and Eritrea (CBE); in Germany, a bank account was opened with HSBC.

Embassies also assisted Eritreans with saving accounts. It has been suggested by some of our respondents that some Eritreans (for instance, those working in the Middle East) found it safer to deposit their savings in Eritrea, or elsewhere, rather than in the country where they were working.

The Commercial Bank of Eritrea opened a free service through Himbol to deposit savings in Eritrea or in the embassy bank accounts. The PFDJ became the owner of Himbol and created 'Hidri'<sup>16</sup> to own all the related businesses (referred to as the '09' commercial activity of the party). The legalisation of the Hidri fund was controversial and it was decided to continue administering it through the embassies. The embassies became holding points for the financial reserves generated abroad.

It is further alleged that, over the last decade, the Central Bank of Eritrea has increasingly started to exploit the black market through the hawala system, in which foreign exchange currencies are bought and changed on the black market and then converted to the new Eritrean currency, the nakfa, with profits generated for the hawala agents, who are allegedly controlled by the PFDJ. (Van Reisen & Estefanos, 2017) [19, 47, 49, 73, 95, 96].

Reportedly, the line-ministries do not have control over their finances. This is clear from the following statement by the former Deputy Minister of Finance:

*That no government agency can utilize government revenue for any reason, whatsoever, is so sacred that government agencies (including embassies), should deposit revenues collected during the day, to a Treasury Department bank account, before noon of the next work day. (KD Hosabay, 2017, unpublished document prepared for this report)*

In addition, no known budget has been published by the Government of Eritrea since 2002 (Van Reisen & Estefanos, 2017).

## 4.2 Volume

It is estimated by the former Eritrean Deputy Minister of Finance, Kubrom Dafla Hosabay, that the 2% Tax generates anywhere between 25 to 75 million USD per year<sup>17</sup> of scarce foreign currency for the Eritrean government (KD Hosabay, 2017, unpublished document prepared for this report & interview, 26 April 2017).<sup>18</sup> The fact that the former Deputy Minister of Finance is not able to give a more detailed estimate and relies on a rather broad range is, in itself, significant. Dafla Hosabay explains that no formal information or

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<sup>16</sup> "Hidri means Trust, for trust fund. When it was founded, Hidri pretended to be the trust fund for whatever the EPLF/PFDJ owned. It was argued that since the EPLF's wealth belonged to the martyrs, and not the to the living, a trust fund would be needed for their wealth. That wealth would be used for realizing the dreams of the martyrs" [95].

<sup>17</sup> This is only an extrapolation; there is no published statistics available.

<sup>18</sup> A written document has been prepared for this study by Kubrom Dafla Hosabay. A further in depth interview was audio-recorded. Other in depth interviews were carried out for this chapter. The most important interviews have been audio-recorded.

public statistics are available on which one could base a more precise estimate of the revenue generated by the 2% Tax.

The Government of Eritrea reports that the total overall annual revenue generated by the 2% Tax was USD 15 million in 2010, USD 25 million in 2013 (Embassy of Eritrea, New, York, 2014) and USD 11 million in 2016 (Asmeron, 2016). In information received by one of the respondents, a much higher estimate was mentioned considering the 2% Tax as well as other contributions from the diaspora:

*R. I just learned that the total of all diaspora tax and contributions was estimated by at a yearly rate of between 300 to 400 million. This estimate is from 5 years ago. I didn't want to press the source too much, it was raised in a casual discussion about economic potentials in Eritrea and how PFDJ survives so far. But he mentioned that the data was provided by Monkey [Yemane Gebreab] to Professor X, a xxx professor at the University of Asmara. He was part of the team helping with writing a paper, he said, I trust him [...] and in this particular context [in around 2007] he had no reason to lie. [95]*

The ball-park figure cited here of USD 300–400 million is likely to refer to the 2% Tax and the other contributions from the diaspora (see Chapter 6, section 6.8). However, a more realistic figure calculated on the basis of conservative estimates would suggest that the 2% Tax may provide a *revenue of around USD 100 million* [47]. Based on the limited information available, it is estimated that the percentage of people paying the 2% Tax could be at least 50% of the members of the diaspora but, according to some estimates provided in some interviews, it could be a much larger proportion.

## 4.3 Conclusion

This chapter identifies that the origin of the 2% Tax is the support of the Eritrean diaspora to the liberation struggle of the EPLF. The 2% Tax is in effect a continuation of the notion that the Eritreans in the diaspora should contribute to the EPLF, which has been renamed as the PFDJ. The 2% Tax comes as a contribution at the discretion of the party leadership. The current volume is conservatively estimated at 100 million USD annually. The 2% Tax is one element of a larger range of contributions, which may constitute a volume of possibly 300-400 million USD annually.

## 5 Administration

This section identifies how the levying and collection of the 2% Tax is structured. It is based on interviews with resource persons who have worked within the administration of the Government of Eritrea or PFDJ, or who have a good understanding of it. It looks at the role of the Ministry of Foreign Affairs in administering the tax, the role of the Eritrean embassies in levying and collecting the tax and, finally, the role of the PFDJ, which works hand-in-hand with the embassies to levy and collect the tax.

### 5.1 The President's Office

The 2% Tax collection is managed by the Eritrean Ministry of Foreign Affairs and the Eritrean embassies. The tax is not administered by Eritrea's Inland Revenue Department (which is the tax authority), nor by the Treasury Department (the public treasury, which has specialised staff and systems already in place for handling tax and public finances), nor by the Ministry of Finance (Interview with Kubrom Dafla Hosabay, face-to-face, 26 April 2017).<sup>19</sup> The Ministry of Finance, Inland Revenue Department, and Treasury Department have never issued any directive in relation to the 2% Tax. Dafla Hosabay explains:

*The most worrying aspect of this 2% Tax, is not that it is not a tax at all, or, that it is not accounted for, properly. Nobody, including the public treasury, knows how much has been collected. The TRD [Treasury Department] knows how much has been deposited in its bank account, not what has been collected. Only the ambassador, and his staff, know that.* (KD Hosabay, 2017, unpublished document prepared for this report)

According to Dafla Hosabay, who makes this observation on the basis of his experience as former head of the relevant offices, the 2% Tax serves three principal purposes for the Eritrean government: it is a *source of intelligence*, as it provides a 'checklist' on what people are doing and whether they are behaving in a loyal manner; it is a *source of intimidation and coercion*, which allows the government to control Eritreans in the diaspora, and it is a *source of finance*, as it provides a slush fund through which the Eritrean government can finance covert activities (KD Hosabay, 2017, unpublished document prepared for this report).

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*Former Deputy Minister of Finance, Kubrom Dafla Hosabay describes the purpose of the tax as threefold: intelligence, intimidation and coercion, and finance.*

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<sup>19</sup> Kubrom Dafla Hosabay headed all of these departments with the rank of vice (Deputy) Minister of Finance. From 1992–2009, he was functionally or otherwise closely involved with the financial administration of the foreign missions (embassies, etc.).

Dafla Hosabay writes:

*In retrospect, one learns that the regime never intended to use the 2% Tax as a normal source of income, but, rather:*

- ③ *As a means of surveillance and intelligence info.*
- ③ *As a means of blackmail and intimidation,*
- ③ *As a slush fund*

*(KD Hosabay, 2017, unpublished document prepared for this report)*

Dafla Hosabay argues as follows :

*How can, then, the embassies, hold on to this income, indefinitely and even dare to spend some or all of it without the consent of the Treasury Department?*

*The simple answer is that the Office of the President (OP) wants it that way. It has authorized, the Ministry of Foreign Affairs and the PFDJ, (and not the Treasury Department!) to utilize it on its behalf. The fund is normally utilized as a slush fund to cover expenses that need to be kept secret from the records of the Treasury. The fund to carry out secret operations in Ethiopia and other neighbouring countries<sup>20</sup>, come from such secret funds.*

*Loyalists are rewarded out of this and other secretly held funds. Party, embassy, and government officials have also a chance to utilize it to accommodate family and friends. Festivals, seminars and receptions, are typically the smoke-screen for diverting the 2% income for other, illicit use. [...]*

*This anomaly was, often, raised by the Treasury Department, but to no avail. (KD Hosabay, 2017, unpublished document prepared for this report)*

The former Deputy Minister of Finance adds the following:

*As a Treasury the strict rule is that every government institution should deposit revenue in the bank. But the 2% Tax is not part of the Treasury and the Treasury has no way of controlling it. The 2% Tax is not deposited. There is no way the Treasury knows what they are going to collect. (KD Hosabay, 2017, unpublished document prepared for this report)*

Reportedly, the Eritrean Treasury does not have information on how the 2% Tax is collected, or how much is collected [19, 47, 49, 95, 96, 97]. This is evidenced by the lack of any statistics on the 2% revenue. As the revenue is not entered in the Treasury, expenses are reportedly covered by income, without oversight and authorization [19, 47, 49, 95, 96, 97]. For this reason, the total amount of revenue collected from the 2% Tax is not publicised.

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<sup>20</sup> "As CEO of Eritrean Airlines, (2006–2009), the former Deputy Minister of Finance argues that he "could not avoid being aware of such operations, which were executed by shadowy figures" (KD Hosabay, 2017, unpublished document prepared for this report).

According to several respondents, expenditure follows the direct instructions of the Office of the President, or the PFDJ, or anyone instructed by the Office of the President; the embassy can release the money without any further authorisation. Such expenditure does not require a budget line nor the involvement of the Treasury.<sup>21</sup> Hence, the money has the characteristics of a slush-fund and, as such, the funds can be used for any secret operation without having to be reported to any institutions. There is no document trail [19, 47, 49, 95, 96, 97]. According to one respondent:

*The President's Office knows. Kisha [Hagos Gebrehiwet] and [Yemane Gebreab] would know. Not anybody in the government ministries, but Isaias has to know, and if Isaias has to know Kisha [Hagos Gebrehiwet] knows, he handles the money in the President's Office. No one in the government ministries knows. But someone has to know, which means the party has to know. The taxes wouldn't be collected if they weren't going to flow towards a single point, so the embassy might not report the amount to the treasury of the government or to the Ministry of Foreign Affairs, but the embassy has to report to someone. This means that a PFDJ agent will have to make sure to collect the money and put it in a PFDJ (09) related account. There is no official government report from the respective authorities: the Ministry of Foreign Affairs or the Ministry of Finance, which means the money is going somewhere else. And that somewhere else can only be the PFDJ. [95]*

According to the respondent the information on the revenue is managed in the President's Office:

*I. This would suggest there is more central knowledge of the revenue, is that correct?*

*R. Yes, but not government knowledge, only party knowledge, even though the distinctions might be blurred. So, the ministries don't have data, but Monkey [Yemane Gebreab] and Kisha [Hagos Gebrehiwet] should have the details. The easiest way to make sense of this would be to consider the allegory of the PFDJ head at the embassies being the real head while the real appointee is only the figure head [referring to 2007]. [95]*

This information indicates that the line of reporting is not to the Ministry of Finance or the Tax Office, but that the reporting on the 2% Tax goes directly to the President's Office, specifically Yemane Gebreab, the political head of the PFDJ, and Hagos Gebrehiwet, who is in charge of finances in the President's Office. He repeats with emphasis that Yemane Gebreab has oversight knowledge of the revenue generated by the 2% Tax:

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<sup>21</sup> The only expenditure that is spent through the Treasury is recurrent expenditure.

*Y wanted X to write a paper on a topic related to nationalism and that is when he told them that the 2% taxes totalled 300 [million] USD minimum, but 400 [million] USD<sup>22</sup> was the usual. X [...] had done papers praising Eritrean nationalism as envisioned by the PFDJ. This was around 2007. [95]*

Another respondent stated that: "All revenue goes to the PFDJ. The 'government' is broke. It has no money. It is the PFDJ that own all the companies and collects all the revenue for its own purpose" [47]. The financial relationship between the government and the PFDJ is also described in detail in Van Reisen & Estefanos (2017).

Importantly, the Office of the President can be equated with the PFDJ:

*There is no distinction between the head of the PFDJ and the Office of the President. The President of the country is the president of the PFDJ. The person (Kisha), in charge of the finances of the PFDJ, is in charge of finances of the country. The person who is in charge of the political affairs (Yemane Gebreab) is the political advisor of the President and represents the country abroad. The national security and intelligence provide these operations for the country and for the PFDJ. There is no distinction. The affairs of the country are the affairs of the PFDJ. The country is owned by the PFDJ. [178]*

Another observer adds the observation that there is no sense of citizenship in the country. The 2% Tax is therefore not a 'contract' between the state and its citizens to help the common good. The 2% Tax is part of the resources that the country, the party, is entitled to for its own survival and benefit:

*Eritrea has nationalized the human resources (hence the national service) and has nationalized its people. They belong to the party. They belong to the country. The leadership can do whatever it wants at its discretion. [179]*

Another respondent states that the President's Office as the head of PFDJ seeks total control, and that the 2% Tax is an element of this:

*The 2% is like the coupons system inside the country. You cannot get anything, unless they give it to you. They will only give it to you, if you are totally loyal. The 2% Tax is their system outside the country. The purpose is a monitoring system. They think they own us. [159]*

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<sup>22</sup> This amount includes all diaspora contributions; 2% Tax and other contributions (see Chapter 7)

## 5.2 Embassies

The 2% Tax is levied and collected in what Eritreans refer to as 'the Embassy'. However, the actual payment of the tax is not always made in the embassies. The interview accounts of the organisation of the collection of the 2% Tax give a consistent picture of a structure that is more or less uniform [19, 47, 48, 49, 50, 73, 95]. In this section the commonalities of this structure will be discussed (differences per country will be discussed in Chapter 7 and the various methods of payment will be discussed in Chapter 6).

It is the task of the embassy (the consular department) to facilitate Eritreans in the diaspora to pay the 2% Tax, to calculate the payable amount, and to determine what further duties should be paid [17, 19, 47, 48, 49, 51, 55, 59, 60, 68, 69, 73, 82, 92, 95, 96, 107, 166]. Eritrean diplomatic missions are readily available in countries with a reasonable number of Eritreans in the diaspora. The European countries included in this study have the following Eritrean diplomatic missions or offices:

- 📍 **Belgium:** Brussels (Embassy, also accredited in the Netherlands and Luxembourg and to the EU)
- 📍 **Germany:** Berlin (Embassy), Frankfurt (Consulate)
- 📍 **Italy:** Rome (Embassy), Milan (Consulate)
- 📍 **The Netherlands:** The Hague (Embassy 'office', the Chef de Poste is in Brussels, the office is run by a consular affairs officer)
- 📍 **Norway:** 'Service office' (not accredited)
- 📍 **Sweden:** Stockholm (Embassy, also accredited in other Scandinavian countries)
- 📍 **United Kingdom:** London (Embassy, and agents in some cities)

The term 'Embassy' is used by Eritreans as a generic term to encompass all those who are involved in administrative and political matters authorised by the Government of Eritrea. Some staff of these diplomatic missions are registered with, and approved by, their host country. It was reported that in some embassies some staff are in fact still in the Eritrean national service [96]. It is not always clear to Eritrean respondents who is accredited at the embassy and who is not and what the official status of the persons working at the embassy is (if any):

*The people who work officially for the embassy, they don't even have a contract, [...] they all get state benefits [from the Netherlands] so that in the meantime they get paid by the Dutch government. [...] PFDJ does not work with contracts. [160]*

Respondents find it difficult to differentiate between the Embassy and the PFDJ. Some clearly are afraid to go to the embassy because they feel that in this way there will be a possibility to be controlled.

*I cannot go to the Embassy, then they will know me. They will know where I live and they will know whom my family is in Eritrea. [68]*

The following transcript of a visit to the embassy highlights the relevance awarded to the information provided in the process of paying the 2% Tax:

*EE2: It is okay. The important thing is, so you don't hide from us. And the concerns you have are important. We are not greedy concerning money. You just come and we will help you. Bring your living permission and your yearly income. And issue a new ID card quickly, and then we will help you.*

*X: So I should do these first. Ok if it is like this.*

*EE2: Bring your address and telephone number and everything with you next time.*

(emphasis added.)

[https://www.youtube.com/watch?v=\\_zDGFP1VU00&feature=youtu.be](https://www.youtube.com/watch?v=_zDGFP1VU00&feature=youtu.be), 2012)

Refugees who come to the embassy have to pay 2% Tax, arrange and I.D. card and sign a regret-form:

*[t]he form of regret [letter] or "taesa" in Tigrinya states that*

*"I, whose name is the above-stated citizen, hereby confirm with my signature that all the foregoing information which I have provided is true and that I regret having committed an offence by failing to fulfill my national obligation and that I am willing to accept the appropriate measures when decided."*

*(13 June 2015)*

*The Senior Research Fellow highlighted that signing the letter "includes accepting any punishment the government might deem appropriate," noting that the rule of law is absent, and that "arbitrary arrests and forced disappearances, abuse and torture are common" (13 June 2015). Likewise, the research consultant commented that the signing of apology letters "is an admission of guilt and is routinely held over the signer's head to prevent future oppositional or dissident activity" (29 June 2015). ([Canada: Immigration and Refugee Board of Canada](#), 2015)*

A video recording of a visit to the Eritrean Embassy in the Netherlands demonstrates that the signing of the "Regret Form" is an integral part of the procedure:

*The visitor explains that he needs a passport so that he can go and visit his family in South Africa on Christmas. The embassy staff (in the Netherlands) explains to him that the visitor has to fill the regret form before he can be issued a passport. The visitor asks if he can just pay the 2% Tax and not have to fill the regret form. He says that the regret form doesn't specify what kind of punishment it entails. Then says he will think about it. The staffer explains why it is important and tells him he can think about it and come back.*

*Having settled the issue of the regret form they then talk about how much the visitor will pay. The staffer explains that it is not compulsory to pay 2% Tax. But he continues and says that anyone who needs services from the embassy must pay. He explains that it is not compulsory, but that if someone*



*wants anything from the country, that person must pay the 2% tax.* (summary, translator [95] based on [700], (Q 01:16:41 of Recording in possession of authors).

The following information is required by the embassy to process a request for administrative assistance and related to this, to process the 2% Tax payment (note, this list is not exhaustive, and not all information maybe always requested). The list is based on an analysis of the information that was requested in the five transcripts communication between members of the diaspora and embassies and the translation of the regret form (Form B4, see Appendix E):

- ③ ID card
- ③ Copy of passport
- ③ Date of birth
- ③ Mother's name, father's name
- ③ Proof of student /university/college in previous decades
- ③ Proof of work in previous decades
- ③ Payslips of income for past decades
- ③ Income tax declaration paid in host country
- ③ Social welfare documents
- ③ Information on bank loans
- ③ Place of residence
- ③ Witness testimony
- ③ Mother in Eritrea to present herself in Eritrea to authorities there
- ③ Copy of proof of payment of 2% Tax

The following additional information is required to prove identity on the regret form:

- ③ Name
- ③ Father's name, grandfather's name, great grandfather's name,
- ③ Mother's name, grandmother's name, great grandmother's name
- ③ Birth place, country of birth, lost ID card number
- ③ Weight
- ③ Village of origin
- ③ Ethnic group
- ③ Marital status
- ③ Education
- ③ Address
- ③ Father's and mother's national ID numbers

The information is excessive in volume and in terms of the kind of information required; for instance, great grandparents' names can be difficult to provide: "it is a way of intimidating people, making them feel that their citizenship can be held in doubt" [95].

One respondent stated:

*...If you ask me, the main purpose of this is control. For instance, if I want to send a parcel back home, I have to go to the embassy and get that paper. It is accounting for every person. Knowing who they are, what they do, where they work. Having them under control. If I go to pay now, they will have my national insurance number, my bank account number, how much I'm paid, my employer's name. This is powerful information. [71]*

The persons working in the administrative and consular affairs section of the embassy have some discretion in their decision-making and there are instances when there is leeway to negotiate solutions:

*EE2: We will cooperate with you, just bring them.*

*X: but the one I spoke to Tsigereda earlier, she said I had too much and I am worried.*

*EE2: I am very kind, I am nice, and if you pay me some I can help. At least 50% of the arears you have.*

(Anon [701] from Sweden, 2012, YouTube video with English subtitles)

The discretion of the official to negotiate the prices is also indicated in the following transcript:

*EE2: Ok bring the 2009 and 2010 and you will only pay for 2009. Probably it will be 1,000 SEK.*

*X: OH so now I.*

*EE2: We will make it like the guarage deal [guarage = negotiation on the price]. Let's say from 800 to 700 and so on until we agree. But you have to pay this first, so a passport can be issued for you. We will ask South Africa [Eritrean Embassy] first, whether [sic] you have left the country legally or not.*

*Anon: I have already filled the form.*

*EE2: You filled the regret form. When?*

*Anon: Just now, she made me fill it.*

(Anon [701] from Sweden, 2012, YouTube video with English subtitles)

In this case, the official indicates that the regret form has to be signed, regardless of whether or not the person left the country legally (or the latter might be arbitrarily applied).

In the following example, a respondent shared how the consul waived the obligation to pay the 2% tax for his wife:

*Let me share my experience with the 2%. When I needed to get my release papers for family reunion I needed to show that my wife was paying the 2% taxes. But I knew she never paid. She never liked EPLF or PFDJ. So it was a difficult situation. Someone suggested a friend of the consuls who was a common friend. I called that friend, and he asked me to send him my wife's details. He called the consul in B., and luckily he knew my wife, they knew each other through common friends, and he recognized my name [...]. So he prepared the documents, on his own, saying that my wife was exempt from paying the taxes because she had been ill for many years, which is as good as paying. So this means that the consul has absolute discretion on administrative issues. But if my wife had been a vocal opposition, the consul wouldn't have been able to do me that favour. [95]*

These citations show the arbitrary nature of settling the final payment of the 2% Tax (depending on social network among those in the administration and being regarded as loyal to the Eritrean regime).

Different experiences are mentioned in the interviews concerning whether it is allowed for one person in the family (the family representative) to pay the 2% Tax to be able to receive the necessary administrative services in Eritrea, while the rest of the family does not pay. In some cases family members arrange that among themselves [21, 32, 67, 45]. Whether or not this is an option seems to be associated with the status of the family in the PFDJ hierarchy (the better the status, the more leeway for such options.).

*My sisters and I have divided the responsibilities for paying the 2% Tax, so that we will always be able to help our parents back home. Our parents are well respected and we have not had difficulty with this arrangement. They know one of us is in opposition, but they ignore it. [73]*

Furthermore, the embassies do not allow all Eritreans in the diaspora to pay the 2% Tax (and to enjoy the entitlements it provides to them or their relatives). The embassies can exclude members of the opposition and refugees who have not signed a regret form from paying the tax and obtaining services (The American Team for Displaced Eritreans, n.d.). Members of political opposition (and their children) are excluded because they are considered to be disloyal due to their political position. Refugees are excluded as they are regarded as treasonous for having left the country and evading the unlimited national service. Refugees can 'solve' the situation by signing a regret form at the embassy, after which they are usually allowed to pay the 2% Tax. By signing the regret form, the refugee admits to wrongdoing, which may have negative consequences for them later in life (The American Team for Displaced Eritreans, n.d.). Once the person has signed the regret form and provided the information for the ID Card, the amount payable under the 2% Tax

can be determined, which is done by the embassy (the different calculation and payment procedures followed by the embassies are described in Chapter 6).

## 5.3 PFDJ

Respondents explained that the embassies work in close association with the head of the PFDJ branch in the host countries where Eritrean embassies are located. The PFDJ branch and the embassy are, therefore, often confused, or just referred to collectively as 'the Embassy' – which was, after all, the successor to the former EPLF offices to support Eritreans in the diaspora. Eritrean respondents refer to 'the Embassy' for a range of services, including administrative and consular services, the payment of the 2% Tax and other 'duties', as well as other financial services. The embassies are identified as a reference point for what Eritreans see as Eritrean representation in the host country.

The embassies fall hierarchically under the authority of the PFDJ and are governed by the head of the PFDJ branch office in the host country [19, 36, 47, 48, 49, 53, 73, 95, 166]. The head of the PFDJ instructs the ambassador or head of mission [19, 36, 47, 48, 49, 53, 73, 95, 166]. Invariably, where there is a head of the PFDJ in any country, there is also an embassy, and there is an embassy in almost every country where there is an Eritrean diaspora community. The representative of the PFDJ in the host country is called '*halafi hgdef chenfer italia*' (the head of the PFDJ branch of Italy) or '*halafi hgdef chenfer Holland*' (the head of the PFDJ branch Holland). Thus, these representatives operating in host countries constitute an institutional organ of the PFDJ:

*The structure is like Communist military; in most communist militaries there is the military commander of a given unit and there is the political commissar. The military leader takes care of solid technical responsibilities, the commissar is the spiritual leader. In the case of an Eritrean embassy the ambassador is the administrative head, the PFDJ head is the political counsel. The ambassador works on strict administrative issues, the PFDJ head is the political guidance, but usually the political commissars have more favour with the party, the technical officer is dispensable, the political commissar is the preacher who spreads the faith and the priest who judges sinners.*

*The structure also helps to keep officials in check. The ambassador feels that he doesn't have real power because of the presence of the political officer, while the political officer doesn't feel powerful because he is not the real appointee. So no one feels powerful enough. [95, interview, skype, 3 June 2017]*

The Norwegian Eritrean group 'mother's for peace' explained the relationship between the Embassy and the PFDJ as follows:

*The name of this business has varied from year to year from "Eritrean Embassy", "Eritrean Interest Office", Eritrean Information Society "and the like. We think this is a way to hide your business. In the following we use the denomination office which is the Eritrean office in Karl Johansgate 4 in Oslo.*

*The office has no agreements with the Norwegian state and is a private and political department for PFDJ's operations in Norway. PFDJ is the only legal party in Eritrea, but at the same time it has associations around Norway and owns this office in Oslo. They have connections to the Eritrean Embassy in Stockholm, which is the right embassy for Norwegian Eritreans.*

*In other words, the office is in close contact with the regime in Eritrea. (Plaut, 2017)*

The head of the PFDJ in the foreign branch has a direct link to Yemane Gebreab, as Head of the Political Affairs Office of the PFDJ, and usually also to President Isaias Afewerki, from whom the local head also receives his/her instructions. These local heads of the PFDJ are: "responsible for everything in the embassy, but officially [are] not the embassy" [19, confirmed by 47, 49, 53]. The head of the PFDJ branches are usually persons of Eritrean decent who have been in Europe for many decades and who have nationality in the host country. Those collecting taxes and dealing with the consular affairs are associated with the embassy in the host country, but are generally not accredited as diplomatic staff and often have the nationality of the host country. They collaborate closely with the PFDJ branch office.

Another respondent explained:

*The person who does the 2% and the consular affairs, they work from the Embassy but they do all sorts of other things. They act like banks selling financial products, without any permits and without any regard to the rules in host countries. [47]*

The head of the PFDJ branch in the host country is usually an ex-fighter or someone regarded as close to President Isaias Afewerki (references are made in meetings to 'instructions received from Eritrea' [53]), and also usually someone who has the nationality of the host country. He/she is not formally part of the embassy (i.e., is not part of the Agrément with the host country) and, therefore, does not enjoy immunity. In some countries (such as the Netherlands, the local head has been in this position for decades – even before the independence of Eritrea) and has been the PFDJ representative in multiple European countries and even Europe-wide. According to respondents, the head of the PFDJ in the Netherlands was carrying Europe-wide responsibility, but is now in charge of affairs in Belgium, Luxembourg and the Netherlands. [19, 47, 55, 92]

Respondents explained that the PFDJ representatives of the branch directs a specifically identified person located in the Embassy but not identified as diplomatic staff, who is in charge of the collection of the 2% Tax and other fundraising activities. This is a trusted person in the PFDJ. This position is characterised by one interviewee as the “cashier of the PFDJ” who carries out “the dirty work” [49]. It is alleged that lot of money “disappears” [19, 47]. A second person may deal with other financial matters of the embassy itself and a third person integrates the finances and reports directly to the head of the PFDJ. Another person is in charge of the consular affairs and also reports to the representative of the PFDJ in the host country [19, 48, 49, 95].

Figure 5.1 shows the reporting structure of the embassies reconstructed from interviews with respondents [19, 49, 73, 95, 96]. It shows that, rather than reporting to the Ministry of Foreign Affairs or the Ministry of Finance, the embassies report directly to the President’s Office, from where the ministries receive further instructions [19, 47, 49, 73, 95, 96].

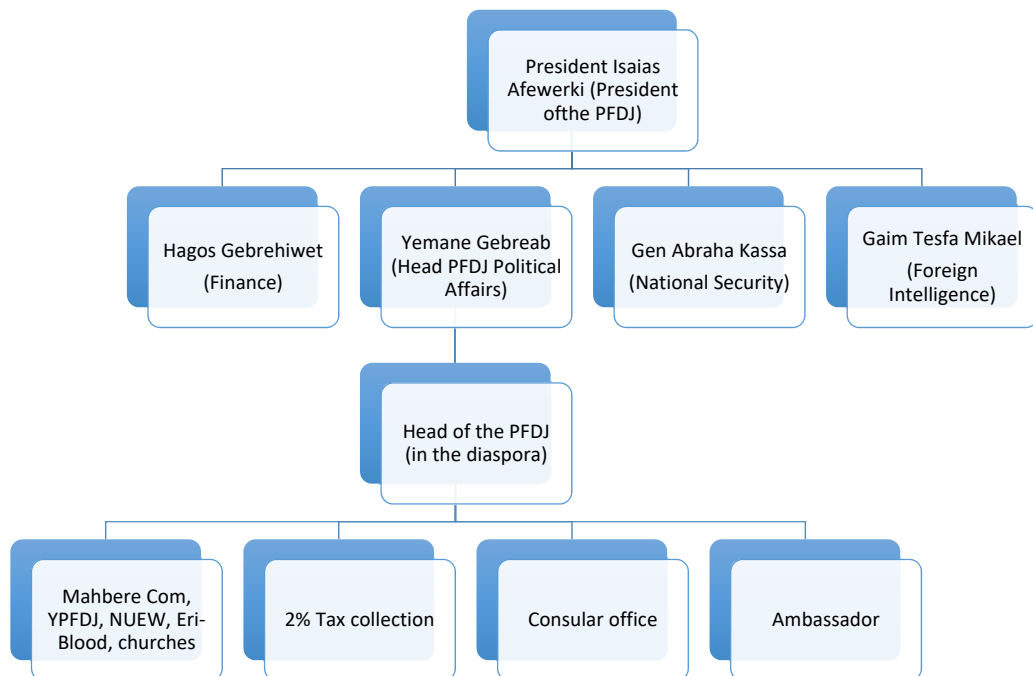


Figure 5.1 Reporting structure for the 2% Tax through the PFDJ lines of authority

The head of the foreign branch of the PFDJ reports to Yemane Gebreab and to President Isaias, while the 2% tax revenue is reported to Hagos Gebrehiwet, who is the central person in the administration. The intelligence information – which includes the payment of the 2% Tax and information identified with it – is channelled to Gaim Tesfa Mikael, who is in charge of foreign intelligence [19, 49, 95].

## 5.4 Community organisations

The local head of the PFDJ also directs community organisations ('Mahbere Com' or 'Mahbere Seb') in the country where the embassy is located, as well as the mass organisations of the regime (the NUEW, NUEYS, and YPFDJ). These organisations play a key role in the organisation of people at the local level; they organise house-to-house visits to alert people of their duties, including the payment of the 2% Tax, and to solicit other contributions and in relation to other activities to support the PFDJ. In a ruling that considered the role of the YPFDJ, the Dutch Court stated that:

*...it follows that the YPFDJ, as considered above, is to be characterised as the extended arm of a dictatorial regime and that through this organisation, intelligence is being passed to the regime. (Bahlbi v Van Reisen [4.6], unofficial translation KS)*

The Dutch court added the following to its legal opinion:

*From this follows that the YPFDJ receives instructions from the PFDJ, that the YPFDJ has supporting the regime of Afewerki as its goal and that members of the YPFDJ are acting as informants for (the embassies of) the regime in Eritrea. The YPFDJ can thus, at this point, be called the extended arm of a dictatorial regime. (Bahlbi v Van Reisen [4.4], unofficial translation KS)*

The Dutch court further emphasised the need to see what it referred to as 'an abusive situation' (een 'misstand') in the Netherlands in the context of the atrocities taking place in Eritrea (Bahlbi v Reisen [4.5], unofficial translation KS).

The Mahbere Com send agents to visit Eritreans in the diaspora:

*There are two kinds of agents. There are those who actually work at the embassy, they sit down, they have their computer, those get paid, it's their informal day job. According to the Eritrean system those are formal agents [...] [but] the Eritrean state will try to avoid evidence. [...] Then, there are] semi-formal agents; they do not work on regular basis at the embassy and they just wonder around in the community. Most are jobless; they are the eyes and the ears of the regime and they report back to the embassy. [...] Some of them work as a board member of the community organizations, some of the are chairman of the Eritrean Church organizations. [36]*

These agents work as part of the PFDJ branch in the host country. They remind Eritreans of their duties (including the 2% Tax) and of the consequences if they do not fulfil their duties. Meetings are called to remind members of their obligations. [19, 36, 37, 47, 48, 201] These agents and officials are receiving income or contracts (and may receive state benefits, is suggested). (see also Frankfurter Allgemeine, 2016) [19, 47]. They are active in the collection of 2% Tax:

*In every county a number of important women of the PFDJ went to say good afternoon and to let them know that the 2% should be paid. [48]*

An organiser of activities, meetings, festivals and concerts is also related to the structure and reports directly to the PFDJ representative in the host country. The orthodox churches are alleged to be under the control of the head of the PFDJ [19, 48, 73]. Some believe that the priests of these churches are sent directly from Eritrea. At least in one case, it has been suggested that a priest was specifically appointed, with the help of the President's Office, in that relatives were provided with exit visas and assistance for obtaining asylum papers [19, 48]. The money collected in the churches is also allegedly under the control of the head of the PFDJ [19, 48, 92]. Inside Eritrea, it is official that the PFDJ is in charge of the finances of the Orthodox Church [95].

Respondents believe that the structure in the diaspora mirrors the structure in Eritrea [19, 48, 92]. The PFDJ branch in the host country relies on power that remains relatively vague and unaccountable, and who holds such power can only be known through insider information spread through the '03' information organ<sup>23</sup>. It is often reported that the number 2 in the hierarchy may receive instructions directly from President Isaias Afewerki. As Eritrea is a monarchy, the designation of power depends on the person's relationship with the President. On this subject a respondent noted:

*The structure is further supplemented by the fact that within each administration there are people who have a direct line of communication with the President's Office. People, like in the case of the embassies, may not be holding the obviously designated position of power. [96]*

Numerous photographs of the YPFDJ conferences picture the hierarchy of the PFDJ – which is not a secret. These conferences are under the leadership of Yemane Gebreab, the advisor of President Isaias Afewerki, and the head of the PFDJ in the country where a meeting takes place also attends these functions. The leaders of the churches and the Mahbere Coms make their representation at such functions, as do the embassy representatives. The hierarchy (directly instructed by Yemane Gebreab) can be demonstrated by a picture from a YPFDJ certificate, directly signed by Yemane Gebreab (picture with authors, received 2017, certificate from Italy (appendix G). The radio programme Argos in the Netherlands showed that receipts for contributions for a European YPFDJ conference (coined by Yemane Gebreab the 'Conference of the Attack') held in the Netherlands, were signed by the same person who signs for the 2% Tax contributions (who is not accredited to the Embassy) (Argos, 2017), while the embassy had denied any involvement in and responsibility for the organisation of the YPFDJ conference (Argos, 2027).

A report by Martin Plaut discussed involvement of the embassy in organising collection of "300,000 signatures to present to the UN protesting against the work of the Commission [of Inquiry]" (Plaut, 2016b;

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<sup>23</sup> '03' is a reference to the informal information channel of the Government of Eritrea/PFDJ; the channel stems from the EPLF.



NRC, 2016). Respondents to this research also identified that meetings had been held organised by the embassy to support the YPFDJ or PFDJ conferences and other political support activities [19, 47, 48].

In an address to a YPFDJ conference in Germany Yemane Gebreab set out the purpose of the YPFDJ, to support the consolidation of the PFDJ, to “detect the enemies and to provide information about their tactics”, in clear terms (in Allpolitiko, 2015, transcribed and translated). The fear instilled (and these presentations are openly shared on YouTube and Facebook) contextualises a sentence quoted in the previous sub-section, in which the embassy instructs: “The important thing is, so you don’t hide from us” (Estefanos, 2012, YouTube video with English subtitles).

At the European YPFDJ Conference in 2015 in Germany, Yemane Gebreab, with the authority of presidential advisor and political head of the PFDJ, explained how members of the YPFDJ can contribute to their common goal:

*...to know our enemies. ... When we fail to really appreciate and understand and know who our enemies are, what they are plotting against us, what they are trying to achieve, what their tools of trade are.*

*Our enemies have a tool box full of tricks of the trade ... We need to learn about, to know, and to study this. What are their political tools, their diplomatic tools, their media tools, economic tools. [...]*

*We have to know who our enemies are! What are they trying to achieve, How they trying to achieve their goals? We have to be vigilant about them!*

*We have to fight. But we have to fight smart!*

(Yemane Gebreab in Allpolitiko 2015, transcript of video presentation)

Former Deputy Minister of Finance, Kubrom Dafla Hosabay, states that intelligence gathering is common in the diaspora. He explains:

*Another major objective of YPFDJ is spying on Eritreans who harbour a dissenting political opinion, including instilling a deep sense of terror against dissidents, in tandem with another radicalized pro-Eritrean government group, the notorious EriBlood. (Hosabay, 2016, signed declaration to the Dutch Court in Case of Bahlbi v Reisen)*

Espionage was one of the reasons why the Swedish authorities abruptly ended the accreditation of an Eritrean diplomat in Sweden in 2014 and asked him to leave the country immediately (Westerborg, 2014).

Respondents see the head of the PFDJ branch as the head of the National Security Agency (the Hagerawi Dehnet) in the foreign country, and identify that the head of the PFDJ branch reports directly to General Abraha Kassa in Asmara (head of the Hagerawi Dehnet) and Gaim Tesfa Mikael (who is in charge of foreign intelligence gathering) [19]. Information on the 2% Tax and all external fundraising programmes is reported

directly to Hagos Gebrehiwet ('Kisha') [19, 49, 95]. The head of the PFDJ branch reports on political affairs to Yemane Gebreab.

As well as instructing the Hagerawi Dehnet in the host country (or region), the head of the PFDJ branch also directs the activities of Eri-Blood (recently renamed Eri-life [601]) (a militia of the PFDJ) (see more on this in Section 5.5). The Hagerawi Dehnet is associated with a whole range of activities aimed at controlling the diaspora, including (allegedly) intelligence gathering, terrorisation, blackmail, disappearances and even assassinations [19, 36, 47, 48, 49, 53, 73, 95]. It is alleged that the Hagerawi Dehnet has an army of informants and collaborators under its command, including in the diaspora, who are reportedly identified only by numbers [19]. This creates fear among the members of the diaspora, as even close friends or relatives may be informants. The (imagined or real) power of the Hagerawi Dehnet is an important source of fear among Eritrean communities and families, fed by rumours that even relatives may spy on their own family.

The collection of the 2% Tax, in combination with the obligatory issuing an ID card – and the new ID card which is announced - as a precondition for 2% Tax payment and the issuing of the regret form, provide the Eritrean authorities with a lot of information (at the embassy), which, in combination with other intelligence, can be used against applicants or their families. The collection of the 2% Tax is a critical element of the fear instilled in members of the Eritrean diaspora and their relatives in Eritrea, and needs to be understood in combination with the knowledge the Eritrean community has about the human rights violations and crimes against humanity that are ongoing in Eritrea, as reported by the UN Commission of Inquiry on Eritrea (UNHCR, 2015a, 2016a).

## 5.5 Threats and violence

The basis for fear of Eritreans is the experience of reprisals and the threats of it. These threats can be direct, but also relatives can be targeted:

*They ask me 'are you not worried about your children'. That is an implicit threat. I know that they are targeting my children ... One time, I was with one of the leaders of Eri-Blood. He tried to get me into a quiet place. I was very scared. I sat down to tie my shoe and trying to see if a VVT camera would catch us. [159]*

*First, I was involved in the planning of an assassination myself. (...) Then they poisoned me several times. I had to go to the hospital. One time I was only just in time. I know they are targeting my kids. I try to keep them safe. I keep quiet ... [704]*

*I have been poisoned with some sort of uranium. They did not put enough, now I take medicine every day. [703]*

*I attended a meeting. There was a spy. He posted a picture of me in the meeting. That evening the child of my brother was thrown off a 2,5 m high wall in Asmara onto a trailer. It was a retaliation. [705]*

Eri-Blood (Eri-life) is one of the branches of the PFDJ operating in the diaspora, with its European headquarters in Frankfurt. It is the militia wing of the PFDJ. Not all incidents described below are necessarily attributed solely to Eri-blood, which works with and alongside the PFDJ and the national security agency, Hagerawi Dehnet. Eri-Blood is involved in providing the security at festivals of the PFDJ and the YPFDJ. They also are the body-guards of high Eritrean PFDJ officials, such as Yemane Gebreab, on their visits to Europe (Volkskrant, 2014)

#### **In Sweden**

- 🕒 Eri-Blood destroyed offices by fire (2014) [142].
- 🕒 Assassination attempts of several persons (2013–2015) [142, 107, 304, 305].
- 🕒 Both of these incidents received quite some media attention [142, 137].
- 🕒 A victim of Eri-Blood in Sweden was severely beaten and sustained injuries (in recent years) [201].
- 🕒 Espionage and extortion of the diaspora, leading to the expulsion of an Eritrean diplomat from the embassy in Sweden by the Swedish authorities (2014) (Westerberg, 2014)

#### **In Italy**

- 🕒 A victim was attacked in Milano and harmed (in recent years) [201].
- 🕒 Threats were received by opposition members (Milano) (2014) [303].
- 🕒 An activist and her partner were physically attacked a few times in Italy, Holland and Sweden (in recent years) [201].
- 🕒 Members of Eri-Blood drove into a demonstration in Bologna with a car in an apparent attempt to assassinate a man who had given a newspaper interview published days prior to the incident in the Netherlands, one person was seriously injured (2014, pictures available of Eri-Blood) [131, 143].
- 🕒 Assassination attempt (in recent years) [703].

#### **In Germany**

- 🕒 Eri-Blood has been accused of intimidating and threatening band members and guests at a concert of a regime-critical singer in Frankfurt (Frankfurter Allgemeine, 2016).
- 🕒 Eri-Blood allegedly beat up a member of the opposition with a baseball bat after they had prevented him from entering a panel discussion moderated by a well-known Eritrean lobbyist (Frankfurter Allgemeine, 2016).

- ③ The alleged head of Eri-Blood in Frankfurt admitted in an interview with the Frankfurter Allgemeine that he and his cousin (another Eri-Blood member) had beaten up several opposition members in the past (Frankfurter Allgemeine, 2016).
- ③ Threats against wife and children [710]

#### In Norway

- ③ There are witness reports that the PFDJ/Eri-Blood drove a car into a group of demonstrators in Stavanger to create fear (2016) [131].
- ③ One respondent reported that Eri-Blood attacks are frequent in Norway [134]; she reported an attack by several Eri-Blood members against a personal contact, who had to be admitted to the hospital afterwards [134].
- ③ Aggressive (death) threats on social media in personal attacks (copies in possession of authors) [302] (signed statement to the Dutch court).

#### In the Netherlands

- ③ Participants at a demonstration were filmed and later summoned to report to the Eritrean Embassy in the Netherlands (2014) [108, 210, 205].
- ③ Violent attacks on refugees from Rotterdam, Breda and Eindhoven who were marked as opposition have been reported in the last decade, some of which have received media attention; threats have also been reported to the police (over several years, recent and less recent, media report Volkskrant, 2012) [108, 143, 160, 161, 165, 205].
- ③ Violent encounters with Eri-Blood/PFDJ observed at Eritrean festivals (reported some years ago) [160, 161, 205].
- ③ Threats against wife and children [711]
- ③ Respondents reported being scared to go to (Y)PFDJ meetings and avoiding such meetings (in recent years) [143, 160, 161, 165, 205].
- ③ Witness reports that the UN Special Rapporteur was followed into her hotel where meetings took place (2016) [211, 301, 205].
- ③ Assassination attempt on child of relative in Eritrea [143]
- ③ Members of the Eritrean diaspora reported to the police that they feel threatened by the European organisation of the YPFDJ in Rotterdam, Amsterdam, Utrecht, Eindhoven, Breda, Nijmegen, The Hague, Kampen (2017) [143, 146, 160, 161, 162, 163, 164] (Copy Police Report, Aangifte by [146])
- ③ Threats followed by police protection (private conversation)
- ③ Respondents said that they are afraid to leave home alone, as they are concerned that people are watching their home (2016, 2017) [162, 165].
- ③ The media reported that 60 Eritrean security guards had been deployed for the YPFDJ conference in Veldhoven in 2017, which had some 530 participants (Meeus, 2017; Mikkers in Omroep Brabant, Vermeeren, 2017); members of the embassy also attended the conference (or attempted to do so) [143].

### In the UK

- 🕒 Harassment and filming of public meetings (Plaut, 2016a).
- 🕒 Aggressive trolling in social media (Plaut, 2016a) [144, 145, 137].
- 🕒 Threats against children [159]
- 🕒 Espionage [159] (signed statement to the Dutch court)

This list of violence and intimidation shows the influence of the militant 'strong-arm' of the Eritrean regime. An important element of how the fear is fuelled is through the uncertainty of how, when and for what reason reprisals may follow:

*It is the threat of reprisal which may or may not be there, and it is by design arbitrary, so that everyone never knows what is and what is not allowed. It is the way to control everyone and the 2% is their attempt to control the diaspora. [177]*

The fear that underpins the coercion is a fear of physical violence from known people. It underpins the intimidation and real (not just perceive or imagined) threat. The result is a general atmosphere of fear and coercion. In such an atmosphere people understandably feel that they are safer if they comply with 'duties' or 'obligations'.

## 5.6 Conclusions

This chapter explored the structure for the collection of the 2% Tax, including the way in which Eritrean foreign representations (embassies) evolved out of the EPLF representations that were established during the struggle for independence and their handling of money collected from members of the diaspora. Now these offices have been formally transformed into embassies, enjoying immunity and diplomatic status.

The 2% Tax is collected by the embassies in countries where Eritreans are living abroad. What Eritreans in the diaspora refer to as 'the Embassy', is a fluid interaction between the diplomatic mission and the representation of the PFDJ organ, present in the host countries. The head of the PFDJ branch is considered superior in rank to the ambassador who heads the embassy. The head of the PFDJ branch in the host country is also connected to the national security apparatus and branches for intelligence gathering, and it is directly linked to the principle point of power in Eritrea, the President's Office. The direct connection to the president, Esayas Afewerki, the President of the PFDJ and to Yemane Gebreab, the President's political advisor and political head of the PFDJ, as well as to the offices of national security and intelligence (through the President's Office), give the head of the PFDJ branch a strong (perceived or experienced) power over Eritreans in the diaspora.

The difference between those in the PFDJ branch and those in the embassy is not always clear to Eritreans. Those associated with the embassy may in fact be working under the PFDJ branch and not be accredited as diplomatic staff under the embassy. This may also be the case in relation to staff collecting the 2% Tax and

providing consular services, as well as agents who collaborate with them. It is clear to Eritreans that the head of the PFDJ branch is the highest point of power and all others (in Embassy or otherwise) report to him.

In relation to the 2% Tax, the embassies are responsible for its collection, calculation of the amount, and for ensuring that the administrative requirements are in order. Before the 2% Tax can be paid, the Eritrean member of the diaspora must have an ID card, without which no administrative services can be provided. All Eritreans have to renew their ID card. This process has already started in some of the European countries studied. In addition, a regret form must be signed by people who have left Eritrea both legally or illegally (according to transcripts of audio-recorded meetings with the embassy and interviews). As part of the application process, a range of questions is asked and information on the applicant is recorded, with a level of detail that may be a barrier for many. A lot of information is made available to the embassy through these procedures.

The collection of the 2% Tax involves self-incrimination (the collection method forces refugees to self-incriminate by signing a regret form) and arbitrary decision-making (by the persons at the embassies dealing with tax collection who seem to have considerable discretion to make decisions in individual cases).

The levying and collection of the 2% Tax must also be understood in relation to the system of fear and intimidation used by the Eritrean regime through the embassies and PFDJ branch in host country (and other organs) to coerce loyalty and the fulfilment of duties, among which is the payment of the 2% Tax. The head of the PFDJ branch in a foreign country is vested with the authority and power of the President's Office, the centre of power in the totalitarian monocratic state of Eritrea. This branch directly represents the national security agency, the feared Hagerawi Dehnet, and the intelligence service. The PFDJ branch constitutes the 'long arm' of the Eritrean Government in the diaspora; the mass organisations of the regime (such as the NUEW and the YPFDJ) as well as the community organisations (Mahbere Com) assist in the surveillance of the diaspora. The fear generated by this surveillance an element of the coercive practice of the collection of the 2% tax. House-to-house visits, 'invitations' to attend meetings and to make 'voluntary' contributions and to participate in commercial ventures are all part of the obligations that constitute the 'duty' of the diaspora. The 2% Tax is the centre piece of this.

The long arm of Eritrea is supported by the 'strong arm': Eri-Blood, a militia group controlled by the PFDJ. Eri-Blood invokes real fear, based on a real threats to those who fail to perform their duty of loyalty, which is first and foremost the payment of the 2% Tax. There have been numerous reports of incidents of violence carried out by this group in the countries studied for this research.

## 6 Procedures for Tax Collection

The previous chapters discussed the legal basis for the 2% Tax and its administrative structure. This chapter looks at the practical aspects of its calculation and payment (including on whom the tax is levied (the taxable person), what the tax is levied on (the taxable object), and the taxable moment. This chapter revisits the question as to whether or not the 2% Tax is a voluntary or a mandatory taxation. It also looks at how the 2% Tax is enforced. It seeks to understand how the enforcement of the 2% Tax has other consequences. Here other duties and contributions paid by Eritreans in the diaspora, in addition to the 2% Tax are considered. The chapter is based on the literature review and interviews.

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*There is a lack of clarity about the procedures for calculating and paying the tax which seem to be at the discretion of the embassy officials. [95]*

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### 6.1 Taxable persons

As described in Chapter 2, the 2% is levied on all Eritreans in the diaspora. 'Eritrean' is not defined in the proclamation establishing the 2% Tax (Proclamation No.67/1995), or in any other documentation (see Chapter 2). *De jure*, it is unclear whether, for example, people of Eritrean descent who hold foreign nationality (naturalised or by birth) are liable to pay the tax. In 2014, the Permanent Mission of Eritrea to the United Nations declared that foreign nationals of Eritrean descent do not have to pay the 2% Tax (Permanent Mission of Eritrea to the United Nations, New York, 2014). A 2016 Memorandum from the Embassy of Eritrea in Brussels on the 2% Tax fails to specify who is liable to pay the tax (Embassy of the State of Eritrea, Brussels, 2016).

According to Lyob (2000) and Hirt (2013), the Eritrean government has an expanded understanding of citizenship that includes "any person born to a father or mother of Eritrean origin in Eritrea or abroad" (Provisional Government of Eritrea 1992, cited in Lyob, 2000). This implies that people of Eritrean descent with foreign nationality are considered to be Eritrean citizens by the Eritrean government. Whilst the Government of Eritrea has the sovereign right to determine who are its citizens, there is a lack of clarity regarding who is a citizen for the purpose of the 2% Tax.

The interviews conducted for this research were inconclusive as to the question on whom the 2% Tax is levied *de facto* (the taxable persons). Several respondents testified that Eritreans with a second nationality or Eritreans who were born in the diaspora and have foreign nationality are, in practice, required to pay the tax [5, 12, 21, 27, 29, 44, 46, 64, 71]. Other respondents stated that foreign nationals of Eritrean descent are not necessarily expected to pay regularly, but that they need to pay the tax if they want to access services

from the embassy [9, 65, 66, 67, 45, 46, 200], visit Eritrea [16, 26, 36, 65] or access services or privileges within Eritrea [26, 45, 67].

From the interviews, information is unclear (or contradictory) whether or not the 2% Tax is levied on students, those receiving state benefits, refugees, members of the opposition, members of the PFDJ, or repatriated citizens from Ethiopia to Eritrea (in the 1998 repatriations). The following information was provided:

- ③ **Students:** Some respondents reported that students do not have to pay [28, 34]. Other respondents state that students do have to pay [2, 11, 14, 15, 30, 37, 67, 71]. It was reported that some students have to pay a fixed sum, whilst others said that students have to pay 2% of their student jobs or from the government support they receive as students [2, 26]. Others said that the amount is negotiable [67].
- ③ **People receiving state benefits (ill, disabled, the elderly, unemployed):** The Government of Eritrea states that people on state benefits do not have to pay the 2% Tax, according to information on the government website Shabait (Ghebremedhin, 2015). In some interviews, respondents also confirmed that people with a very low or no income are exempt from payment [34]. However, other respondents indicated that people who receive state benefits do have to pay the 2% Tax [2, 3, 6, 12, 14, 15, 16, 22, 26, 27, 30, 36, 37, 44, 45, 62, 63, 65, 66, 67, 71, 102]. Several respondents said that those who receive benefits from the government are asked to pay a smaller fee (less than 2% of their income) [2, 27, 28]. Some specified that the contribution (amount) is negotiable [67, 95].
- ③ **Refugees waiting for asylum status:** Recent refugees who have an income of some sort also have to pay, according to several respondents [1, 11, 12, 14, 16, 36, 37, 38, 64, 65, 71]. In some cases these refugees are denied consular services and are not allowed to pay the 2% Tax. Others, however, reported that refugees are required to pay the 2% Tax [2, 11, 12, 14, 16, 36, 39, 44, 46, 63, 64, 65, 67, 205]. Some explained that refugees are first (or in addition) expected to sign a regret form [3, 4, 6, 34, 36, 38, 45, 46, 62, 64, 65, 67, 205].
- ③ **Members of the opposition and activists and their family:** Some respondents reported that members of the opposition are not allowed to pay the tax (they may not even be allowed in the embassy to make an appointment) [13] [30]. Some members of the opposition said that even their families were unable to pay the tax. Others have paid the tax or have family members who have paid the tax [2, 14, 37, 67].
- ③ **Members of the PFDJ:** Some respondents said that the 2% Tax is not levied on people who are regarded as high in the hierarchy of the PFDJ/YPFDJ and that they may receive a receipt of payment without paying [30, 95]. Some of the (former) members of the mass organisations (Y)PFDJ and NUEW who were interviewed claimed that they were never asked to pay the 2% Tax [205].

Most Eritreans are not directly approached about the 2% Tax, by letter or in person [5, 16, 26, 62, 64, 65, 45, 67, 102, 104, 200]. They explain that Eritreans are usually asked to pay the tax once they need something from the embassy or in Eritrea [2, 3, 5, 16, 26, 30, 33, 36, 39, 44, 45, 46, 63, 64, 65, 67, 71, 102, 200]. However, some mentioned that Eritreans were approached directly in the past [5, 16, 96, 200]. Others



reported that the agents still approach (specific groups of) Eritreans [6, 15, 16, 27, 30, 36, 44, 65, 66, 102, 711]. Those who still have strong ties to Eritrea are the ones most commonly approached about the tax [30].

The 2% Tax is not levied on some Eritreans in the diaspora, such as those who:

- ③ have no or given up their ties with Eritrea (family, land, property, business) and do not plan to visit, or to be buried in, Eritrea [47, 73, 107, 166];
- ③ are publicly identified as opponents of the Eritrean government (activists) and refuse to pay, or would not be allowed to pay [38, 47, 67, 73, 81, 166, 200];
- ③ do not expect to ever need official papers from the embassy (for instance because they are married and naturalised citizens of the host country) [44, 46, 67];
- ③ are new refugees who refuse to pay and go to the embassy because they do not want to be known by the PFDJ or embassy and they do not want to sign a regret form, because they are afraid of the consequences of signing the regret form if one day they return to Eritrea, or of the consequences for their family who still live in Eritrea [102, 45, 46, 200];
- ③ are members of the (Y)PFDJ who are high up in the hierarchy and have the privilege not to pay through patronage or protection [47, 95].

It is interesting that some people acting within the PFDJ would not pay the 2% Tax. The basis of this is explained as follows:

*It is possible even that you do not pay the 2% Tax and yet you do not get any kind of sanction, because it may be that you are seen as not acting against the party. [201]*

In some other accounts, there seemed to be an unawareness among recently arrived refugees of the 2% Tax [52, 78, 79], while at the same time other refugees claim that many of newly arriving refugees are paying the 2% Tax because they need the services, but they are not keen to speak about this [51, 68, 69]:

*As far as I know people don't want to tell their experiences with the embassy because they are afraid of them. They don't want to take risk and they don't trust each other. [64]*

Sometimes pressing needs may emerge and Eritreans may find that they have to pay the 2% Tax, under the procedure listed under 6.3.

From this analysis it can be concluded that the question on whom the 2% Tax is levied is neither clear nor consistent.

## 6.2 Taxable object

In order to understand the taxable object, there needs to be understanding of the part of the income which is taxable. Proclamation 67/1995 states that the 2% Tax is levied on “net income” from “employment, rental of moveable or immovable property, or any other commercial, professional or service-rendering activity or employment” (Government of Eritrea, Proclamation No. 67/1995). The majority of the respondents recognised this, although some respondents reported that it is levied on gross income [6, 28, 47, 95]. Some respondents reported having to show income tax returns from the host countries (e.g., in countries in Europe), while others said that pay slips must be shown [67, 146, 147]. Based on this documentation, the embassy staff calculate how much tax should be paid. Some respondents indicated that the amount of income earned is estimated and the amount of tax payable is at the discretion of the embassy staff [67, 95]. If information is not available and one cannot show proof of income for the missing years, an estimation is made:

*My brother in law worked on and off and had interim jobs. In between he received some state benefits. He could not show proof of all the income. They made an estimate of the 2%, based on what he could prove. [67]*

From formal statements by the embassies (see Chapter 2 ,section 2.4), including the 2% Tax forms provided by the embassies (see Appendix D), as well as from interviews, it is apparent that the 2% Tax is levied retroactively from the time the person left Eritrea (after 1991) or from the time of the last tax payment made [27, 48, 50, 55, 67, 92]. The missing years are included in the calculation of the amount due [27, 48, 50, 55, 67, 92]. However, there is no interest added and no fine or other penalty for late payment [27, 48, 50, 55, 67, 92]:

*My father needed to give someone in Eritrea a power of attorney a couple of years ago. He stopped paying the 2% Tax in 2002. He went to the Embassy and they calculated the 2% on all the missing years. [67]*

*I wanted to visit my father when he was ill and went to the Embassy for a visa. I did not pay the 2% Tax since I had arrived in [European country]. They calculated it retroactively for all the years I was here from the beginning of the '90s. [96]*

*The representative told [Ms x] she had to pay money. She sent the money and received a copy of payment. But then they called and said, we forgot, we saw that you lived in [...another European country] before. They asked her to send the money from that period... [27]*

Differences were also reported by respondents in relation to whether the tax was calculated on personal income or household income. In one example where the wife was a student and the husband had an income the wife did not have to pay the tax [67], whereas in another similar situation the wife did have to pay based on the annual income of her husband [26, 46]. One respondent reports that he was asked to pay twice for

the same year [4]. Several respondents informed that it was possible to bargain on the amount [3, 26, 67, 95].

## 6.3 Taxable moment

There is no consistent moment at which the tax is paid (i.e., no end of financial year tax time). Proclamation No. 67/1995 states that the 2% Tax shall be paid “on a monthly or yearly basis, depending on the circumstances” (Proclamation No. 67/1995). However, in practice, three *modus operandi* can be distinguished in relation to the moment the 2% Tax is levied and paid:

- ③ Levied yearly and paid annually or periodically
- ③ Levied and paid only when in need of services
- ③ Not paid at all

Among the group that pays annually or periodically are those that consider themselves among the most loyal to the PFDJ and are most likely to identify the 2% Tax with the formal purpose of contributing to the development and rehabilitation of Eritrea. Respondents say that they are reminded of the need to pay regularly for instance through visits by other Eritreans.

Some people only pay when they need consular services or services in Eritrea. The 2% Tax is then calculated retroactively. They are not fined for late payment. They are very reluctant to pay and do so only when it is unavoidable. Several respondents said that they do not receive a letter, a tax form or other communication from the embassy about paying the 2% Tax, not even after having paid the 2% Tax once [67, 205]. They are only obliged to pay when they ask for services at the embassy or in Eritrea.

Several respondents testify that the number of people paying 2% Tax when they need services has grown in recent years, including among new refugees [46, 51, 67, 87]. People in the first migration wave who voluntarily paid more even than the 2% just after war, have now stopped paying [62, 46, 67].

There is a lot of dissatisfaction in the diaspora about the 2% Tax among recent refugees. As long as they do not need papers from the embassy they don't go to the embassy and do not pay the 2% Tax. Their reluctance or fear to go to the embassy also is related to the obligation to sign a regret form before being allowed to pay the 2% Tax (and receive the services). Eritreans who left Eritrea illegally and/or who did not (completely) fulfil the national service have to sign this so-called regret form before they are allowed to pay the 2% Tax [3, 4, 6, 34, 36, 38, 62, 64, 65, 45, 46, 67]. Signing the regret form is perceived as an even bigger obstacle to contacting the embassy for services than the 2% Tax [27, 45, 46, 205]. Many refugees are afraid of the consequences of signing the regret form if they might go to Eritrea one day [3, 72, 45, 46, 205].

Once refugees have paid the 2% Tax, the needs listed under 6.6 may become more pressing for various reasons and they may change their situation to regularly pay the 2% Tax [77]

There are no fines or penalties associated with any of these taxable moments. The taxable moment is entirely flexible, with no penalty associated with it. In other words: there is no penalty associated with a delayed payment and there is no penalty if one not pay at all.

## 6.4 Voluntary versus mandatory taxation

There are no penalties associated with the 2% Tax. Therefore, the question as to whether or not the 2% Tax is voluntary or mandatory needs to be further considered (see also 2.4). Given that there are no penalties, it would be logical to conclude that the 2% Tax is raised on an entirely voluntary basis. It is indeed the understanding of most of the members of the Eritrean Diaspora that the Government of Eritrea portrays the 2% as voluntary [2, 3, 6, 11, 13, 14, 15, 26, 27, 28, 42, 63, 67].

However, most of the respondents perceive the tax as mandatory (mostly because of the penalties and privileges associated with it) [2, 4, 6, 7, 15, 26, 27, 37, 38, 42, 43, 46, 62, 63, 65, 67, 200] (see sections 6.5 en 6.6 of this chapter). Many explained that sooner or later, everybody will need something from the embassy, and then they will have to pay the tax retroactively for all the years they have missed.

*Officially they [the government and its representatives] say it's voluntary, but the consequences are very hard. Do you want to help your sick mother? Then you have to pay. [11]*

*The government says that according to the law it is mandatory, but once it began to be challenged by different countries, when the sanctions began, it [the government] said it's voluntary. When you need something, they tell you straight forward you have to pay. They tell you, it is mandatory. But you are either willing to pay or not. [...] If you don't pay it, it is your choice. But they know, you came there to facilitate something you need and you won't get whatever you need if you don't pay. If you see it from the payment perspective, it's a willing payment. But if you see the greater picture, it's mandatory. [26]*

There are rare occasions in which paying the 2% Tax was portrayed as an entirely voluntary contribution and in this case the person making the argument (a YPFDJ leader) was not himself paying the 2% Tax, even if he stated to agree with its voluntary nature and objectives (Dichtbij Nederland, 2014). In few if any of the interviews did the respondent state that he or she wanted to pay the 2% Tax out of free will and as a voluntary contribution. Even the respondents who explained that the 2% Tax was a voluntary contribution to the country, identified that if the 2% Tax was not paid, consular and other services could not be obtained and therefore the principle aim was to not be excluded from such services.

A voluntary contribution could still be considered as a taxation if it would be raised in some kind of a systematic way. However, many respondents identify that they pay the 2% Tax involuntary because they have to pay it and appear to see the tax as an obligation. The vast majority of respondents stated a wide range of consequences to consider if the 2% Tax is not paid. Respondents report on these consequences as

"I pay the 2% Tax because I needed ..." or "I have to pay 2% Tax because I need to ...". This seemed inconsistent with a voluntary motivation. In addition, the 2% Tax is levied retroactively- as a mandatory obligation. The amount calculated for taxation is dependent solely upon a decision by the Tax collector, and there seems to be no participation of the taxable person to that decision.

From the above it can be construed that the 2% Tax cannot be understood as a voluntary tax - similar to something like a membership contribution to a political party or a voluntary diaspora contribution to help build the country (as its intention was during the contributions raised to support the EPLF). The way in which the tax is collected, is inconsistent with a voluntary notion.

If it is concluded that the 2% Tax cannot be conceived of as a voluntary tax, but is in fact a mandatory tax, then the question arises how it is enforced – especially in light of the fact that no penalties are defined for late or non-payment (as described in 2.3 and 6.3).

## 6.5 Enforcement

From the previous analysis it is concluded that the 2% Tax should be understood as a mandatory Tax regime. Hence the question of its enforcement needs to be raised. If it is a mandatory tax, how is it enforced? During the interviews the question was asked how the 2% Tax was enforced. The following areas were identified.

### 6.5.1 Denial consular services and services in Eritrea

According to the Eritrean government, the consequences of non-payment of the 2% Tax are of an administrative rather than criminal nature, are "clearly stipulated by law", and "consist of denial of specific entitlements and services (land allocation etc.) to those directly accountable" (Ministry of Foreign Affairs, 2012, para. 1). However, within the reviewed documents, the government does not further specify what services could be affected, yet they explicitly reject the SEMG's allegations that consequences are applied extraterritorial, "i.e. in the country of residence of the person concerned, and/or by proxy (to relatives or other persons affiliated to the individual concerned)" (Ministry of Foreign Affairs, 2012, para. 1). They also explicitly deny that non-payment leads to the denial of access to identity cards or passports (Permanent Mission of Eritrea to the United Nations, New York, 2014), denial of entry visas (*ibid.*), or imprisonment (Permanent Mission of Eritrea to the United Nations, New York, in UN Security Council, 2015). Yet, other statements from representatives suggest that some of these consequences do indeed occur following non-payment.

In an interview with journalists from the German *Zeit*, Yemane Gebreab (Head of Political Affairs of the PFDJ) stated the following:

*It [the 2% Tax] is entirely legal, other countries, such as the USA, do the same. If you are an American citizen and you do not pay taxes, then you will be imprisoned. You will not be given a passport abroad, and you will not be helped at the embassies. That's exactly how*

*we do it too.* (Yemane Gebreab, in Interview with Dausend and Lau, 2015, translation by author)

The German government has also received official information that the Eritrean government is replacing Eritrean ID cards [25]. This means that people will have to pay the 2% Tax in order to receive their new ID card.

Several secretly-recorded conversations with embassy staff members confirm that services are denied if the 2% Tax has not been paid. Staff members of the Eritrean Embassy in Sweden (2012) and Canada (2014) specifically explained that one does indeed have to pay the 2% Tax in order to renew one's passport. Another staff member in Sweden suggested that Eritreans need to pay at least part of the 2% Tax in order to receive an entry visa to Eritrea (transcription, Sweden, 2016). (see 5.2. and appendix A)

According to the reports by the United Nations the list of consequences is in fact more severe. This information is corroborated in the interviews.

In fact, while some consequences were confirmed by most respondents, other consequences were less consistently affirmed. This finding supports the observation that the 2% Tax is characterised by a high degree of arbitrariness and inconsistency.

From the interviews (in addition to the recorded transcripts of meetings with embassy officials), it is clear that the 2% Tax payment is enforced by withholding services, first and foremost any consular services. Such services themselves are also paid for so the 2% Tax comes in addition to such services. One respondent states:

*...but in case the refugees need some documents from the Embassy or the Consulate the person in charge is asking if the tax has been paid. The person in charge is well informed about the 2 % Tax that each Eritrean has to pay. I was told that at the Embassy and Consulate have a file for everyone. No documents, if they don't pay also the outstanding amounts. [15]*

In the transcripts of recorded (phone-)meetings with the Embassy in Sweden, the staff at the Embassy do not issue visas to Eritreans who are nationals of the host country and have a Swedish passport. The visa is only given if the person has an Eritrean ID card and, in order to obtain an ID Card, the person is required to pay the 2% Tax:

*Caller: I'm asking if I can get a visa using my Swedish passport.*

*EE: Forget that. Tell me have you ever had an Eritrean ID or not? (Sweden, posted 29 July 2016)*

The majority of respondents mention that consular services are withheld if the 2% Tax is not paid. Similarly it is generally understood that any administrative services in Eritrea are withheld unless 2% Tax is paid. [1, 2, 5, 6, 9, 13, 14, 15, 16,21, 26, 30, 36, 37, 64, 80, 45, 46, 67, 200]

When an Eritrean in the diaspora goes to the Embassy to request any form of assistance, the first question that is asked is 'have you fulfilled your duties?', in other words, 'have you paid the 2% Tax?' [177]. The embassies will not provide any services or assistance if this has not been done:

*The regime in control of Eritrea demands that members of the Eritrean Diaspora pledge allegiance to the government and provide financial support in the form of a 2% tax on net income. [...] [t]his pertains to all of Eritrean origin, be they refugees, asylees, asylum seekers or naturalized [...] citizens. Unless in good stead with the government, including up-to-date payment of the tax, the individual is not eligible to receive official documents, such as birth certificates, marriage certificates, school transcripts, etc. (The American Team for Displaced Eritreans, n.d.)*

A number of respondents claimed that it is possible to travel to Eritrea without paying the 2% Tax [3, 32, 27, 102, 205]. Others say that one does have to pay if one wants to visit Eritrea [7, 22, 34]. Some specify that travelling to Eritrea without paying is only possible for those who possess an Eritrean ID card [2, 14, 36, 45]. Those who do not have such an ID card will be asked to acquire one and will then need to pay the 2% Tax [2, 36]. For those that have fled (asylum seekers), it is possible to get a special letter for a visit to Eritrea if one pays 2% Tax at the Embassy of Eritrea in Khartoum, signs a regret form and acquires an Eritrean ID card. It seems that the ID card is a precondition for entering Eritrea and that this requires the 2% Tax to be paid (or exempted).

Many respondents stated as a motivation for paying 2% Tax the need to protect the possibility to access consular services now or in the future (e.g., birth certificate for a child, birth certificate for renewal of a passport, marriage certificate, diploma, services in relation to burial in Eritrea). [11, 1, 2, 3, 4, 5, 6, 22, 12, 13, 14, 15, 16, 102, 26, 27, 28, 30, 34, 36, 37, 38, 39, 40, 41, 42, 62, 64, 65, 66, 67, 7, 107, 205]. The papers are crucial to the persons concerned and these can constitute key proof in such matters as asylum, family reunification, legalisation of children, school admission, etc. In order to get duplicates it is also necessary that the 2% Tax is paid. A young refugee states:

*In order to enter into school I need my certificate. My parents cannot get it unless I have paid 2% Tax [51]*

It is also impossible to get any duplicates from within Eritrea when the 2% Tax is not paid. This has serious impact on basic rights. Withholding consular and administrative services constitutes extortion.

## 6.5.2 Denial services, privileges and protection in Eritrea

From the interviews and the questionnaires, it appears that a much wider scope of services and privileges are withheld if the 2% Tax is not paid:

- ③ to receive protection for land received from the government in Eritrea [16, 50, 71, 105];
- ③ to receive protection in association with certain projects in Eritrea, such as housing projects, and purchased land and/or houses and need further services and permissions [4, 6, 9, 13, 14, 46, 50, 67, 102, 30, 71];
- ③ to be allowed access to further services for projects (such as building a house) in Eritrea and they want to reduce the risks involved [3, 36, 46, 50, 67, 200];
- ③ to receive protection to reduce risk of exposure [19, 50, 73]; to be protected against the consequences of irregular or illegal activity, which the embassy has information about (e.g., earning an income, legally or illegal, and receiving benefits at the same time or married couples who live apart to receive more benefits) [19, 30, 47, 48].

A combination of these motivations leads in some cases to a regular payment of the 2% Tax. The coercive aspect is in that paying the 2% Tax means that they can access services or receive protection that would otherwise not be available to them. This can be considered extortion; people need to keep on paying more in order to keep the properties that they rightfully own.

*I have to pay. I own a house in Eritrea. To be able to maintain the house I need to pay. At the moment the Regime prohibits selling of property. So I have no choice. If I stop paying I cannot give my sister a warrant of attorney and then the house goes to the state. I feel trapped. [46]*

In some cases such interests may constitute a matter of survival:

*I am now in my seventies. The only asset I have is the house of my parents. Without it I will be destitute. I have to pay the 2% Tax to make sure they do not take it away from me. [77]*

Creating uncertainties about the properties and financial investments in Eritrea are an important fear associated with the collection of the 2% Tax (see 6.6). The fear is based on the abuse of power, that the government can take away privileges associated with any property, investment of transaction arbitrarily. This forces the members of the diaspora to stay in good stead with the authorities. This constitutes blackmail.



### 6.5.3 Withholding protection in the host country

The payment of the 2% Tax is associated with the need to receive protection from the embassy in the host country. This is associated with the financial services offered by the embassies (without permits in the host country to do so). Such services include the safekeeping of money or other valuables for the members of the Eritrean Diaspora. [47, 48, 71]. The embassies have been (or still are) involved in providing routes for financial transfers to bank accounts. A range of financial services, shares, bonds and obligations are offered [46, 48, 71]. These forms of financial support have created dependency on the continued support of the embassy. In this context the embassy receives sensitive information and this information may also be used to put pressure.

Collecting the 2% Tax is therefore associated with the coercion that financial resources or valuables in possession of the embassy are withheld. The services may not be carried out in a legal or regular setting and may constitute fraud, which puts further pressure on the taxable person to fulfil duties so as not to be exposed [160, 162, 705]. This constitutes blackmail. The blackmail constitutes the withholding of protection granted to members of the Eritrean diaspora (in form of financial safekeeping, information, or otherwise), or the fear that this may happen. This is further compounded by the fear that the financial resources, given to the embassy for safekeeping, may never be returned. This may constitute blackmail in relation to illegal practices and potentially fraud.

### 6.5.4 Mental pressure: demand of loyalty

The notion of having to fulfil the 2% Tax as a 'duty' is experienced as intimidation. One respondent explains it as follows:

*When I was asked in a debate with a PFDJ leader if I had paid my duties, it was intended as intimidation, as a threat. We Eritreans, we all know what it means when that question is asked. [177]*

A respondent clarified the mental pressure to pay the 2% Tax as follows:

*You have to have allegiance to the party. If you are a citizen of Eritrea you are beholden to the PFDJ. Therefore you are expected to obey the decisions of the party, you observe any rules (explicit or implicit) and any decisions they make and you do not act against the interest of the party. It is a decision of the party whether you are acting in its interest. (...) But it is all very arbitrary because there is no rule of law. There is just people in power. [161]*

Given the absence of rule of law and a governance system with checks and balances, the tax cannot be regarded as an ordinary contract between the state and citizens. It is this element that makes the consequences of not paying the 2% Tax uncertain and at the discretion of 'people in power' that provides

the principal coercive element. This system is directly linked to the administrative party hierarchy that controls people within Eritrea and which is connected through a system of intelligence-gathering:

*I worked for the youth organisation in Eritrea. We would go to all the youth and collect all the information. If we saw anything wrong we would report. All this information could be used when there was a reason for it. It was usually clear what the hierarchy was and how you could obey the (implicit) rules, by obeying superiors. The problem is when you have more people in superior position, then that creates insecurity as you do not know the rules of whom to obey. The system here in this country in the diaspora is the same, they do exactly the same. [401]*

The 2% Tax is described as a system of control, which is akin to the way in which control is exercised within Eritrea (for instance through the vouchers-system and the national service). The 2% Tax allows the tax-payer to demonstrate loyalty and submission and in exchange he or she receives protection and privilege. If the 2% Tax payment is understood as an indication of loyalty and adherence to the PFDJ, then the question arises what the possible costs can be if such loyalty - as demanded, is not respected (and 2% Tax is not paid).

The mental pressure demanding explicit loyalty to the Government of Eritrea, to the PFDJ, is a coercive practice associated with the 2% Tax collection.

### 6.5.5 Social pressure, vilification and exclusion

Many respondents mentioned that there is an intense social pressure to pay the 2% Tax, which is exerted by members of the local Eritrean community [3, 11, 22, 30, 33, 36, 37, 39, 49, 46, 63, 66, 67, 205]. Many pay because they are afraid of social isolation or do not want to cause problems for their relatives in Eritrea [39, 49, 46, 205]. A large number of respondents stated that the reason for paying the 2% Tax was to protect themselves from social exclusion and isolation [3, 15, 28, 29, 37, 38, 40, 41, 46, 65, 66, 67, 71, 80, 205]. The fear for social exclusion is very real:

*Those who are reluctant or those who refuse to pay the 2% Tax, are ostracized as pariahs and, consequently, intimidated and harassed. They are labelled 'woyane's', which translates as 'traitors or agents of the arch enemy', namely, Ethiopia. The spectre of being isolated from the small, but tight, Eritrean society, is unbearable to many Eritreans. The Regime also tries to blackmail them into submission, by intimidating their families back home, whose information is obtained through the compliant members of the diaspora. [49]*

Not paying the 2% Tax is considered to be disloyal [36, 37, 49, 46, 63, 67, 205] and may lead to social isolation [37, 39, 49, 46, 63, 66, 205]. The social pressure appears less in countries where the local community organisations of the PFDJ are less developed [22, 67, 205], and where presence of the (Y)PFDJ is

less [22, 67, 68, 69]. Social pressure is also less in countries where there has been a lot of political and media exposure on the 2% tax [28, 71, 73]. Social pressure also leads to pressures within families (in Eritrea, but also in Europe) [19, 48]. As part of the social pressure it is expected that contributions are made, for fundraising and other charitable or political objectives as part of (and in addition to) the 2% Tax collection. These are usually included in the retroactive calculation of duties (see 6.8).

Fear for loss of assistance provided by the Eritrean community and/or church priests and community is an important concern as well. This is for instance relevant for (increasingly frequent) concerns of mental health, trauma and traditional healing practices [1, 2, 5, 30, 69, 202]. As most priests and deacons of the orthodox church are under the authority of the PFDJ, important support may not be available if the person is not compliant with the 2% Tax. This may constitute special items for healing with official blessings from the church to heal specific trauma related conditions, which can only be accessed if the person is considered allegiant.<sup>24</sup>

Personal visits, door-to-door visits, targeted visits of refugees in refugee camps/locations and pressure through relatives or friends amount to extortion, as it threatens someone with actions that impact personally or mentally with the objective to extract funding. The fear for exclusion constitutes a serious threat for the vulnerable group of Eritrean refugees and the association of the 2% Tax with such fears constitutes mental and social pressure that affects their wellbeing in a deeply existential way.

The third wave of refugees are severely traumatised, due to the duress experienced during the difficult journey to reach Europe, which may have included torture, sexual violence and other violence, rape and many other degrading experiences. Ongoing mental health problems, problems associated with traditional healing practices are examples of the situations in which refugees seek help from the priests during which they may be pressurised into paying the 2% Tax drawing on sentiments of guilt [DSP-groep & Tilburg University, 2016].

### 6.5.6 Reprisal through family in Eritrea

One way of pressuring Eritreans to pay the tax is pressurising or threatening their family members in Eritrea [19, 16, 30, 47, 48, 64]. One respondent explained:

*...Eritreans in Italy are contacted by family members in Eritrea about the payment of the tax. It can happen when a brother, a sister, the father or the mother need the issuing of authorisations for their own business from the government in Asmara. In that case the government uses the family to put pressure on the refugees to pay the 2% Tax. [119]*

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<sup>24</sup> Such practices are described in Kidane and Van Reisen (2017). These are increasingly widespread in European countries. [99, ]

Family members may be punished when refugees have fled the countries and are subsequently vilified as traitors for not fulfilling national service. The family members may lose access to food coupons, which are essential for survival, and they may be forced to pay a fine of 50.000 nakfa (a fine payable for a relative who has fled). Paying such a fine is impossible for most families and family members may end up in prison. In order to avoid such consequences, refugees may opt to sign a regret form and pay the 2% Tax. As a consequence information about them and their family becomes available to the embassy and intelligence services [19, 16, 30, 47, 48]. As explained in the following quote by a former YPFDJ member, the local Mahbere Coms (local community organisations in the host countries) play an essential role in this.

*At some point, you become a member of the organizations. In the beginning, you do not realize that you are walking into a trap. You want to connect when you get here and so you join a group. There, people can play billiard etc. Then you become a member, you fill out papers, provide the names of your parents etc. With that they can then extort you. They explain that they know where your parents are and that it is good if you are loyal and always go along with them and then your family will be doing well. Otherwise, you sort of know what will happen in Eritrea. These people know what can happen in Eritrea, they grew up there; people are shot, extorted etc. [30]*

The advantage of paying the 2% Tax is that it is possible to support the family in Eritrea. In order to send money or to send parcels 2% Tax must have been paid. [11, 30, 68, 71, 107]

Once the family ties are known the continuation of the 2% Tax is important to ensure that relatives in Eritrea do not experience a denial of access to permits, administrative procedures, etc. Examples provided in the interviews are that the 2% Tax should be paid in order to ensure

- ➊ support to relatives in Eritrea who have an economic activity and there is a need to avoid exposure [5, 34, 36, 67, 95, 107]
- ➋ support family in Eritrea to arrange family reunification (this procedure requires thorough documentation of family relations and they hope that paying the 2% will advance this procedure) [11, 4, 15, 16, 68]

The consequences of not paying the 2% Tax for relatives in Eritrea by association is a serious form of extortion, as many family-members live on the brink.

### 6.5.7 Reprisals direct or by association

Fear for consequences for relatives was mentioned as an important motivation to pay the 2% Tax.

This was expressed as the need to protect relatives in vulnerable positions and avoid exposure of them to any risk; to protect themselves to not get into trouble or do not want their family in Eritrea or in the diaspora to get into trouble [11, 1, 2, 3, 6, 13, 15, 16, 27, 29, 30, 36, 37, 39, 40, 41, 46, 64, 66, 67, 71, 205].

Respondents refer to a wide range of possible reprisals on family members within Eritrea (national service,

finances, withholding coupons, imprisonment, disappearance) that feeds their fear and point to the evidence of the presence of the strong arm in the diaspora as a basis for reprisals in Europe (see section 5.5.).

Respondents identify the reprisals by association as especially hard. Given the arbitrariness of possible comebacks, they fear that they can only protect their relatives (in the diaspora and in Europe) by showing loyalty and submission. The payment of the 2% Tax is an important element to demonstrate such loyalty.

As indicated, the punishment by association associated with the collection of the 2% Tax constitutes a serious form of coercion and violates the basic human rights that no-one should be punished for the deeds of someone else. The possibility of harm to relatives creates serious mental pressure on the Eritreans in the diaspora to pay the 2% Tax.

## 6.6 Favours, privileges, benefits versus punitive measures

The 2% Tax is not just a punitive-enforced system. Payment of the 2% Tax opens the door to a range of favours, privileges and benefits, which are only accessible if the 2% Tax is paid. These benefits motivate tax-payers to pay. Those that are excluded from the 2% Tax payment, or exclude themselves by refusing to pay it, cannot access these benefits. The punitive measures is that the favours and privileges and enjoyment of basic rights are denied.

Given the broad extent of the consequences, their impact on basic needs and basic rights, not only of the tax payer but also on relatives and on relatives in Eritrea makes the 2% Tax difficult to resist. The few who dare to oppose it openly refer to it as 'extortion tax'. Generally, the 2% Tax is a silent pact between the PFDJ and the tax-payer, to leave him and his family alone. It is this silent pact that makes the 2% Tax not conducive to police reporting, which goes exactly against the quest for loyalty that underpins the 2% Tax regime.

In the following sections the positive and negative consequences associated with the 2% Tax collection are set out.

### 6.6.1 Direct positive consequences

Payment of the 2% Tax is a precondition for receiving a variety of services, privileges and rights. Many Eritreans have to pay the 2% Tax because they need something from the Eritrean embassy or from within Eritrea. Table 6.1 gives a list of the positive consequences of paying the tax, as mentioned by our respondents and/or in the UN reports.

Many respondents stated that the provision of any services by the embassy (including the provision of any documents) was dependent on payment of the 2% Tax [21,34, 38, 39, 42, 44, 46, 62, 63, 65, 66, 67, 71, 72, 205]. Table 6.1 lists only those services and documents mentioned in particular.

Table 6.1 Direct positive consequences of paying the 2% Tax

Type of consequence	Mentioned by most respondents	Different experiences or stories from respondents
Consular services at the embassy or consulate in the country of residence	<ul style="list-style-type: none"> <li>Birth certificate</li> <li>Marriage certificate</li> <li>Certificate of diploma</li> <li>Baptismal certificate</li> <li>New or renewed passport</li> <li>New or renewed ID</li> <li>Repatriating deceased for burial in Eritrea</li> </ul>	<ul style="list-style-type: none"> <li>Sending parcels to Eritrea</li> <li>Sending remittances to Eritrea</li> <li>Entry visa (on their European passport)</li> </ul>
Privileges or rights in Eritrea	<ul style="list-style-type: none"> <li>Investing in Eritrea</li> <li>Selling, buying or owning property (piece of land)</li> <li>Buying, building or reconstructing a house</li> <li>Renting property</li> <li>Owning business/receiving permits</li> <li>Giving power of attorney</li> <li>Inheriting</li> <li>Applying for a piece of land in birth region or birth region of parents</li> <li>Requesting exemption from customs duty when immigrating to Eritrea permanently</li> </ul>	<ul style="list-style-type: none"> <li>Coupons for food or gasoline (during vacation)</li> <li>Exit visa for diaspora Eritreans who visit the country</li> </ul>

## 6.6.2 Indirect positive consequences

Apart from the set of services, privileges and rights that becomes accessible as a direct consequence of paying the 2% Tax, there is also a set of 'favours' that are associated more indirectly with payment. Paying the 2% Tax is one way of proving your loyalty to the Eritrean government. The more loyal you are perceived to be, the more favours you will receive. Table 6.2 provides a list of the indirect positive consequences, which some of the respondents associated with payment of the 2% Tax.

Table 6.2 Indirect positive consequences of paying the 2% Tax

Type of consequence	Mentioned by most respondents	Different experiences or stories from respondents
In the diaspora	Invitation to cultural events	
In Eritrea		<ul style="list-style-type: none"> <li>Businesses are favoured</li> <li>Job promotions</li> </ul>
For family members		<ul style="list-style-type: none"> <li>Businesses are favoured</li> <li>Job promotions</li> <li>Permission for family members to visit</li> <li>Family reunification procedures are made easier (provision of exit visas, provision of documents, etc.)</li> </ul>

## 6.6.3 Direct negative consequences

Punishment by association against family members in Eritrea, which has also been mentioned by several reports of the UN Monitoring Group (SEMG 2011, 2012 & 2015), was highlighted by respondents as one of the main direct negative consequences of non-payment of the tax:

*My family they had to say 'we don't know where he is' and that they have no contact with me. Because for anything they want, to renew their licenses if they want to do business, they ask for me. If you don't pay the 2%, then your family back home gets affected. The food supplies are given by coupons, for that they have to account for every member of the family and if you are not in the national service and you are not registered as someone who is missing, then they don't give you the food coupons. [71]*

Table 6.3 Direct negative consequences of not paying the 2% Tax

Type of consequence	Agreed on by most respondents	Different experiences or stories from respondents
In the diaspora	Social pressure	Disclosure of illegal activities (informal work etc.) Loss of money saved at the embassy Threats or intimidation
In Eritrea	Inheritance is taken away Property goes to the state Businesses are taken away	
For family members	Inheritance is taken away	Loss of food coupons Unable to obtain/renew business licence

#### 6.6.4 Indirect negative consequences

Another set of negative consequences is associated more indirectly with failure to pay the 2% Tax. According to the majority of the respondents, those who do not pay the tax are perceived as disloyal to the Eritrean government. Some have even explained that someone who does not pay is immediately believed to be part of the opposition. Many respondents said that they believe that the Eritrean government punishes those who are disloyal. The punishments listed below are not necessarily directly linked with failure to pay the 2% Tax. They are rather punishments associated with disloyalty in general.

*Some people, especially the ones who have been here for 20–30 years, pay because they have things to do in Eritrea. They have houses and businesses and they fear what happens when they do not pay. 3–4 year ago, for instance, the Regime destroyed houses in various cities. If you pay, you are respected and that means that they are unlikely to destroy your property. If you do not pay the tax, then you are automatically understood to be part of the opposition. [13]*

*I pay the tax because I want to be able to visit my parents and sisters and I want to be buried in Eritrea. I receive state benefits. So it is hard but I have no choice. [93]*

*My father needed to give a power of attorney to a relative in Eritrea to take care of the family property. He stopped paying a long time ago. He went to the Embassy to pay the 2% Tax. His relative needed to show a copy of the receipt to receive that power of attorney. He did not want to pay but he had no choice, otherwise the family property would go to the state. [67]*

Table 6.4 Indirect negative consequences of not paying the 2% Tax

Type of consequence	Agreed on by most respondents	Different experiences or stories from respondents
In the diaspora	Isolation from diaspora community	Community avoids your business
In Eritrea	Registration on the black list Property may be destroyed Concerns about safety when visiting Eritrea (e.g., fear of arrest, denial of exit visa)	
For family members		Harassment of family members Imprisonment of family members Land or property is taken away Business is closed

The removal of favours, privileges and benefits are serious in a country where accessing of basic needs and basic rights are dependent upon the goodwill of those in higher power. The 2% Tax therefore impacts on basic rights, which will be discussed in section xx.

## 6.7 Payment transaction

The 2% Tax is always paid in foreign currency. The interviews, analysis of documents and literature show lack of a clear, transparent and coherent approach to the way in which payments of the 2% Tax are made and to whom. The modus operandi differs between the European countries studied, and have also changed over time, especially as a result of the increasing pressure in certain countries following UN Security Council Resolution 2023, which requested a prohibition of the 2% Tax.

Four categories can be distinguished based on the institution to which the payment is made. Within these categories, sub-categories can be distinguished based on how the 2% Tax is paid. Table 6.5 summarises the different ways of paying the tax.



Table 6.5 Ways of paying the 2% Tax

Category label	To Whom	How	Description
A1	Embassy	Personally in cash	Taxpayer pays cash having made an appointment at the embassy (annually or periodically) and receives a receipt from embassy
A2	Embassy	Transfer to a bank account	Taxpayer transfers money to an account of the embassy (annually or periodically) and receives a receipt from embassy
A3	Embassy	Cash delivered by someone else on behalf of the taxpayer	Someone else pays cash on behalf of the taxpayer using the other person's passport; the taxpayer receives a receipt in his/her own name (this method is especially used by recent refugees who are afraid that paying the 2% Tax and signing the mandatory regret form might interfere with their asylum procedure)
A4	Embassy	Cash paid through representative of the Mahbere Com	A representative (not official) of the Mahbere Com helps the taxpayer to communicate with the embassy, receive information on how much has to be paid and brings the money to the embassy; taxpayer receives a receipt from the embassy if requested
B1	Office in Eritrea	Cash paid personally during a visit to Eritrea	Cash is paid in foreign currency at the Immigration Office in Asmara <sup>25</sup> ; taxpayer receives a preliminary receipt, which can be changed into an official receipt at the embassy of the host country
B2	Office in Eritrea	Cash paid by relatives in Eritrea	Money is sent to relatives in Eritrea (through hawala agents) and paid at the administration office in Eritrea; the relative receives a preliminary receipt, which is sent to the taxpayer in the diaspora who uses it to prove to the embassy that they have paid the tax and to receive an official receipt
B3	Office in Eritrea	Cash paid through friends or trusted people who travel to Eritrea	Cash is given to a friend or trusted person who takes the money to Eritrea and pays at the administration office in Eritrea; the friend/trusted person receives a preliminary receipt, which is given to the taxpayer in the diaspora who uses it to prove to the embassy that they have paid the tax and to receive an official receipt
B4	Office in Eritrea	Cash paid through a courier	Cash is brought to Eritrea by a courier (or a contact given by the embassy, who is usually a member of the Mahbere Com who operates as a private individual and not as an official representative), and paid to the administration office in Eritrea; the courier or contact receives a preliminary receipt, which is sent to the taxpayer in the diaspora who uses it to prove to the embassy that they have paid the tax and to receive an official receipt
B5	Office in Eritrea	Someone else pays on behalf of the person	Someone else pays on behalf of the person (using his own passport), but a code is used to register the person (the code is transferred to the embassy) to conceal payment (in fear of consequences for asylum status, for instance)
C1	Mahbere Com	Cash	Informal tax collectors (agents) from the Mahbere Com collect the tax from people in their community; cash is brought to the embassy or Eritrea (only for very trusted persons)
D1	In Dubai	Cash or on an account	People send money to Dubai in cash (in person or using a person as a courier) or through an account.
D2	In Dubai	Someone else on behalf of the person	Someone else pays in Dubai on behalf of the person using his own passport
D3	In Dubai	Cash send to an account	Cash is paid at small banks (where people exchange currency for holidays, such as Forex Bank and Money Bank) where it is put in a dedicated bank account (usually in name of a private person); money is then sent to Eritrean government-affiliated businesses in Dubai and Saudi Arabia
E1	In country of residence	Transfer to a bank account	Money is transferred to a bank account –other than account the account of the embassy – in the country of residence
F1	In Sudan	Cash	Cash is paid at the Eritrean Embassy in Khartoum where, after paying the 2% Tax, various papers can be obtained

<sup>25</sup> See Appendix C for the announcement at the Immigration Office in Asmara.

It has also been reported, that refugees regularly travel to Khartoum, Sudan, to receive a special paper (known as *Laissez-Passe*) that allows them to re-enter Eritrea [12, 33, 66]. In doing so, their travel to Eritrea remains undetected by European authorities. One respondent explains:

*... There was another person, he also wanted to go to Asmara. He was also a refugee, he also had to sign the letter, but he didn't need a passport, he needed to enter Eritrea. [...] He didn't need the passport, he had a travel document as a refugee, so he asked him for some sort of collaboration to get a temporary passport. He used it not from [European Country] to Eritrea, but from [European Country] to Sudan and from Khartoum he used this passport to enter Eritrea. He exited with the passport and then he used his travel documents to Italy. [124]*

A precondition for receiving such papers is the payment of the 2% Tax and signing of the Regret Form. Our information suggests that this can be paid in Europe or at the embassy in Khartoum, where other papers can also be obtained [19, 47, 68, 95].

Various receipts are in circulation. Some are in Tigrinya and others are in English (See appendix B for some examples). Some mention explicitly the 2% Tax, others do not. Some respondents said that they always receive a receipt, others said that they only receive a receipt when asked for and a few respondents reported that receipts are no longer issued.

In general, a shift towards paying cash in foreign currency as a more dominant mode is apparent in most of the countries studied [3, 8, 12, 13, 14, 15, 16, 22, 30, 33, 34, 36, 38, 39, 44, 63,67, 71, 200]. Several respondents state that in past years it was more common to transfer money to an account [14, 22, 30, 37].

## 6.8 Other financial services and transactions

The Eritrean embassies have a range of other financial programmes in addition to the 2% Tax and related financial obligations. These include fundraising projects, financial services for Eritreans in the diaspora, commercial projects, including projects related to housing and land, and projects supporting integration in the host country [19, 47.] These 'other duties and contributions' are discussed here briefly for two reasons.

- ③ They may constitute a larger source of revenue than the 2% Tax and they may potentially explain the difference between the minimum estimate of revenue of 2% Tax of USD 11 million (Permanent Mission, 2014) and USD 400 million [95, quoting Yemane Gebreab] (see Chapter 4, section 4.2 on the volume of the tax) – the difference being between diaspora revenue in narrow sense (2% Tax) and the broader range of contributions made by the diaspora.
- ③ Some members of the diaspora have invested significant amounts of money in these financial programmes (e.g., sometimes tens of thousands of euros by way of payment of bonds or to housing projects) and, therefore, have an interest in protecting their investment. They may feel the need to

continue to pay the 2% Tax so as not to lose the potential to realise their investment. Hence, these other contributions may contribute to the coercion to pay the 2% Tax.

## 6.8.1 Other duties to charitable and political causes

There are various types of other duties and contributions; these include:

- ③ 'Voluntary' contributions including additional taxes, duties or contributions for various causes, such as defence (Mekete), support for the disabled (Drar Sinkulan), the fund for martyrs and orphans (which are often collected through a bidding process)
- ③ Contributions to charity projects, such as schools and orphanages
- ③ Contributions for special events (such as the YPFDJ conferences, cultural events and tours such as the Bidho Tour, a music festival)
- ③ Attending pro-PFDJ meetings or demonstrations

These duties and contributions might not be that voluntary; for example, the Dutch Country of Origin Report (Ministerie van Buitenlandse Zaken, Netherlands 2014) stated that:

*...the Eritrean government would have networks of informants in Eritrea as well as abroad. Members of the diaspora who did not participate in political and cultural events and fundraising abroad would be reportedly blacklisted. Non-loyal members of the diaspora would be the target of organized government campaigns [...]. (Ibid., p. 16)*

Eritreans in the diaspora may feel pressured to pay extra contributions during community meetings or alongside their 2% Tax. Pressure to comply with further duties and make additional contributions may be enhanced once someone has paid the 2% Tax. As explained by several respondents during the process of paying the 2% Tax, when you pay the 2% Tax, you are registered at the embassy and receive information and invitations for cultural events and festivals [38, 39, 45, 205]. At these events, you are reminded of your 'duties' [33, 71, 67]. The 2% Tax payment constitutes one of those duties [30].

**Fundraising and integration projects** channelled by the PFDJ, in collaboration with the embassies, are carried out with the community organisations, called Mahbere Com. Respondents alleged that the board of these groups and organisations are routinely predetermined by the PFDJ leadership in the host country, which, in this way, controls the community organisations [19, 47, 48, 73, 95, 166]. Such community organisations can be either informal and not registered or formal and registered. Pressure is also routinely exercised through close family members, to try and ensure that members of the communities remain loyal to carry out their duties, as established by the authorities [19, 47, 48, 49, 53, 72, 92, 95, 96]. The projects run by these community organisations are to financially support particular purposes (such as (Y)PFDJ meetings). Abuse of such funding was reported in Sweden when a diplomat was expelled (Westerdorp, 2014).

These fundraising projects often have an 'obligatory' nature in the sense of a 'duty' and the amounts can or may be added to the 2% Tax collection. Meetings to initiate fundraising can also be experienced as coercive

and intimidating [100]. The apparent purpose of such meetings is to call members of the Eritrean diaspora to account to the PFDJ leadership and to ensure that they carry out their 'duties', of which the payment of the 2% Tax constitutes one important component [48, 49, 53, 95, 96]. Such meetings can be understood in the context of a spectrum of activities that are experienced as intimidation, as reported in the report '*Nothing is what it Seems*' (DSP-groep & Tilburg University, 2016, pp. 72–77). The orthodox churches are also incorporated into the PFDJ structure and these are also connected to fundraising duties from among the members of the communities (however, specific financial linkages between the churches and fundraising programmes have not been investigated in detail in this research).

**Projects for charitable causes** and the involvement of the Mahbere Com in raising funds for these have been subject to scrutiny in some countries, notably the UK, on the basis of the UK Charity Act, which requires that charity projects are reported and fulfil certain requirements in relation to accountability [143].

**Open bidding** In a number of countries, regular meetings are held in which the community associations (Mahbere Com) are called by the embassy in relation to fundraising. The local head of the PFDJ, or someone representing him, and other officials preside over these meetings. The purpose of the money collection is explained. The local PFDJ leaders in the associations then call on members to contribute to the cause. As part of the collection, bidding is organised. These bids often take place on the premises of the Mahbere Com. A leader of the Mahbere Com first asks for voluntary contributions from the members. According to respondents, the leaders of the Mahbere Com are trusted and loyal PFDJ members<sup>26</sup>. Like in an auction, each member announces how much they want to contribute. Other members post a higher 'bid' in response to the first bid. Respondents report that this is staged or pre-arranged [12, 36, 48, 100]. The bidders appear to make high voluntary contributions, apparently with the aim to raise the level of the expected 'voluntary' contributions [27, 48, 100]. This can range from tens to hundreds and even thousands of euros, depending on the project they are collecting money for. (see also Westerdorp, 2014)

Once a number of members have publicly announced their contribution, an amount is agreed upon for all members [28, 36, 48]. The amount set by the community in this process becomes mandatory – receiving the status of a 'duty' – and becomes part of the dues associated with the 2% Tax collection [36, 48, 67, 98, 100].

*We are obliged to attend these meetings. Then one of the women will volunteer a high amount to the cause. Yet she will announce a huge sum. We all swallow, how should we pay this? This amount will scare everyone, it can be up to hundreds of euros. The woman is typically not well-off and praised by the organisers for her sacrifice. Then others are asked to contribute and more women (who have also been set up) will contribute similar amounts. Usually the amount agreed upon by the community will not be that high as*

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<sup>26</sup> The election of the leaders of the Mahbere Com is reportedly overseen by the head of the PFDJ in the hierarchy of the embassy. Such elections are pre-arranged, according to respondents who explained that they had been sought out to stand for election with the support of the highest level of the PFDJ.

*people will try to protest, although this is difficult. The amount is then agreed upon and fixed as a duty for all members. [48]*

Indeed, some of these other duties and contributions have been described by respondents as mandatory for all Eritreans in the community who need any kind of service or privilege. In these instances, Eritreans have been prevented from accessing services until the amount has been paid [6, 14]. However, other contributions, especially those collected in informal community meetings are communicated as voluntary. One respondent stated as follows:

*We all know what 'duty' means. In our language and our history, it is what you must do because this is asked from you. Duty translates to loyalty. [73]*

The consequences of not paying are described in the following quote:

*They also ask you money for defense every year and when they make a festival [...] they ask for a lot of things. You have to pay that. I have to pay because I [only] have an Eritrean passport. [...] They collect money. For example, last year it was about the human rights commission in Geneva. They call you and tell you to say "no, this is not correct" and that you have to be with your government. They work like Mafiosi. [...] I have to pay, whatever they say, you have to do it. If I say no one day, then I will miss my passport. Some people have houses in Eritrea, so they are afraid, so they pay. If you don't pay, then you are out... [4]*

In the contributions collected for the YPFDJ conference in the Netherlands in 2017 (Veldhoven, 2017), the collection of contributions to support the event started six months prior to the event. The fundraising included meetings involving officials from the embassy. This was followed by door-to-door visits. Receipts were obtained for contributions. Receipts were signed by Isaac Menassi, the official who also collects the 2% Tax and signs the receipts.<sup>27</sup> If one fails to contribute, such contributions can be added to the 2% Tax [48,50, 96].

## 6.8.2 Commercial projects

**Commercial projects** in Eritrea are also a source of revenue for the Eritrean government. Such projects are raised by the Eritrean embassy, although the legal basis for doing so is unclear. These projects tie the members of the Diaspora into continued payment of the 2% Tax. The more involved they are in the commercial projects, the more this ties them to ensure 2% Tax payments and related duties are made as requested. This is a particular aspect of the coercion exercised on members of the diaspora.

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<sup>27</sup> Argos (2017, April 15). De lange arm van Eritrea [Radio program].

One example of such projects are housing projects (e.g., Space 2000 project, Jacaranda, Villaggio Genio, etc.) [19, 48, 49, 50, 92, 95, 96]. These include the 'Sembel' and 'Nakfa' projects. According to respondents, participation in these schemes is solicited at the PFDJ events and is also subject to the bidding process. Pictures of the houses or apartment schemes are shown and participants contribute amounts as high as EUR 50,000—60,000 [19]. The housing projects are believed to be built using forced national service labour free of charge. Vacant land in Asmara near the Italian cemetery was for one USD 600,000 project in 2006 [96]. One respondent stated:

*They show pictures of the apartments at the meeting. It was 6 or 7 years ago in Germany. I would estimate that 11,000 people have subscribed to the scheme and all of them may have paid EUR 50,000. The total collection would be EUR 550 million. Nothing has been built. They just have to wait. They pay 2% Tax and hope for the best. [142]*

Another respondent stated:

*There are thousands of people subscribing to the same project, in which only 100 or 150 apartments will be built. They will never get it. They know it, but by paying the 2% Tax they increase their chances of being among the lucky ones who may actually get one, if the government ever finishes these houses. [73]*

With regard to land – although land in Eritrea belongs to the government and is managed by communities and farmers – it was given to former fighters in particular. In order to hold on to the land, the 2% Tax has to be paid [6, 19, 96, 99, 102, 105]. Respondents also said that they or relatives pay the tax because they are afraid of what will happen to their land or house if they stop paying [2,4, 6, 13, 26, 30, 50, 65,46, 205].

*Refugees from the first wave have often invested in the land, developed it, built houses on it. In order to hold on to these houses and keep them running with water, electricity etc., and rent them out (as additional income), it is necessary to continue to pay the 2% Tax. [50]*

*You know that houses have been destroyed. If your house has a red cross, it may be up for destruction. So it is imperative to pay the 2% Tax so that you can avoid your house being taken down. Others, especially refugees from the first wave, have inherited houses, in which either family lives or which is rented out and, in order to not lose these houses to the state, 2% Tax must be paid. [50]*

Respondents also report that there is a fear that irregularities may be discovered if the 2% Tax is not paid [19, 50]. Such irregularities are easily found, as regulations change and recourse to the rule of law in Eritrea

is limited. Such projects tie Eritreans to paying the 2% Tax so as to lose such potential assets (even if they are unlikely to be ever realised). The coercion is that such projects have no legal certainty and any return or realisation may be affected by the fulfillment of the 2% Tax and other duties [19, 48, 49, 73, 92, 95, 96]. This constitutes coercion related to fraud.

Problems have been associated with these projects, including:

- ➊ Additional money is requested in subsequent follow ups to the programmes because of new and additional costs [19, 50, 102].
- ➋ There are no official contracts or property papers [19, 50].
- ➌ The schemes are vastly oversubscribed and, therefore, there is doubt among the participants and in the community about whether or not the property will be handed over to the contributors [73].
- ➍ The large sums invested make it very difficult for participants to withdraw [19, 50, 71].
- ➎ There is no legal or financial information available on the projects [47, 50].
- ➏ The houses are not built (yet) or the land is never handed over [37,38, 50, 73, 105, 106, 205].

In summary, it can be concluded that the 2% Tax is one of the critical means of collecting money as part of a bigger set of 'duties and obligations'. These duties include the participation in commercial and financial products, which may often not have any return for the participants [47, 48, 71]. Concern was raised about the lack of a legal basis of such projects [19, 47, 49]. The need for participation can be experienced as mandatory, certainly in terms of social and mental pressure.

## 6.9 Conclusion

This chapter identifies the modus operandi of the levying and collection of the 2% Tax. There is unclarity regarding the terms of the 2% Tax. It is unclear on whom the tax is levied, what income is taxable and the taxable moment is unclear. The purpose of the tax is unclear, while respondents identify a great variety of reasons as to why they would pay the 2% Tax.

There is a high degree of indiscriminate and informal decision making about the amount to be paid. The person in charge of determining the amount of tax payable has a lot of discretion to decide the amount, which differs between individual cases and between countries. There is a high degree of variance on decisions and there is leeway to negotiate the taxable amount, at least in some instances.

Fear of the potential withdrawal of 'favours' or services, which could result in significant losses, are a source of coercion prompting the collection of the 2% Tax and other contributions and duties.

The Eritrean embassy may hold power over people in the Eritrean diaspora as it collects information and intelligence and collaborates closely with the PFDJ branch. Information that is a source of embarrassment or that may be incriminating (e.g., undeclared money kept by the embassy) can be used by the Embassy to

coerce Eritreans in the diaspora to pay the 2% Tax. Eritreans in the diaspora also pay out of fear of losing the possibility of reaping the rewards of financial and commercial projects in which many Eritreans have invested.

The 2% Tax is an issue of immense importance in the lives of the Eritreans in the diaspora. It is accepted by few as a way of contributing to the development of Eritrea or to help the martyrs and former fighters. Instead it is regarded as an obligation that – if not fulfilled, brings oneself and relatives onto a collision course with the Eritrean authorities, with a range of undefined and unpredictable possibilities that may seriously harm the individual and their family.



# 7 Comparison in Countries Studied

This chapter looks at how the 2% Tax is levied, calculated and paid in the seven European countries studied. A description of this process is provided for each country, together with information about the size of the Eritrean diaspora community, the strengthened of Eritrean government organisations (such as the PFDJ and Mahbere Com), and the level of media and political attention on the issue of the 2% Tax. This is followed by a comparison of the payment modes and a summary of the similarities and differences. This chapter is based mainly on the interviews.

## 7.1 Belgium

Belgium has a very small Eritrean community. The first migration wave was of only a couple of 100 people. Since 2008, approximately 2,000 Eritrean refugees have settled in Belgium [70 (Eurostat, 2017)]. In Belgium, the 2% Tax is most commonly paid in cash [112, 113, 152] at the Eritrean Embassy in Brussels. The Ambassador in Brussels is also the Ambassador for the Eritrean Embassy in the Netherlands [112, 113, 114, 115, 150]. The 2% Tax is calculated by a member of the embassy staff [112, 113, 115, 152]. According to several respondents there is no special official in charge of the 2% Tax [112, 152]. Calculations of the tax payable are done by the embassy secretary [152]. The same receipt is issued in Belgium as in the Netherlands..

There is no strong PFDJ branch and its community organisations in Belgium (Mahbere Com) do not play a specific role in the collection of the 2% Tax, other than reminding people of their duties at events organised by the embassy. There is little media and political attention on the payment of the tax and there is little open opposition to the tax [113, 114, 115, 152]. Refugees do not need documents from the embassy for the asylum procedure [114]. Therefore, most refugees in Belgium have not been to the embassy or paid the 2% Tax. However, certain documents, such as a birth certificate, can be necessary for family reunification and naturalisation [113, 152]. Furthermore, some respondents mentioned that they need a copy of their Eritrean diploma to enrol in educational institutions [113, 152].

## 7.2 Germany

Germany has a long history of Eritrean refugees and houses the largest community in Europe. In the eighties and nineties approximately 20,000 Eritreans came to Germany. In around 2004 there were about 30,000 Eritreans in Germany (Nolting, 2004). In recent years, Germany has witnessed a large influx of more than 60,000 Eritreans. The current estimate is that there are about 90,000 Eritreans in Germany [21, 24, 25], (Eurostat, 2017) , which makes it the largest Eritrean community in Europe.

PFDJ community organisations are strong in Germany, including the YPFDJ, NUEW, and Mahbere Coms. The Eri-Blood militia are headquartered in Frankfurt. In Germany, payment of the 2% Tax at diplomatic missions is forbidden. Eritreans who are trusted can pay representatives, who usually belong to the local Mahbere

Coms [116, 117, 119, 306]. Otherwise, the tax money has to be paid in Eritrea (in person or sent) [10, 116, 117, 118, 120, 121, 122, 306]. As a result, the 2% Tax is now most commonly paid in Asmara [10, 21, 116, 117, 118, 120, 121, 122]. This is also announced at the Immigration Office in Asmara [153, see picture in Appendix C].

In Germany, representatives for the Mahbere Coms function as informal tax collectors [117, 120, 306, 20]. They act as facilitators between the taxpayer and the embassy. They sometimes communicate with the embassy on behalf of the taxpayer [120, 306]. Agents (couriers) take the cash to Asmara if the taxpayer cannot travel to Eritrea him/herself [120, 122, 153, 306]. These agents are not official representatives of the Eritrean government, but private persons [120, 306].

The embassy in Berlin and the consulate in Frankfurt continue to levy the tax [117, 120, 306] (i.e., they calculate the tax, but do not collect it) and ask whether the tax has been paid before providing consular services [117, 118, 119, 120, 121, 306]. In Germany, the Eritrean government is starting to renew Eritrean ID cards [142]. A copy was obtained of a form with which agents go to the refugee camps to solicit refugees to apply for an ID card. To receive a new ID card, the 2% Tax needs to be paid and a regret form signed [25] (see Appendix E and F).

## 7.3 Italy

The Eritrean community in Italy has a long history of Eritrean refugees, as Eritrea is a former colony of Italy. In 1980s and 1990s about 10,000 Eritreans settled in Italy [103] (Eurostat, 2017). Although Eritrean refugees enter Europe through Italy, most travel on to other countries. The size of the community is estimated at about 30,000 people. The PFDJ has a strong organisation here and the majority of local organisations are under the influence of the embassy or the PFDJ.

In Italy, different ways of collecting the 2% Tax are used and it is not clear from the interviews which method is most dominant. However, the following patterns have emerged: At least some Eritreans pay the tax in cash at the embassy [123, 124]. These people are usually trusted persons [124]. People who call the embassy for services and who are not known are first referred to local representatives who are in charge of the 2% Tax [124]. These representatives play a mediating and facilitating role in levying and collecting the 2% Tax. They give information about the tax and collect it (informally) on behalf of the embassy [124]. They may also negotiate for (partial) postponement of the payment if the person does not have the money available at that time [124].

People who are loyal to the Eritrean government are allowed to transfer the money to an account [124]. When you pay by transfer, you do not get a receipt [124]. Some cases are known of people who pay the 2% Tax at the Immigration Office in Asmara [124]. They can pay it there themselves or arrange for someone else to pay on their behalf.

There is very limited media and political attention on the 2% Tax in Italy [123]. Support for the Eritrean regime is decreasing among the diaspora in Italy [124]. According to some of our respondents, many Eritreans do not pay the 2% Tax [123] and others only pay when they need services [124]. Some respondents mentioned that the introduction of the new ID card will make payment necessary, as people will not be issued with a new card unless they have paid the tax [117, 124].

## 7.4 The Netherlands

The Netherlands has an Eritrean community of about 20,000 people, of which about 75% came to the Netherlands after the year 2000 [DSP-groep & Tilburg University, 2016]. The 2% Tax is predominantly paid at the Eritrean Embassy in the Netherlands [111, 125, 127, 128, 129, 130, 150, 151], preferably in cash [111, 127, 129, 151]. In earlier years, transferring the money to an embassy account was more common [111]. The receipt that is issued is in Tigrinya. Eritreans receive information on the 2% Tax when they come to the embassy [111, 125, 127, 128, 129, 151, 205] and at the (cultural) events organised by the Mahbere Com [125, 205]. Taxpayers are registered with the embassy, which records their personal information [111, 128, 129, 205]. A special official is in charge of the 2% Tax [125, 129].

There is a strong PFDJ organisation and the Mahbere Com are also very well organised. The diaspora community is heavily polarised and there is also a well-organised opposition (DSP-groep & Tilburg University, 2016). Representatives of the local organisations play a role in controlling people, but it seems that the practice of knocking on doors to collect the 2% Tax has diminished [205], although two people mention that they have heard that agents knock on doors [111] and call vulnerable people [125] to talk to them about the tax. Others respondents also spoke about several (recent) events where agents were going around door-to-door to organise the members of community organisations, including for fundraising [205]. Recently the opposition in the Netherlands has become stronger. There is a lot of fear and mistrust within the community (DSP-groep & Tilburg University, 2016).

Payment of the 2% Tax has received considerable media attention in the Netherlands. This has led to a series of parliamentary questions and resolutions. As described in Chapter 3 of this report, the embassy is prohibited from collecting the 2% Tax by means of coercion, extortion, fraud or any other illegal means. However, since the regulation was issued in October 2016, it appears that the mode of collection has not changed. The 2% Tax is still mainly collected at the embassy. However, due to increasing attention, the tax can now also be paid directly in Eritrea [110, 125, 126, 129], or may be collected by intermediaries who work informally for the embassy and by priests of the Eritrean churches [111].

According to several respondents an increasing number of people would rather not pay the tax [151, 205]. Because of the tensions within the Eritrean community, several respondents mentioned that talking about the 2% Tax is taboo [128, 150, 205]. It is considered an indication of loyalty to pay the tax (and vice versa, non-payment is considered disloyal). Some refugees (especially the ones who are applying for family reunification) experience problems when they need papers from the embassy [111, 125, 127, 205] and do

not want to go to the embassy, because they do not want to be known by the embassy or be forced to fill in the regret form and pay the 2% Tax.

The political awareness of the situation in Eritrea is high among members of the Dutch parliament and in the media. Members of the diaspora have regular meetings with line ministries, which are well informed about the various concerns among the Eritrean community.

## 7.5 Norway

The Eritrean community in Norway's is similar in size to the Eritrean community in the Netherlands: approximately 20,000, most of whom came in recent years (Statistisk Sentralbyrå, 2017). According to our respondents, the Mahbere Com are strong in Norway. From the interviews, no clear picture emerges about the practices used for the levying and collection of the 2% Tax in Norway.

The Norwegian government shut the office of the Eritrean Embassy in Oslo in December 2016, as it was used as an informal office of the Eritrean Embassy in Sweden, without accreditation in Norway. The office used to collect the 2% Tax [156, 157, 158]. Exposure in the media led to its closure for 2% Tax payments, although it still functions as a general community support and information office.

In Norway, the tax was paid in cash at this office by people who are trusted by the PFDJ. For other taxpayers the tax payments were transferred to an account of the embassy [158]. It was also mentioned by respondents that members of the (Y)PFDJ and who are loyal to the regime paid to representatives in the local community. The money is then sent to Eritrea [156]. Representatives of the Mahbere Com function as facilitators.

Although the office is officially closed for the 2% Tax payment, it is still in charge of facilitating and overseeing the collection of the tax. It provides information about how much and where the 2% Tax has to be paid [133, 134, 135, 140]. Those who are specifically trusted, can still pay in cash at the office [131, 134]. Others are asked to transfer the tax to a bank account of the Eritrean Embassy in Sweden [132, 133, 134, 135, 140], or to pay the tax directly in Asmara [9, 132, 133, 134, 140, 158]. Several respondents mention that tax collection has become more informal and secretive to avoid further attention and resistance [131, 132]. According to some respondents, people are referred to informal representatives of the Mahbere Com when they contact the Eritrean Embassy in Sweden (which is also the Eritrean Embassy for Norway) or the office in Oslo [132]. They check whether these people are trustworthy and only then are they allowed to pay the 2% Tax [131, 132].

## 7.6 Sweden

Sweden has a large and old Eritrean community, with a strong (Y)PFDJ organisation. Approximately 35,000 Eritrean immigrants live in Sweden [32, SCB, 2017]. The embassy levies and calculates the 2% [137, 138]. The 2% Tax is most commonly transferred to a Swedish bank account [136, 137], which said to belong to the embassy [136]. Some respondents said that at some point after the parliamentary questions in 2014, people were asked to pay cash [139] in Sweden or at the Immigration Office in Asmara [138]. Some respondents reported that transferring the money to the account of the embassy has now become more common again [138], as well as paying in cash. The interviews did not give a clear account of who pays cash and who transfers money to a bank account. Informal representatives, said to be members of the Mahbere Com, function as facilitators between the taxpayers and the embassy [136, 137].

On 4 February 2014, the Committee on Justice in the Swedish Parliament held a debate on the issue of the 2% Tax. Ultimately, the ruling coalition parties in the judicial committee rejected the bid to ban the forced taxation of Eritrean expatriates residing in Sweden. Under international law, it is permitted for a State to impose taxes on citizens who are resident in another country, although certain practices employed in the collecting of such tax may be illegal under domestic law (e.g., where coercion is involved) [32]. The Committee argued that current Swedish law was sufficient to stop any practices of collecting the tax by means of extortion, threat or blackmail. The consensus within the Parliament was that any Swedish-Eritrean national who was subjected to coercion and/or threats in paying the tax, should report the issue to local law enforcement authorities. (UN Security Council, 2014, paras. 108–110)

## 7.7 United Kingdom

According to the last census approximately 40,000–45,000 Eritrean citizens reside in the UK [154]. This does not include the large group that arrived since 2015. Eritreans in the UK pay the 2% Tax in cash (in foreign currency) in Asmara [141]. The UK government prohibited the collection of the tax at the embassy in 2011. The 2% Tax is currently paid in Asmara using various methods namely, methods B1 to B6: going to pay in Asmara [141], sending the money with family [141], friends or another trustworthy person [141], by money transfer, to a person of the Mahbere Com. However, the embassy is still involved in the levying and assessment of the 2% Tax [141].

The Eritrean diaspora in the UK is heavily polarised. There is a strong (Y)PFDJ structure, but also a strong opposition movement [154, 74]. In the UK members of the Eritrean diaspora have aired their concerns over the legality of the 2% Tax for a long time. In the UK a political caucus in the parliament follows the situation of Eritreans in the diaspora. Members of the Eritrean diaspora have regular contact with the caucus and provide updates. Media regularly publish on the situation [153, 310, 311].

In 2015, a formal complaint was filed with the London police about coercion. However, a formal investigation was not launched because there was not enough evidence of coercion and extortion to file a case [154, 250].

## 7.8 Comparison of payment modes

The way the 2% tax is paid differed from country to country. Table 7.1 lists the most common ways in which the 2% Tax is paid (based on the categories in Table 6.5), together with possible explanatory factors.

Table 7.1 Comparison of modes of collecting the 2% Tax and assessment of explanatory factors

Explanatory factor	Belgium	Germany	Italy	Netherlands	Norway	Sweden	UK
	Main way of payment						
	A (A1++)	B (was C1)	A B C1	A (A1++)	A (A2++) (A1+) B -	A B	B
Size and strength of community	--	++	++	++	+	++	+
Extent challenged	--	+	--	+	+	++	++
Political/government attention	--	+	--	++	+	+	++
Necessary papers	+/-	+	+/-	+	+	+	+

++ = very strong; + = strong, +/- = mixed; - = weak; -- = very weak or not applicable

A: payed at the embassy (A1= cash, A2 = transfer to an account)

B: payed in Asmara

C1: payed cash to a member of the Mahbere Com

## 7.9 Conclusion

The steps involved have changed and diversified in recent times, responding to the increased scrutiny of the tax. The Eritrean embassies continue to play a central role in such assessments, while payments may be made elsewhere. In countries where authorities have questioned the role of the embassy in the levying and collecting the 2% tax, the tax is still levied in the embassy, but the actual payment is made elsewhere (in Asmara). This is the case for payments of the 2% Tax by Eritreans in Canada, the UK and Germany. In these countries, the collection has moved to agents and payments are now made in Asmara and Dubai.

The differences in the practices in the various European countries can be explained by the following factors:

- ③ The size and strength of the Eritrean community and the strength of the local Mahbere Com in the country of residence (this is related to the size and strength of the (Y)PFDJ and the role of the community in the collection of the 2% Tax)
- ③ The extent to which the 2% Tax has been challenged in the country of residence by members of the Eritrean diaspora
- ③ The political and government attention on the 2% Tax in the country of residence
- ③ The documentation demanded by the country of residence for the asylum procedure and other procedures, such as the family reunification, nationality and ID/passports and education papers

## 8 A Mirage

This chapter looks at the perceptions of the 2% Tax among members of the diaspora community in the European countries studied, as well as the consequences of non-payment. It is based on interviews with Eritreans and experts in the seven countries studied for this research.

### 8.1 Rehabilitation or slush fund

It is clear from the legal analysis, the interviews (and other the documents) that there are widely diverging views on the purpose of the 2% Tax, both in terms of why it is levied and how it is used (see also Chapters 2 and 3). Several sources make a distinction between the official and actual purpose of the tax [19, 3, 8, 27, 28, 30, 44, 50, 66, 68, 95, 102, 166 (Dafla Hosabay, 2017)]. The Government of Eritrea and some members of the Eritrean diaspora stress that the tax is used for rehabilitation and development in Eritrea, including infrastructure. When asked on a Dutch radio program about the purpose of the tax, an Eritrean, who identified himself as a YPFDJ member, explained in the interview:

*Naturally, you can see that when you go to Eritrea. You can see what is happening with the number of hospitals that are being built, how many roads are being built... As far as I know, everything goes primarily to infrastructure, the building of schools, houses, to everything [...] that you would expect in the Netherlands. (Interview broadcasted on radio with three Eritreans (Meseret Bahlibi, Biniam Daniel and Eden Weldai, in Dichtbij Nederland, 2014)*

Others say that the tax is used to support former fighters and 'martyrs' of the EPLF. Sometimes both aims are mentioned. In addition to this official line, government representatives claim that the tax is used "to combat illegal migration" (The Awaze Tribune, 2016) and describe the tax as "a land tax for expatriate Eritreans or dual nationals who own land or property in their homeland" (UN Security Council, 2011a, para. 382; a similar comment was made by [203]). According to some respondents, the Eritrean embassies in Sweden, Germany and the UK and the Eritrean office in Norway have suggested that the tax functions as a fee for consular services [25, 131, 136, 141, 155]. Officials from the national governments of the European countries hosting these embassies report in a similar way, stating that the official verbatim they have received from the embassies concerning the 2% Tax is that Eritrean citizens have to prove they have paid the tax before being able to receive consular services [32, 76, 24].

Most respondents understand that the officially stated purpose of the 2% Tax, as proclaimed by the government, is the rehabilitation and development of Eritrea [3, 6, 8, 10, 12, 14, 16, 26, 27, 28, 30, 33, 34, 36, 38, 39, 42, 44, 45, 46, 62, 64, 65, 66, 67, 71, 102, 200], that the 2% Tax is necessary for the nation-building process and to resist external challenges by neighbouring countries and through international conspiracies and is used to build infrastructure and provide health care and education [4, 12, 13, 16, 22, 64, 71]. This is the official information that respondents said they have received from representatives of the Eritrean government and the Eritrean media.

However, many respondents complained that there is no evidence of how the tax is used [2, 3, 5, 6, 12, 15, 16, 22, 33, 36, 38, 44, 65, 66]. In other words, there is no transparency concerning the use of the 2% Tax, a problem that is compounded by the fact that Eritrea has no formal budget [12, 14, 22, 26, 27, 33, 42, 44, 63, 64, 65, 66, 71, 102]. Several respondents indicated that they are not allowed to ask questions about how the 2% Tax is used [4, 6, 14, 52, 67], as this is construed as disloyalty and may provoke suspicion [30, 67]. Some of the respondents described the lack of transparency on the use of the 2% Tax as follows:

*If somebody asks you for taxes in Holland, you can ask why, where, how? But [with] this government, you don't have the right to ask. So, you don't know. [...] But if you ask how is Eritrea, they say 'good, we make hospitals etc.'. You don't have right to ask more. [4]*

*Officially, it's for reconstruction [for agriculture and other good purposes]. But you don't know where the money goes. There was never a report. Even in Eritrea, there is no open budget, you don't hear the cabinet ministers talk. The parliament hasn't gathered since 2002. [...] No one knows where it goes. At the end, I'm sure it's not for good. You don't hide good. [33]*

Many of those who had recently left or visited Eritrea said that they see no development in Eritrea [16, 38, 66]; others say that their families in Eritrea do not report any development [6]. They also state that propaganda is used to portray that development is taking place [64]. In particular, they mention that Eritrean state television reports on certain developments, such as the building of roads and schools [6, 30]; however, to the respondents it is not clear whether this information is accurate and whether these projects are indeed realised with the 2% Tax revenue:

*The government says it's for rehabilitation and development, but we didn't see any of that in the last 25 years. [...] Our family in Eritrea says that what they show about the development of Eritrea on the Eritrean TV is not correct. [6]*

Members of the (Y)PFDJ, report that there is development in Eritrea and that there is free medical care and education; however, these claims are denied by respondents working inside in Eritrea. The (Y)PFDJ supporters interviewed said that the slow pace of development is because of the ongoing border conflict with Ethiopia and the UN sanctions. They explain that Eritrea is a young nation emerging from a 30-year war and so development takes time [108, 109, 203, 205].

Some of the PFDJ cadre seem to be unclear (or contradict each other) about when and why the 2% Tax is levied and how it is used. In a radio interview with three YPFDJ members (two former Presidents of the YPFDJ Holland), the first person said that the 2% Tax is only paid when you need to access services, identifying it as a voluntary act (based on the wish to access those services):



*MB: No, I do not pay.*

*Radio: You do not pay? Why?*

*MB: True. I have not paid until now. I have remained a student primarily.*

*Radio: So you do not yet have to pay?*

*MB: I do not yet have to pay. But in principle I do not have to pay in principle. I only need to pay it at the moment that I need a service in Eritrea. And I have enough friends and family in Eritrea.*

*Radio: So, you pay when you need a service?*

*MB: Yes. Of course.*

*Radio: Can you give an example?*

*MB: Well if you want to build a house in Eritrea, that is how you should see it, it is completely misunderstood in the media. As if it is forced or something; when someone pays the 2% Tax, you pay morally because he wants to pay. And secondly because he simply wants the service. [...]*

(Radio interview with three Eritreans; Meseret Bahlibi, Biniam Daniel and Eden Weldai, in Dichtbij Nederland, 2014)

The other member also identified the 2% tax as a voluntary contribution to rehabilitation and development in Eritrea:

*Radio: E, do you pay the 2%? Voluntary? What happens with your money?*

*E: Uhm, what happens with my money... first I pay voluntary because I like to make my own plans.*

*Radio: Yes, but what happens with the 2%? If I pay somewhere I would like to know what happens with it.*

*E: Of course, You can see it when you go back to Eritrea. You can see what happens with... the number of hospitals that have been built, how many roads have been built. All of it goes mainly to, insofar as I know of course, but infrastructure, schools, hospitals, all of those things, as you could expect in the Netherlands.*

(Radio interview with three Eritreans, Meseret Bahlibi, Biniam Daniel and Eden Weldai, in Dichtbij Nederland, 2014)

Other respondents stated that the revenue from the 2% Tax is used as a slush fund [3, 19, 27, 30, 36, 37, 44, 47, 87, 95]. These respondents had worked with the Eritrean authorities in one way or the other to come to this conclusion. The slush fund allows Eritrean authorities to fund activities abroad (including politically motivated festivals and concerts for the diaspora – which are seen as mechanism to keep control of the diaspora) [3, 19, 30, 37, 44]. The fungible nature of the 2% Tax is due to the absence of a budget or any financial control mechanisms. Fungibility further allows the Eritrean government to participate in military ventures in the Horn of Africa region. One respondent who had observed this personally (in a professional capacity in a meeting where it had been addressed) pointed to Eritrea as the geo-political centre for destabilisation in the Horn of Africa:

*It is because Eritrea has been caught red handed in Baidoia that the Kenyan Government has decided that it will no longer accept the free movement of Eritreans into Kenya (i.e. no visa according to COMESA). (...) [A]t a meeting in South Sudan in 2006 [...] the issue of the Eritrea Government trafficking in weapons in support of militia groups in the border areas of Sudan, Ethiopia and the associate diplomatic incident came up. [...] The Eritrean government has also been involved in the Darfur issue supporting this or that militia group. In this regard Julia Taft's book on Darfur makes very interesting reading – most of us will recognize the main actors. [...] I was advised by Eritrean government officials that if anything happened they would be able to get me out of Darfur. They knew very well what was going on. [...]*

The military involvement of Eritrea in the region is one breach of the UN sanctions; another is the military presence of various regional powers within Eritrea, which directly breaches the terms of UNSCR 1907:

*The last Eritrea Somalia Monitoring report raises the issue of the presence of the Qataris and the Saudis [in Assab, Eritrea] as a possible breach of the sanctions and as further destabilizing force in the region. In fact it is – we now have a well-armed presence just across from Djibouti and less than 60 km from the Ethiopian border – not only is this a well-armed presence it is also potentially one of the worst Islamic extremist presence. A presence that cannot be anything but destabilizing in the area. Add to this the rumors of the Egyptians also setting up a military base in Eritrea. [87]*

One respondent pointed out that European tax money is being channelled to Eritrea as the 2% Tax through tax levied on benefits:

*Tax-payers in Europe are paying for the oppression in Eritrea and for what is causing the refugee crisis. It is so ironic. The majority of people paying 2% Tax receive benefits. And so the European tax money is actually ending up in the hands of the PFDJ. [47]*

An important observation was made by an expert dealing with Eritrean refugees. He observed that the cash payment of the 2% Tax in Asmara were being channeled into the facilitation of smuggling and trafficking across the border of Eritrea. The increased availability of hard foreign currency floating in Eritrea has increased the prices of smuggling and trafficking routes across the Eritrea-Ethiopia border, which is now costing USD 4.000 (from the cities of Asmara and Dekemhare to Ethiopia). The numbers of persons fleeing over the border has not decreased and remains around 5000 refugees a month, despite a renewed practice of shoot-to-kill on Eritrean refugees who try to reach Ethiopia or Sudan. The allegation is that the 2% Tax

payments in foreign currency in Asmara facilitates the human trafficking organization through the black market arrangements [702].

In summary, it can be concluded that:

- ③ The actual purpose and use of the 2% Tax is unclear to taxpayers.
- ③ The actual purpose and use of the 2% Tax cannot be known, due to lack of financial management, lack of transparency and the absence of a national budget in Eritrea.
- ③ The revenue generated by the 2% Tax is fungible.
- ③ The 2% Tax generates a slush fund, for financing political-security and military projects as well as cross border human trafficking in the region and globally, including activities for surveillance of the diaspora at large.

## 8.2 Fear, violence and intimidation

The levying and collection of the 2% Tax must be understood in relation to a system that uses fear, violence and intimidation to coerce loyalty and the fulfilment of duties. This coercion has three components:

- ③ not giving rights, e.g., denial of consular services
- ③ taking away rights, e.g., the right to run a business or own land in Eritrea
- ③ violence, e.g., by Eri-Blood, the PFDJ's militia, including violence against relatives

In relation to the first and second components, the coercion is associated with the refusal to provide services (including those needed for survival) to oneself or relatives in the diaspora or in Eritrea and/or the withdrawal of protection and the taking away of rights, again either of the person in the diaspora or their relatives in the diaspora or in Eritrea. Services should be understood here to include protection for survival and basic human rights (the right to food, etc.). In addition to these elements of the coercive practices directly associated with the collection of the 2% Tax, a third element of coercion is intimidation resulting from concrete violence (see also section 5.5). This is not an imagined fear.

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*The system of levying and collecting the 2% tax must be understood in relation to the system of fear and intimidation used by the Eritrean government, which has three components: not giving rights, taking away rights and violence.*

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This system, paying the 2% Tax is one mechanism by which the Eritrean government is able to measure loyalty. One of the main intentions of levying the 2% Tax on the diaspora is to exert control [3, 37, 71, 36, 305, 205] and to verify and ensure loyalty [3, 8, 73, 166, 205]. Those who do not pay, may be portrayed as traitors and as part of the opposition [19, 46, 48, 73]. According to some of our respondents, those who do

not pay end up on a black list and are isolated from the diaspora community, and family members or other Eritreans [19, 46, 48, 166]. Loyalty must be shown in a number of ways:

- a) *publicly showing support for the Eritrean government;*
- b) *[...] attending festivals, seminars, demonstrations etc.;*
- c) *signing petitions, and participating in social media activities;*
- d) *surveilling other Eritreans, including friends and families;*
- e) *collecting information about the opposition;*
- f) *running illegal errands, such as transfer of illegal money, for the Eritrean government;*
- g) *Intimidating, harassing and physically abusing opposition members.*

(Kubrom Dafla Hosabay, 2017, unpublished document prepared for this report)

In order to understand the element of coercion in the collection of the 2% Tax, the source of the fear, experienced as a direct threat, must also be appreciated. In the report '*Nothing is what it seems*' (DSP-groep & Tilburg University, 2016), coercion was identified as a spectrum of progressive intimidation that is based on the realistic possibility of serious threats against the individual or his/her relatives. A culture of silence is the result of the real potential for serious repercussions, based on real experiences of violence.

When they register at the embassy, Eritreans in the diaspora are forced to provide their most intimate personal details, including the names and location of family members in Eritrea [205, 46]. This is one of the reasons why new refugees do not want to go to the embassy [45,46, 205]. With this information, the Eritrean government is able to blackmail people to ensure that they continue paying the tax and fulfilling other duties. This does not mean, that everyone who has paid the 2% Tax once and who has family in Eritrea will be extorted in this manner. Some Eritreans manage to remain relatively independent from extortion, whereas others get caught up in the system.

Fear is an important motivation for paying the 2% Tax and it is important to understand the source of such fear. In the previous report '*Nothing is what it seems*' (DSP-groep & Tilburg University, 2016), the modus operandi leading to fear was identified. The practices leading to a sense of intimidation were placed on spectrum, "from subtle and implicit to explicit threats and even violence" (*Ibid.*, p. 72, translation by authors). Among the respondents to that research, fear of these practices seemed to be real in many cases (*Ibid.*). However, whether or not the fear is based on real events is not important (*Ibid.*). As Thomas Theorem states, "If you define situations as real, they are real in their consequences" (cited in *Ibid.*).

Below are the threats against members of the diaspora that were identified in that research (DSP-groep & Tilburg University, 2016, p. 72):

- 🕒 Receiving notifications and warnings
- 🕒 Vilification and targeting as a 'traitor'
- 🕒 Placing informants in the private sphere
- 🕒 Triggering divorce

- ③ Intimidation
- ③ Taking away privileges and services
- ③ Taking away privileges and services of family members and acquaintances
- ③ Punishment of family and acquaintances
- ③ Deportation
- ③ Trolling, public media and death threats
- ③ Targeted threat
- ③ Suicide
- ③ Disappearances
- ③ Murder attempts

The spectrum of intimidation constitutes an important source of fear, because of the collective knowledge of its progressive nature. The collective knowledge about the perpetration of violence compounds to this fear (as described in 5.5). A further description of these steps and the progressive nature of intimidation is provided in '*Nothing is what it Seems*' (DSP-groep & Tilburg University, 2016). The coercive practices of the collection of the 2% Tax feed the fear that disloyal behaviour is beyond the pale and therefore any measures can be taken to bring the person back into submission [19, 47, 48].

## 8.3 Punishment by association

Through the embassies, Eritrea extends the violation of the human rights of Eritreans into the diaspora, including by penalising Eritreans in the diaspora for exercising their right to freedom of speech and freedom of political assembly and by soliciting self-incriminating information from refugees (through the regret form) for escaping national service, a system qualified as slavery and found to constitute crimes against humanity by the UN Commission of Inquiry on Eritrea (UNHRC, 2016). The embassy communicates information on the loyalty of members of the diaspora and payment of the 2% Tax to Asmara. Based on this information, decisions in Eritrea are taken by the government that may affect relatives who have remained in Eritrea.

Depending on whether or not the 2% Tax is paid, privileges are granted or denied to relatives in Eritrea. Relatives who remain in Eritrea are dependent on their relatives living abroad to pay the 2% Tax and to stay away from opposition activity. In this sense, the people living in Eritrea are akin to hostages: relatives living abroad are coerced into paying the 2% Tax in order to protect relatives who have remained behind in Eritrea. Relatives who have remained inside Eritrea are *punished by association* if the 2% Tax is not paid. This punishment by association is described by the UN Commission of Inquiry reports (UNHRC, 2015b, 2016) and is a human rights violation in itself.

One respondent who received an exemption for payment of the 2% tax by his wife shared the following:

*The coercion is real because the person would be denied their rights if they don't pay. If I hadn't been issued my wife's 2% tax documents, I might still have been in Asmara, serving for the umpteenth year doing national service and forced labour without income. [95]*

The embassy staff and officials can intervene to change the situation of relatives in Eritrea:

*This is the story of an Eritrean mother. She had cancer. She lived in Europe. She had one son in Eritrea who was desperate to be released from national service in Eritrea. The people at the consulate helped. He was released after they intervened. They cleared her 2% Tax, stating she was ill. [95].*

Hence, the 2% Tax payment opens the door for privileges, which may benefit relatives in Eritrea. However, those who are not considered loyal, are not given the possibility to pay the 2% Tax (and to receive such privileges). The penalisation of those who do not pay the 2% Tax involves measures intended to punish or harm the individual or his family (in Eritrea or elsewhere).

Punishment by association (or the possibility of it) is a considerable source of fear for members of the diaspora and can be regarded as a mechanism of pressure or coercion to push members of the diaspora into paying the 2% Tax. It can be construed that, given this fear, the invitation to report to the police (for instance, in the Netherlands and Germany) is not an option, given that the reason for paying the 2% Tax has as an important purpose the protection of relatives in Eritrea from being punished. Reporting to the police in the host country would directly undermine that goal. This is the main reason that the coercion that is involved in the 2% Tax collection by the embassies involving punishment by association is not reported in host countries.

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*Given this fear, reporting to the police is not an option for most Eritreans in the diaspora, as it would directly undermine the purpose of paying the tax – the protection of relatives in Eritrea from being punished.*

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## 8.4 Violation of human rights

The penalisation of relatives inside Eritrea as a result of the non-payment of the 2% Tax by their family members in the diaspora, may involve serious human rights violations. The punishment by association of relatives in Eritrea – a country with one of the worst human rights records in the world – through the withdrawal of protection, has serious consequences for those involved. The relatives in Eritrea are used like hostages, to force the members in the diaspora to comply with 'duties' or 'obligations'. The violation of

human rights that can result from the withdrawal of protection can be listed as follows (this list is not exhaustive):

- ③ **The right to live and to a livelihood:** Eritreans in the diaspora cannot send remittances and parcels to Eritrea, which are crucial for the survival of their families, who depend on supplementary income from abroad for their survival, if they have not paid the tax. In addition, fines may be levied on persons in Eritrea for relatives who have fled and have not fulfilled all of their 'obligations' or relatives may be imprisoned. (Van Reisen & Estefanos, 2017)
- ③ **The right to earn an income:** The permission of relatives in Eritrea to own a business or other work-related permits may be withdrawn if the 2% Tax is not paid by family members in the diaspora, and business licences owned by people in the diaspora might be denied renewal, which means dependents inside the country lose their income<sup>28</sup>.
- ③ **The right to a family-life:** If the 2% Tax is not paid, papers to unite wives, husbands or children with their relatives are not granted and permission to travel is withheld.
- ③ **The right to freedom of movement:** If the 2% Tax is not paid by family members in the diaspora, relatives in Eritrea may be denied the right to travel.
- ③ **The right to health care:** If the 2% Tax is not paid by family members in the diaspora, relatives in Eritrea may be denied health care, as they may not be able to travel and may not be authorised to make arrangements in Eritrea.
- ③ **The right to property:** If the 2% Tax is not paid, land and house ownership of family members in Eritrea may be affected.
- ③ **The right to legal representation:** If the 2% Tax is not paid the possibility for legal representation and power of attorney of family members in Eritrea may be affected.

The power to stop the enjoyment of these rights (by tax-payers and their relatives) is a source of coercion to pay the 2% tax.

## 8.5 Reporting

In several countries, including Germany, The Netherlands, Sweden and the UK, the policy is to encourage members of the Eritrean diaspora to report to the police if coercion is exercised during the collection of the 2% Tax. This policy has not been effective and few reports are made and even fewer of those reports made (such as in the UK) have been investigated (DSP-groep & Tilburg University, 2016; Jones, 2015; Plaut, 2014b, 2016c). [154]

Those who seek to pay the 2% Tax are unlikely to report to the police as a result of coercion. By paying the 2% Tax they hope to avoid 'repercussions' for themselves and their families. The members of the Eritrean diaspora fear more intense repercussions on them or their families if they would report this 2% tax payment

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<sup>28</sup> Since last year, diaspora members who own businesses in Eritrea have been required to pay the 2% tax in order for their licences to be renewed, but they have to renew the licence in person or the licence will be denied and the business closed.

to the police. The mechanism of reporting to the police is therefore not well suited to address the issue of coercion in this context. (DSP-groep & Tilburg University, 2016).

It is ultimately the responsibility of the authorities under whose jurisdiction members of the diaspora reside to protect them and this obligation to protect does not rely on whether or not members of the diaspora are able to report to their authorities,

## 8.6 Conclusion

There are strong indicators showing that fear and coercion play an important role in the collection of the 2% Tax. The coercive nature can be distinguished as having four principle elements: social and mental pressure, punishment by association, blackmail, extortion and intimidation. These include social exclusion and the direct threat of intimidation or even violence.

The definition of the 2% Tax is unclear. It is also unclear who should pay the tax and who are exempt from paying the 2% Tax, this is partly because of the arbitrary decision-making during the 2% Tax collection. However, members of the diaspora agree that Eritreans cannot receive any services from the Eritrean Government unless the 2% is paid (unless one is exempted).

The object (what is the basis for taxation) and the purpose (what is the tax used for) of the 2% Tax are also unclear. How the 2% Tax is used is not knowable due to the lack of financial management/transparency and lack of a nation budget in Eritrea. The intention of the 2% Tax is not defined as 'use of services', as separate service fees are asked for the consular services. And 'services' seem to include any government action, including 'positive consideration'. From this it can be construed that those who do not pay the 2% Tax (and are not formally exempted from paying the tax) are excluded from protection by the Government of Eritrea. This withdrawal of protection is a serious existential threat and is by association extended to relatives.

Although the 2% Tax is sometimes – and especially more recently – referred to (or perceived by some) as voluntary, it is in fact a mandatory tax, as not paying may have serious consequences, especially for those who need services from the Eritrean embassies or those with relatives in Eritrea. Not having access to services is not merely an administrative matter, it means that protection is no longer available. In a country where human rights are violated and crimes against humanity are committed, a withdrawal of protection has serious implications for survival and the enjoyment of core human rights.

It is particularly disconcerting that the relatives in Eritrea are penalised for non-payment of the 2% tax by Eritreans in the diaspora. The consequences of non-payment are broad, not formally defined, and appear to be arbitrary. This punishment by association, may involve serious violations of (human) rights.

For these reason, many in the diaspora choose to pay the 2% Tax. The power to withhold access to such fundamental human rights (including by association), constitutes one of the coercive elements of the



collection of the 2% Tax. The 2% Tax is also associated with other duties and fundraising projects, routinely coordinated by the embassies and carried out with the support of the Mahbere Coms.

# 9 Conclusions

This chapter addresses the research questions on the nature and extent of the 2% Tax and presents the findings on the legality of the tax, based on the criteria established in Chapter 3.

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*This research found that the 2% Tax is perceived as mandatory by Eritreans in the diaspora and that non-compliance may result in a range of consequences, such as denial of consular services and punishment by association of relatives in Eritrea, including rights violations. It also found that the tax is potentially illegal in its application in practice as it is, inter alia, collected using coercion and intimidation.*

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## 9.1 Nature and extent

### 9.1.1 Research Q.1

**Q.1 What is the nature (including legal basis) and extent of 2% Tax levied and collected by the Eritrean government in the seven European countries studied (Belgium, Italy, Germany, the Netherlands, Norway, Sweden and the United Kingdom)?**

The 2% Tax is a tax regime on Eritreans living abroad. It is based on Proclamations No. 17/1991 and 67/1995, however, Proclamation No. 17/1991 (Rehabilitation and Reconstruction Tax) is intended for persons living within Eritrea and Proclamation No. 67/1995, although intended for people living in the diaspora, contains no stated objective for the levying of this tax. Furthermore, according to the Eritrean constitution, which was ratified in 1997, only the National Assembly of Eritrea has the authority to impose taxes. However, the constitution never became operational and the National Assembly has not met since the border conflict in 1998. Therefore the 2% Tax has an uncertain legal basis.

It is widely recognised in international law that a sovereign state, such as Eritrea, can impose a tax on nationals residing outside the country. Nevertheless, concerns have been raised about the nature of the tax, specifically pertaining to: (i) taxable persons, (ii) its object, (iii) the identification of the taxable event, (iv) procedures (v) enforcement and (vi) other consequences. Compliance with the rule of law was also considered.

There is scant information available on the 2% Tax and many of the aspects of the tax are unclear including on whom it should be levied and the purpose of the tax. Proclamation No. 67/1995 identifies the taxable persons as: "Any person who lives outside of Eritrea and who earns income". However, it is not clear whether the 2% Tax is applied to Eritreans with a foreign residential base and nationality. It appears from the

interviews that the understanding is that all persons of Eritrean descent living outside of Eritrea are required to pay this tax, even if they happen to be citizens (naturalized or by birth) of other countries.

The purpose of the tax is variously given as to stimulate the devastated national economy of Eritrea (for recovery and rehabilitation), to provide a tax regime conducive to investment, or for development programmes. However, in practice, there is no transparency or accountability in relation to how much tax is collected or what it is used for. Respondents, with close knowledge of government operations, testified on record that it is used as a slush fund for activities of the PFDJ and to fund military ventures, including in the Horn of Africa.

In relation to the taxable event, Proclamation No.67/1995 states that 2% is to be levied on the annual income of Eritreans living abroad. The proclamation identifies the Ministry of Foreign Affairs of Eritrea as in charge of levying the tax through the consular and ambassadorial mission and establishes that the tax is payable to the Ministry of Finance through diplomatic missions. However, Proclamation No. 67/1995 does not stipulate how diplomatic missions are to collect the tax and it appears that the money is never actually paid to the Ministry of Finance. Furthermore, in practice, the procedures for payment of the tax differ among the countries studied, with some paying to the embassy, some paying into a bank account, and some paying in Asmara.

The penalties for non-compliance are not provided in the proclamations, but can be found in the Penal Code, which provides for two penalties: imprisonment and fines. However, these penalties are not applied in practice. In practice, the penalty for non-compliance with payment of the 2% Tax appears to be denial of access to consular and administrative services (as well as other more extreme penalties, such as punishment by association of relatives in Eritrea). If people do not pay the 2% Tax they (and their family, including relatives in Eritrea) are at serious risk of suffering negative consequences and of having protection of the Eritrean government withdrawn, which poses a serious existential threat and is by association extended to relatives.

In relation to the extent to which the 2% Tax is levied in the European countries studied, the research found that the 2% Tax is levied broadly and that the majority of Eritreans are confronted with the decision whether to pay the 2% Tax or not at some point, when they need any kind of 'services' from the embassy and/or the government. Paying the 2% Tax is a precondition for any consular services, even though consular services require a separate service fee. Secondly, 2% Tax payment is a precondition for any administrative or legal transactions within Eritrea, including for relatives. Thirdly the payment of the 2% Tax is a precondition to use any postal or financial services which are used to support relatives (including remittances). Finally the payment of the 2% Tax is a precondition for protection by the government, since it is construed as a pledge of loyalty. Those who fail to pay the 2% Tax can no longer count on the protection by the government, including their relatives, which puts them in an extremely vulnerable situation (especially given the serious human rights record in the country). Because it is almost unavoidable not to pay the 2% Tax at some point and people who do not pay will have to bear consequences, the 2% Tax is de facto mandatory in nature.

Based on the limited information available, it is estimated that the percentage of people paying the 2% Tax could be at least 50% of the members of the diaspora but, according to some estimates provided in some interviews, it could be a much larger proportion. A conservative estimate of the annual revenue of the 2% Tax is 100 million USD.

While the Government of Eritrea has maintained that it has the sovereign right to impose taxes on Eritreans living abroad, such a tax regime must respect principles of the rule of law in order to be valid, including in the host countries where Eritreans are living. This research found that the 2% Tax has an uncertain legal basis and is uncertain in its application. Hence, the second criterion of rule of law (legal certainty) – that laws are sufficiently precise – is not satisfied. This is confirmed by IBFD:

*The problem with this tax [the 2% Tax] is the way it is levied and collected, which very clearly departs from the standards and requirements of the rule of law. [IBFD, personal communication 2017]*

**Q.1a Is the 2% Tax levied and collected in more or less the same way in the seven European countries studied (Belgium, Italy, Germany, the Netherlands, Norway, Sweden and the United Kingdom) or are there (large) differences? If so what explains these differences?**

The research found that how the tax is levied and collected differs in the seven countries studied (and, as well as variations between countries, variations can also be found within the countries studied). When comparing the seven European countries studied, certain patterns emerge in relation to the 2% Tax.

In all of the countries studied the Eritrean embassy in the host country is responsible for levying and calculating the tax. The Eritrean embassies play a central role in the assessment of the amount due under the 2% Tax, even if the payments are made elsewhere. How the tax is levied differs between countries. It is the task of the embassies in all of the countries studied to assess the payable amount and it is at the discretion of the embassy to interpret on whom it should be levied, and what penalties to apply in case of non-payment and how it is collected. Decisions regarding the levy and collection of the tax often appear arbitrary. There is a high degree of indiscriminate and informal decision-making involved in determining the amount payable.

There is no clear definition of who is liable to pay the tax (i.e., no clear definition of Eritrean citizenship) and what income is taxable. In practice, different rules or criteria are applied regarding the levying of tax on disabled or ill people and students. Some people on state benefits pay the tax, while others are exempted. The 2% Tax is also levied on the income that refugees receive from state benefits in recipient countries, undermining the intent of recipient countries to support refugees by providing them with minimal conditions to live in dignity.

In all countries studied, the tax is calculated retroactively from the time the person left Eritrea (which can be decades). The embassy staff seem to have wide discretion over who should pay the tax, including the discretion to exempt some people from payment of the tax and exclude others from being able to pay the

tax (e.g., opposition members or activists). The embassy staff also seem to have wide discretion over how much the taxpayer should pay (and for how many years). The person calculating the tax calculation has the discretion to negotiate the amount of the tax payable. The embassies issued receipts for payment of tax in cash (either as a matter of course or when requested).

The status of the person handling (levying and collecting) the 2% Tax is unclear, but they are usually associated with the embassy and/or with the PFDJ branch in the host country (or sometimes with the Mahbere Com). Representatives and agents of the Mahbere Com (the PFDJ Eritrean community associations) have a facilitating, mediating, informational and also controlling role when it comes to the 2% Tax. They also collect information and intelligence (with an implicit or explicit brief to do so).

In all of the countries studied, the ability of members of the diaspora to obtain services from the embassy is contingent on payment of the 2% tax.

The greatest differences between countries was in relation to how the tax was paid. Four main modes of payment were identified based on the institution paid: to the embassy, to the Immigration Office in Asmara, to a bank account, or to the Mahbere Com.

The differences in the practices in different European countries might be explained by the following factors:

- ③ The size and strength of the Eritrean community and the local Mahbere Com in the country of residence (this is related to the size and strength of the (Y)PFDJ and the role the communities plays in collecting the 2% Tax);
- ③ The extent to which the 2% Tax has been challenged in the country of residence by members of the Eritrean diaspora;
- ③ The political and government attention on the 2% Tax in the country of residence;
- ③ The documentation demanded by the country of residence for the asylum and other procedures (such as for family reunification, nationality and ID/passport documents, and education papers).

The mode of payment seems to have changed the most (from collection of payment by the embassy to other methods) in countries where there has been media and political attention on the tax.

The collection of the 2% Tax is characterised by a great deal of personal discretion on decisions related to it, and its mode of collection differs according to circumstances which are unrelated to the tax itself. The third criterion of rule of law (prohibition on arbitrariness) is not satisfied.

### **Q.1b What are the reasons for the differences in the level of political and media attention on the 2% Tax in the different countries studied? Can this be explained by the modus operandi or by the media/politics of the country?**

This research shows that in countries where there is a strong PFDJ branch office, higher political priority is awarded to the issue of the 2% Tax and resistance to it has been formulated more explicitly by members of the diaspora. The political interest in the host country increases when the Eritrean opposition becomes more vocal and loses some of its fear to discuss its concerns with the collection of the 2% Tax. In the UK, for

instance, members of the Eritrean diaspora have aired their concerns over the legality of the 2% Tax for a long time. In the UK a political caucus in the parliament follows the situation of Eritreans in the diaspora. Members of the Eritrean diaspora have regular contact with the caucus and provide updates. Media regularly publish on the situation.

Similarly, in the Netherlands, the political awareness of the situation in Eritrea is high among members of parliament and in the media. Members of the diaspora have regular meetings with line ministries, which are well informed about the various concerns among the Eritrean community.

In countries where the 2% Tax has received public attention and where Eritrean diaspora communities have opposed its imposition, there have been shifts in the modus operandi for the collection of the tax. In these countries, the 2% Tax is still assessed and registered at the embassies, but the actual transfer of the money (in foreign currency) happens in various way, namely: cash payment to the embassy, through agents within the diaspora communities, cash payments in Asmara (through relatives or agents), and cash or bank transfers to accounts in Dubai. This is particular the case in Germany and the UK. Dubai is seen as a major hub for payments of the tax. Although the political and media attention in the Netherlands is high, Eritreans still pay the 2% Tax at the embassy.

In some countries, bank accounts are available for taxpayers to transfer payments into; however, whether or not a bank account transfer is proposed to the taxpayer depends on the vetting of the taxpayer by the community organisations and the embassy. In recent years, the 2% Tax has been mostly paid in cash in foreign currency instead of being transferred to an embassy account. Members of Mahbere Coms serve as informal tax collectors in the sense that they may bring the cash (in foreign currency) to the embassy in the host country (or to Dubai or Eritrea) on behalf of the taxpayer or facilitate this.

In the UK, a report was filed with the Metropolitan Police, but it was assessed that in this case the incident could not be further investigated (SEMG, 2015). In the Netherlands a number of reports were made recently to the police regarding threats and intimidation (Kamerbrief, 15 December 2016) and fresh police reports of intimidation were filed in 2017 in close to ten different cities. As a result of such exposure, greater awareness of the problems associated with the 2% Tax in host countries, its collection has been followed more critically. This is also the case in the other European countries that were included in this study, where political and media interest to understand the 2% Tax has grown.

A notable exception is Belgium. This is all the more interesting given that Eritrea has a full embassy in Belgium. The more reduced intensity with which the 2% Tax is collected can be explained by the fact that Belgium does not host a large EPLF/PFDJ community, and the organisation of the PFDJ is historically not well established. The organisation of the Mahbere Coms and other mass organisations is also not well developed in Belgium. Also, Eritrean Orthodox churches have not been established in Belgium (although this is now changing as a large number of third wave Eritreans have applied for asylum in Belgium). Under these circumstances the 2% Tax has not been levied (much) and the sense of intimidation and surveillance of the Eritrean community is much reduced compared to the other countries.

Although the 2% Tax is levied at the embassies, the research suggests that the presence of the PFDJ branch offices have a significant impact on the mode of collection of the 2% Tax and the coercive nature of it. In some countries members of the diaspora have started to oppose its coercive nature and in such countries the payment of the 2% Tax has been moved out of the embassies, given its increasingly contested nature. The presence of the PFDJ appears a critical factor for the intensity with which the 2% Tax is levied and collected, more so than the presence of an embassy.

## 9.1.2 Research Q.2

**Q.2 What are the experiences and opinions of members of the Eritrean diaspora living in the selected European countries in relation to the way the 2% Tax is levied and collected? Is pressure or coercion used to levy/collect the 2% Tax, and is this pressure or coercion related to the (perceived) benefits and penalties associated with the 2% Tax? What is the role of the media in raising certain issues about the 2% Tax?**



The 2% Tax is a sensitive issue among members of the Eritrean diaspora, who are not generally forthcoming with information on how it works or whether or not they pay the tax and why. The 2% Tax is also a contentious issue that divides Eritrean diaspora communities.

Some members of the diaspora explain that they understand their duty to pay the 2% Tax as part of the contribution that the diaspora should make to its mother country. Other members of the diaspora identify the 2% Tax as one of the key mechanisms through which surveillance and espionage is carried out on the Eritrean diaspora by the PFDJ, the only political party in Eritrea.

In terms of who pays the tax, the 2% Tax is levied on the first, second and third wave of refugees, including those who have recently arrived. Although new arrivals are initially not aware of the obligation to pay the 2% Tax, but at some point they are made aware of this obligation (through visits in the refugee camps, in churches etc.) They are then made to understand they must comply with it, if they wish to help family members at home (i.e., through remittances, parcels and family reunification). Moreover, certain aspects of the legalisation of the situation of new arrivals (e.g., in terms of education, marriage and birth-certificates of them or their children), necessitate services through Eritrean embassies, which can only be obtained if they have complied with the 2% Tax. In order to pay the 2% Tax, refugees of the second and third wave are required to sign a 'regret form', in which they officially admit that fleeing Eritrea was wrong. They also need to acquire an ID card. It is applicable to all Eritreans in the diaspora, including those who have become a citizen of the recipient country.

Among the penalties for non-compliance with the 2% Tax, it is almost standard that consular services are denied to those who do not comply (and have not been exempted), although there is no legal basis for this penalty in the laws of Eritrea (which only identify imprisonment or a fine as possible sanctions).

The levying and collection of the 2% Tax must be understood in relation to a system that uses fear, violence and intimidation to coerce loyalty and the fulfilment of duties. This coercion has the following components:

-  denial of consular services
-  social and mental pressure

- ③ denial of rights in Eritrea
- ③ withdrawal of protection and threat to inform on persons
- ③ denial of rights of relatives in Eritrea
- ③ intimidation and the use of force, e.g., by Eri-Blood, the PFDJ's militia, including use of force against relatives

The 'long arm' of the PFDJ reaches into the diaspora through real threats and the 'strong arm' of the PFDJ (Eri-Blood) has become increasingly visible through a series of violent incidents across Europe. The PFDJ branches do not enjoy immunity. The head of the PFDJ branches are usually persons of Eritrean descent who have been in Europe for many decades and who have nationality in the host country. Those collecting taxes and dealing with the consular affairs are associated with the embassy in the host country, but are generally not accredited as diplomatic staff and often have the nationality of the host country. They collaborate closely with the PFDJ branch office.

The festivals in the diaspora appear to be organised specifically for the purpose of raising funds and creating fear. Yemane Gebreab has stated publicly that the purpose of the YPFDJ is to foster the objectives of the PFDJ. The YPFDJ is directly overseen by the head of the PFDJ, who is also the *de facto* head of the embassy and oversees directly the activities of the mass organisations in the country, including those of the National Union of Eritrean Women and the Mahbere Com. There are various agents active in these organisations who visit Eritreans in the diaspora. It is through these networks that the levying of the 2% Tax is organised and a tight network of informants is established so that the head of the PFDJ, National Security Agency and intelligence knows what is happening among the members of the diaspora. Whether this information is given knowingly or not in an operation of intelligence gathering is not known and may differ among different members of such associations.

Some members of the diaspora who are not following the instructions of the embassy are called to the embassy and receive direct threats. Spies are deployed, even within the houses and among those near to the person who is targeted. Death threats have been received and assassinations (attempts) have been carried out. The head of the embassy also instructs Eri-Blood, a militia operating in the Eritrean diaspora in the European Union, with its headquarters in Frankfurt. This militia has left a trail of violence behind it in recent years.

This research has identified coercive practices routinely associated with the levying and collecting of the 2% Tax. These include: mental and social pressure, extortion, blackmail and coercion, and fraud. A range of different examples have been identified and described. Those who seek to comply with the 2% Tax do so in order to avoid problems for themselves and/or their families and in the hope that they can access certain services and favours by remaining on good terms with the Eritrean authorities.

The legality of the levy and collection of the 2% Tax is conditioned on whether or not the coercion of taxpayers and their families is involved—a criterion that was set by the UN in its Security Council Resolutions (2023) and EU Council Decision (2010/127/CSFP). Most countries have explicitly stated that



taxpayers should report to the police if they are coerced to pay the tax. However, few taxpayers have come forward to report coercion.

Those who seek to pay 2% Tax are unlikely to report to the police as a result of coercion. By paying the 2% Tax they hope to avoid 'repercussions' for themselves and their families. The mechanism of reporting to the police is not well suited to address the issue of coercion in this context. On the contrary, there is a great unwillingness to discuss the 2% Tax, as paying it is associated with protection by the embassy and the PFDJ/Government of Eritrea. Speaking to authorities would undermine the silent pact associated with the 2% Tax—a pact of confidentiality, entirely between the embassy and the taxpayer.

In this sense, the 2% Tax undermines the rule of law in recipient countries, as it is secretive and not transparent. In this regard, it should be remembered that coercion qualifies the responsibility of the person or party who is coerced as well as the person or party that exercised the coercion for illegal practices or crimes committed related to the coercion.

The research found the following modes of coercion and intimidation used in the levying and collection of the tax:

### **Mental and social pressure**

The 2% Tax is portrayed as a duty associated with a strong sense of patriotism. Those who do not pay the tax are portrayed as traitors. The threats, which can be identified on a progressive scale of intimidation, constitute collective knowledge and fear. Those who are vulnerable find it difficult to resist such pressure. As part of this mental pressure, the Mahbere Coms are called for meetings by the head of the embassy and PFDJ to actively participate in fundraising (note the distinction between the embassy and the PFDJ office is often not clear to the members of the diaspora). These fundraisers are staged processes in which participants donate large amounts in the form of bids, so that the members of the community feel that they have to equal these donations to demonstrate their loyalty. Based on the bidding process, a price is agreed by the community (although this process is allegedly staged by the PFDJ representatives). These contributions become part of the 2% Tax regime and are added onto the payable contributions accrued.

### **Extortion**

Door-to-door visits are undertaken in some countries (e.g., in the Netherlands) by the community associations, PFDJ members and presumed members of the national security and engaged in intelligence gathering on the diaspora community. This adds to the mental pressure to pay the 2% Tax as a duty to the community and to not ask questions. Other pressures may relate to the situation of family members in Eritrea, for which members in the diaspora feel responsible. There is a fear that if the 2% Tax is not paid family members may not be favoured for good jobs or treated badly. In a country where there is indefinite national service (described by the UN Commission of Inquiry on Eritrea as slavery and forced labour), small favours may be perceived as the difference between life and death.

Other examples of extortion include financial collections in church, which are paid as part of a broader set of duties in which the 2% Tax is embedded. These collections in church support projects of the PFDJ and, at least in those Orthodox churches that are linked to the PFDJ, the revenue is allegedly controlled by the PFDJ. In these situations, the practice of financial extortion linked to the 2% Tax is extended to the Orthodox Church, especially for refugees who do not yet pay the 2% Tax. The priests specifically preach that Eritreans should fulfil their duty and may even ask about the 2% tax. Refugees who are not yet aware of the 2% Tax obligation, are introduced to the collections in church as a community duty.

The third wave of refugees are severely traumatised, due to the duress experienced during the difficult journey to reach Europe, which may have included torture, sexual violence and other violence, rape and many other degrading experiences. Ongoing mental health problems, problems associated with traditional healing practices are examples of the situations in which refugees seek help from the priests during which they may be pressurised into paying the 2% Tax drawing on sentiments of guilt. Abusing their vulnerability for financial gain can be seen as a form of extortion.

It is not possible to transfer money to Eritrea unless the 2% Tax has been paid. It is also not possible to send parcels. Family members in Eritrea may be put under pressure and have their food vouchers withheld, or worse, adding to the mental pressure on refugees to sign the regret form and pay the 2% Tax. For members of the Eritrean diaspora, including many (young) refugees, this is a very problematic situation, as they know their parents and siblings in Eritrea are in dire need of support and they feel responsible. This coerces them into signing a regret form and registering and paying the 2% Tax. Refugees from Europe travel to Khartoum, where the embassy helps refugees to travel to Eritrea covered by a special paper, so that they cannot be detected by European authorities.

Family reunification is very important to many Eritrean refugees who know that their parents and siblings have remained behind in extremely difficult circumstances. However, family reunification requires documents that are generally unavailable unless the 2% Tax is paid. Ultimately, many refugees feel pressured into signing the regret form and paying the 2% Tax as a way of advancing the family reunification procedures, although this is not always advanced by doing so.

In order to realise family reunification, refugees depend on getting their family members out of the country through smuggling or facilitation, which requires collaboration with officials (through bribes or payments). By signing the regret form and paying the 2% Tax, the refugees believe that they are increasing their chances of successfully facilitating the exit of their families. This process is facilitated in European countries through offering new ID cards to refugees in the camps, which can only be obtained if the regret form is signed and the 2% tax is paid.. Alternatively, refugees travel to Sudan, where they can arrange papers at the Eritrean embassy in Khartoum.

Some refugees indicated that they needed educational certificates, without which they cannot advance their education. These are also generally only available to them if the regret form is signed and the 2% Tax is paid. One particular problem reported in several of the countries studied is that refugees need passports or birth certificates in order to acquire citizenship in their host state. Many respondents have explained that

almost all members of the recent refugee influx will, therefore, eventually be forced to register at the embassy, sign the regret form and pay their 2% Tax.

### **Blackmail**

One way of blackmailing members of the Eritrean diaspora into paying the 2% Tax and committing to other duties, is by extortion through information. Once they register at the embassy or a local Mahbere Com, or come into contact PFDJ agents, extensive information is gathered, which can be used against them. Especially those with family members in Eritrea, are vulnerable to such threats of blackmail, once their family's identity has been revealed.

It was also brought to the attention of the researchers that the embassies provide protection to members of the Eritrean diaspora in various ways, including with a range of financial services. Such information can be used to blackmail the taxpayer into paying the 2% Tax.

### **Coercion in combination with fraud**

The levying of the 2% Tax is implemented in association with other projects, such as housing and land projects. Members of the diaspora who have property in Eritrea fear that they may lose the property unless the 2% Tax is paid. Members of the diaspora are also given lucrative offers and some make serious investments. They are given special deals based on their status as loyal 2% taxpayers. They may pay large sums, but do not receive a contract or title deed establishing a clear legal entitlement. Such projects are usually oversubscribed and people continue to pay the 2% Tax so that good relations are maintained with the embassy and the investment is not lost. Some housing investment schemes that have not been realised include investment participation of EUR 50,000 to 60,000, in which tens of thousands of people have participated. One such scheme is estimated to have a value of possibly EUR 550 million. The investment in these schemes will be lost if participants do not pay their 2% Tax.

The 2% Tax is used at the discretion of the embassies, among other things, for festivals, political meetings and cultural events organised by the embassies and the PFDJ. A range of resources are mobilised for these events, including, allegedly, contributions from public welfare and local governments intended for integration purposes. There is no public accountability for the finances raised for such purposes. People who previously worked on such projects reported that the resources were not always (or never) used on the projects for which they were raised and that the revenue is in fact slushed to other programmes. Financial resources are raised for purposes other than those stated, in a combination of coercion and fraud.

In conclusion, the 2% Tax regime uses the withholding of consular services as a sanction to ensure payment, although this is not provided for by the law. In addition, other sanctions and penalties are arbitrarily executed, at the discretion of persons put in place to oversee the levy of the 2% Tax. The collection of the 2% Tax is characterised by a range of practices that are targeted to abuse the specific vulnerabilities of Eritreans in the diaspora. The 2% Tax regime is based on a system of extortion that at first sight seems incoherent and illogical, but which in effect seeks to exploit the weaknesses of people by

abusing the difficulties of particular groups of people. The exploitation is specifically focused on economic gain without any oversight or financial accountability. The system of extortion feeds on the information about people in the diaspora and the role of community organisations and churches which are under the supervision of the PFDJ. These organisations supply the information with which taxpayers can be extorted. It is, therefore, a system that is vicious and exploitative in its design, concealing the coercive practices behind an appearance of legality.

### 9.1.3 Research Q.3

#### **Q.3 What is the role of the different Eritrean government agencies and organisations in levying and collecting the 2% Tax in the selected European countries studied?**

Officially, the embassies are charged with levying and collecting the 2% Tax. However, the embassies are controlled by the PFDJ and informal PFDJ agents work at the embassy as tax collectors. The distinction between the embassy and the PFDJ is blurred and respondents referred to the embassy as the institution in charge of taxes – whilst explaining that the head of the PFDJ branch in the foreign country is in charge of the embassy.

The structure that has emerged for collecting the 2% Tax through the Eritrean embassies originates from the foreign representation of the EPLF during the independence war. The current financial services provided by Eritrean embassies in the countries studied have three principle aims:

- ③ The fulfilment of duties as identified by the authorities (this includes the payment of the 2% Tax and other duties), issuing of ID cards and other administrative services.
- ③ The use of services for the safekeeping of financial savings (or jewellery).
- ③ The transfer of money to family members within Eritrea.

None of the countries included in this research have concluded bilateral agreements with the Government of Eritrea regarding the financial services offered by the embassy and the levy and collection of the 2% Tax.

Members of the diaspora experience the hierarchy in the embassy on occasions where they have been negatively approached, for instance, when they were warned about what is considered potentially disloyal behaviour. This hierarchy has also been experienced by members of the diaspora approached to carry out particular tasks to support the PFDJ. The distinction between the embassies and the PFDJ office is not clear to members of the diaspora.

The structure of the implementation of the 2% Tax collections is embedded within a broader structure of the embassies, which goes beyond the narrow-accredited diplomatic officials. On closer look, it appears that the embassies come under the authority of the local head of the PFDJ branch in the host country. The Head of the PFDJ is directly instructed by President Isaias Afewerki and the members of the security apparatuses around him. The ambassador or head of mission is instructed through the local head of the PFDJ. The Head of the PFDJ is regarded as the lead of the National Security Agency or Hagerawi Dehnet, providing real power

to the position. It is in this context that the 2% Tax is embedded within an administration that is not steered from a financial management perspective, but from a national security brief.

The PFDJ branches are the direct arm abroad of the National Security Agency and intelligence gathering arm of the President's Office in Asmara. It is in this light that the raising of the 2% Tax is associated with fear. The administration of it gives the President's Office in Asmara the information necessary to control the members of the diaspora, to know who is who and who is where, to know what is happening and who opposes the regime.

The PFDJ branches in host countries play an important role in the collection of the 2% Tax. The head of the PFDJ branch reports directly to the President's Office and especially to the National Security Agency of the Office of the President. The ambassador (or chargé d'affaires) is overseen by the head of the PFDJ of the branch in the host country. The Community organisations, the PFDJ, YPFDJ, NUEW, Mahbere Com (community organisations) are crucially important to collect the 2% Tax and other contributions, carry out house-to-house visits and arrange meetings for fundraising and other projects. The line between tax collection; collection of other contributions, commercial projects and intelligence gathering is blurred. The 2% Tax collection is a key element through which the PFDJ organises the surveillance among the diaspora community; the 2% tax is a principle instrument of the 'long arm' of the Eritrean government. The strength and size of the PFDJ and PFDJ-controlled organisations in the different countries explains the extent to which individuals feel pressured to pay the 2% Tax

It is in this context that the rather sinister observations that the 2% Tax is an instrument for intelligence gathering, or perhaps better a mechanism through which to 'check' on the members of the Eritrean diaspora, should be understood. It is one small, but important, element of the overall structure available to control the actions of the members of the Eritrean diaspora by the long arm of the Eritrean government abroad. In this way the 2% Tax serves as stark reminder that no Eritrean can flee from the regime and that, even abroad, they can and will be traced.

## 9.2 Legality

The 2% Tax collection may be an illegal practice if its collection violates core human rights and other legal principles, such as the rule of law, and if it is levied with coercion. Chapter 3 set out certain criteria for analysing the legality of the 2% Tax; these are:

- 1 The clarity and consistency of the 2% Tax, how it is levied and the mechanisms supporting its collection.
- 2 The modus operandi of the Government of Eritrea (and its representatives) in the collection of the 2% Tax and whether or not coercion is integral to the collection practices.
- 3 The compliance of the collection of the 2% Tax with the Vienna Convention on Diplomatic Relations and Consular Cooperation.

- 4 The indirect impact of the collection of the 2% Tax on destabilising the Horn of Africa region (e.g., by use of the tax to fund military equipment or operations).
- 5 Respect for the rule of law by the Government of Eritrea (and its representatives) in countries where members of the Eritrean diaspora are residing and where the 2% tax is levied, and whether or not the levying and collection of the 2% Tax is a mechanism to control the diaspora communities (e.g. as a form of intelligence gathering).

In the following sub-sections, the legality of the 2% Tax is assessed based on these criteria.

### 9.2.1 Criterion 1. Clarity and consistency

*The clarity and consistency of the 2% Tax, how it is levied and the mechanisms supporting its collection.*

In international law, a sovereign state can decide to levy taxes on members of the diaspora, and there are indeed several examples of such a tax being levied (by the United State of America, for example). However, there are a number of fundamental issues that undermine the clarity and consistency of Eritrea's 2% Tax regime. These are:

- The legal basis of the 2% Tax is not clear** (it is unclear which Proclamation it is based on): Proclamation No. 17/1991: Proclamation to Provide for the Collection of Rehabilitation Tax (10 December 1991) and Proclamation No. 67/1995: Proclamation to Provide for the Collection of Tax from Eritreans who Earn Income while Living Abroad (10 February 1995) are both identified as providing the legal basis for the 2% Tax. The 2% Tax on personal income is identified in Proclamation 67/1995, while the title and purpose of the tax as a Rehabilitation Tax is identified in Proclamation 17/1991. The Government of Eritrea does not make it clear on what legal basis the 2% Tax is levied. This undermines the possibility for accountability to these Proclamations.
- The Eritrean National Assembly, the proper authority for imposing tax, has not met since the border conflict with Ethiopia:** According to the Constitution of Eritrea (which has never been implemented), only the National Assembly has the authority to impose taxes, including extraterritorial taxes. The National Assembly of Eritrea – the sole authority mandated to collect taxes – has not met since 1998; hence, the 2% Tax is not approved under a system of rule of law, with associated checks and balances. This strongly undermines the legal basis for the collection of the tax.
- It is unclear whether or not the 2% Tax is mandatory:** While according to the Proclamations, the extraterritorial tax is mandatory, other official statements by the Government of Eritrea and its representatives identify the 2% Tax as voluntary. Members of the Eritrean diaspora have various understandings of the nature of the tax as both mandatory and voluntary, and some identify it as a 'duty' with much wider connotations and inclusive of obligations beyond the 2% Tax levy.
- The penalties for non-payment are not clear:** According to the Penal Code of Eritrea, two penalties are available for those who do not pay the 2% Tax, a fine or imprisonment. However, neither of these penalties are used in relation to the collection of the 2% Tax. On the other hand, a wide range of other penalties are used (see below); for example, the denial of consular services is a common penalty described by respondents, but this is not prescribed by the law. The application of other

sanctions seems to be relatively arbitrary. There is no information provided by the Government of Eritrea on how such penalties are applied.

- ③ **The definition of taxable person is not clear and inconsistent in practice:** This is especially the case in relation to members of the Eritrean diaspora with a disability or who are sick. Payments by students also differ. There is also no consistent understanding of who is defined as 'Eritrean'. As there is no legal recourse or complaint or clarification mechanism, it is entirely at the discretion of the embassy officials to decide who should pay the tax and how much, which precludes the possibility of accountability for taxpayers. Refugees are levied the 2% Tax if they need services from the Eritrean embassy. In order to be able to pay the 2% Tax, they have to fill out a regret form admitting wrongdoing (by fleeing the country). Some members of the Eritrean regime's mass organisations (Y)PFDJ and NUEW claimed that they have never been asked to pay the 2% Tax (and have not been penalised for not doing so). Among members of the opposition and activists, some respondents or their families report not being allowed to pay the tax (some were not even allowed into the embassy to make an appointment). They are penalised based on the fact that they have not paid. Others have paid or have family members who paid without being asked any questions. The 2% Tax appears to be a tax levied by the PFDJ, given the lack of separation between the political party and the state.
- ③ **The assessment of the amount payable under the 2% Tax is at the discretion of the embassy staff:** There is a general consensus that the 2% Tax is assessed as a 2% levy on personal income. There is also a general consensus that the 2% Tax needs to be paid retroactively. However, in the process of the actual assessment there is quite some room for negotiation and the basis for the assessment differs between embassies and countries. This discretion also includes the possibility to waive the 2% Tax.
- ③ **The 2% Tax is arbitrary in its application and is reported to be collected using fear and coercion:** Rule of law does not exist in Eritrea. The UN Commission of Inquiry described Eritrea as a country of fear and the Eritrean regime has been accused by the Commission of Enquiry of committing crimes against humanity, which are ongoing (UNHCR, 2016a). This reality impacts on the levying and collection of the 2% Tax, which is perceived as arbitrary and favouring those who are loyal to those in power. The persons at the embassies dealing with the collection of the 2% Tax seem to have considerable discretion to make decisions in individual cases about who pays the tax and how much, raising concerns about the arbitrary nature of these decisions. Those who oppose the regime, cannot pay the 2% Tax and do not want to pay the 2% tax, but live in fear of potential repercussions for their family members. Some respondents have not experienced any consequences beyond the denial of services. Others reported severe repercussions for themselves or their family members. There were also respondents perceived as high in the hierarchy of the PFDJ who did not need to pay 2% Tax and experienced no penalties. The fact that there is no generally applicable rule that determines the penalty proves the arbitrariness of the system. The Commission of Inquiry on Eritrea established that punishment by association is widely implemented in Eritrea (UNHCR, 2015b, 2016b).
- ③ **There is a lack of transparency regarding the use of the revenue generated by the tax:** There is a variety of information available from the Government of Eritrea as to the purpose (utilisation) of the 2% Tax revenue. According to respondents, asking about the purpose of the 2% Tax can be

interpreted as a political act against the government and can lead to penalties, including for family members. Due to the lack of financial management and the absence of a budget, or even a statistical office, the volume of the revenue generated by the 2% Tax is not known. There is no reporting related to traceable financial management on the utilisation of the revenue generated by the 2% Tax.

The legality of the 2% Tax is further affected by its violation of key principles in the law. Concern is raised over the following elements that characterise the collection of the 2% Tax:

- ③ **Discrimination:** The collection method discriminates against persons in the diaspora who are not regarded as loyal.
- ③ **Favouritism:** Members of the diaspora who are regarded as loyal (even if they may not have paid the 2% Tax) may receive privileges, including privileges for their relatives in Eritrea.
- ③ **Self-incrimination:** The collection method forces refugees (including youth) to self-incriminate by pressuring them to signing a 'regret form'.
- ③ **Punishment by association:** The relatives living in Eritrea of persons in the diaspora who are considered disloyal (including by not paying the 2% Tax) may be penalised in a variety of ways and the measures used can have severe consequences for their lives and livelihoods – and can even constitute serious human rights violations.

The practices involved in the collection of the 2% Tax raise considerable concern regarding its legality in the way it is applied. The punishment by association of relatives in Eritrea, resulting in human rights violations of the person or his associated family members (including children) is of particular concern – especially given the lack of protection of human rights in Eritrea, the risk of being subjected to torture and the lack of opportunity to a life with dignity (see UNHRC, 2015a, 2015b, 2016a, 2016b).

Hence the researchers conclude that the 2% Tax lacks a clear and consistent basis in law and it is levied without respect for the rule of law. Given the lack of official information on the tax (from the Government of Eritrea), and the fact that the information that is available is contradictory, the levy of the 2% Tax can be described as arbitrary in nature (supported by the fact that Eritreans have various entirely different understandings of it, based on their own experiences). This is exacerbated by the lack of clarity about whether payment of the 2% Tax is voluntary or mandatory. The embassies seem to have discretionary power in relation to the assessment of the amount of tax payable, and these assessments also seem variable and arbitrary. Furthermore, there is no transparent financial management of the revenue generated by the 2% Tax. Nor are there any statistics on how much is generated.

## 9.2.2 Criterion 2. Modus operandi of collection

*The modus operandi of the Government of Eritrea (and its representatives) in the collection of the 2% Tax and whether or not coercion is integral to the collection practices.*



The modus operandi of the Government of Eritrea in levying and collecting the 2% Tax has changed over time and is different in the various countries studied in this research. While the tax is consistently levied and calculated by the embassies, the role of the embassies in collecting the tax has shifted, especially in countries where questions have been raised as to the legality of the tax. In such countries, the 2% Tax is still levied and collected, but the payments are made in different ways.

The modus operandi for the collection of payments includes:

- ③ Cash payment to the embassy
- ③ Cash payment to an agent in the local Mahbere Com who transfers it to the embassy.
- ③ Cash payment in Asmara (in person or through a courier)
- ③ Sending cash with a trusted person who travels to Asmara to deposit the payment
- ③ Transferring to a bank account in the country of residence
- ③ Transferring to a bank account in Dubai
- ③ Sending cash with a trusted person who travels to Dubai to deposit the payment in a bank
- ③ Payment in Sudan, by refugees, who travel to the Eritrean Embassy in Khartoum, where various papers can be obtained
- ③ The payment of the 2% Tax is always levied and collected in foreign currency, whether it is paid abroad or in Eritrea.

The penalties associated with non-payment of the tax include, among other things, the following:

- ③ Denial of access to consular services in the embassy
- ③ Denial of access to services or rights in Eritrea for self or family members
- ③ Denial of access to food vouchers for family members in Eritrea; services not granted
- ③ Family members are imprisoned or threatened if their children have fled, particularly if the fine of 50,000 nakfa for relatives who fled has not been paid and if the refugee has not signed a regret form and paid the 2% Tax
- ③ Denial of access to sending remittances to family members
- ③ Denial of access to sending packages to family members
- ③ Social exclusion and vilification

On the other hand, those who pay the 2% Tax may receive favours for themselves or for their family members (see for an exhaustive list of consequences, positive and negative, in Chapter 6). Hence, the 2% Tax is levied and collected using intimidation and coercion, including mental, social and emotional pressure, extortion, blackmail, and coercion, sometimes in combination with fraud.

### 9.2.3 Criterion 3. Compliance with Vienna Conventions

*The compliance of the collection of the 2% Tax with the Vienna Conventions on Diplomatic Relations and Consular Cooperation.*

The 2% Tax is levied, but also collected by, (some of) the Eritrean embassies in the countries studied. To the knowledge of the authors, there is no other tax regime in the world that is raised in this way and the UN Security Council has questioned whether the levying of the 2% Tax by the embassies is in compliance with the Vienna Conventions on Diplomatic Relations and Consular Cooperation. Of particular concern is that there is no clear distinction between the embassy and the organ of the PFDJ (the party) and, therefore, the 2% Tax is experienced as a control mechanism by the PFDJ in Eritrea over the diaspora (also see point 5 below).

#### 9.2.4 Criterion 4. Impact on destabilising the Horn of Africa region

*The indirect impact of the collection of the 2% Tax on destabilising the Horn of Africa region (e.g., by use of the tax to fund military equipment or operations).*

The lack of financial management and transparency (Eritrea has not published a budget since 2002) means that the revenue generated by the 2% Tax is fungible. The research indicates that the 2% Tax generates a slush fund, which may or may not even reach Eritrea. In the absence of proper financial management and transparency, the 2% Tax revenue may, and it is suggested probably does, end up being spent on the activities of the Eritrean government abroad and, therefore, potentially violates the conditions imposed by UN Security Council Resolutions (1907 and 2023). It is, after all, the responsibility of the Eritrean Government to demonstrate for what purpose the 2% Tax is levied and how it is used.

#### 9.2.5 Criterion 5. Respect for the rule of law and use of the tax to control the diaspora

*Respect for the rule of law by the Government of Eritrea (and its representatives) in countries where members of the Eritrean diaspora are residing and where the 2% Tax is levied, and whether or not the levying and collection of the 2% Tax is used as a mechanism to control diaspora communities (e.g. as a form of intelligence gathering).*

In Chapter 1, certain criteria were set out to establish the existence of the rule of law (as set out by AIV, 2017 forthcoming and based on the Venice Mission of the Council of Europe). These criteria are examined here in relation to the 2% Tax. The following observations are made in relation to the compliance of the 2% tax with the rule of law:

- 1. The principle of legality:** The Government of Eritrea has been ruling Eritrea under a *de facto* state of emergency. The Eritrean constitution, which never became operational, identifies the powers and duties of the National Assembly (Article 32), which include, inter alia, the imposition of taxes. It is, therefore, only the National Assembly that has the authority to impose taxes. As the National Assembly of Eritrea has not met since the 1998 border conflict, and there actually is no constitution in place in Eritrea, hence, the principle of legality is not satisfied.
- 2. Legal certainty:** There is scant information available on the 2% Tax, and what is available is inconsistent. The official statement identify the purposes of the tax as ranging from supporting martyrs and their families and disabled fighters to 'development projects' for the country. Eritrea's Proclamations No. 17/1991 and 67/1995 are referred as the legal basis for the 2% Tax; however,

Proclamation No. 17/1991, the Rehabilitation and Reconstruction Tax, is intended for persons living in Eritrea. Proclamation No. 67/1995 is intended for people living in the diaspora, but the objective of this tax is not identified. There is much uncertainty about the taxable event and the timing of the taxation (from the interviews and based on transcripts of conversations with embassies) seems to coincide with the need to obtain an ID card or other services from an embassy. There is much uncertainty regarding the procedure by which the 2% Tax is collected. In some places the tax is paid in the embassy, while in other places the tax is paid in Asmara. Embassies are involved in the 'soliciting and calculation' of the 2% Tax (as cited in one of the transcripts), but are not responsible for ensuring payments in Asmara. There are different and contradictory information on the penalties for non-compliance with the 2% Tax. The Penal Code on Taxes refers to a 'fine' and 'imprisonment', whereas Government of Eritrea information on the 2% Tax mentions administrative consequences (on land entitlement and some related services inside the country). From the interviews and transcripts, it seems that the penalty implemented in the embassies is to withhold all administrative and consular services, including the obtaining of an ID card, which is a prerequisite for obtaining any other services. In addition a range of broader punitive measures may result from not paying the 2% Tax, which are imposed on the individuals in the diaspora as well as their relatives in Eritrea.

3. **Prohibition on arbitrariness:** The collection procedure of the 2% Tax leaves much space for arbitrary decision making.
4. **Access to an independent and impartial judge:** There is no information available on access to a complaints procedure or an independent or impartial legal review of decisions made about the tax.. Respondents mention that asking questions about the 2% Tax and its purpose may provoke punitive measures on the tax papers or his relatives.
5. **Respect for human rights relating to the previous criteria:** Eritreans in the diaspora do not have access to administrative, legal or consular services unless they have an ID card. To obtain an ID card they need to have paid the 2% Tax, even if they hold the nationality of, or have a passport issued by, the host country. An ID card is also only available to many after they sign a regret form. In addition, their relatives in Eritrea experience the negative consequences of non- payment as punishment by association, and these punitive measures can seriously impact on their survival, livelihood, freedom and health among other things.
6. **Non-discrimination and equality of the law:** The application of the law differs in the different countries where members of the Eritrean diaspora live, as do the procedures involved for paying the tax (e.g., whether one should pay in Eritrea or in the embassy in the host country). Persons who are on good terms with the PFDJ are more likely to be exempted without experiencing negative consequences. The 2% tax system creates favouritism and a system of privileges for those who have paid the 2% tax and their families, or for those who are favoured by the PFDJ.
7. **Separation of powers and checks and balances:** There is no separation of powers in Eritrea: the President appoints the judges and there is no legislature as such (the National Assembly has not met since Eritrea went to war with Ethiopia in 1998). All of these functions (and power) are concentrated into the hands of the executive government, with no oversight by any other body. The PFDJ branches in foreign countries control the work of the embassies.

- 8. Respect for human rights in a broad sense:** The UN Commission of Inquiry on Eritrea has found that crimes against humanity have taken place in Eritrea and are still ongoing and has referred this to the international community (UNHRC, 2016a; UNHRC Resolution, 2016). The consequences for those who fall out of grace with the regime, including by not paying the 2% Tax, must be understood in this context. They, and their families, risk being badly punished and will no longer enjoy protection.

Reacting to the research results, IBFD concluded the following regarding the legality of the 2% Tax:

*There are significant problems if, in the absence of international agreements of mutual assistance in the collection of taxes, people formally or informally representing the interest of Eritrea undertake actions on the territory of another State to force people to pay an Eritrean tax. We consider this as unprecedented in international tax law and as a violation of the sovereignty of the Netherlands [or another European country] from a public international law perspective. [IBFD, concluding remarks commenting on the final draft of this report, email, 21 June 2017]*

## 9.3 Final remarks

In his advisory opinion to the Dutch Minister of Foreign Affairs, Prof. Dr. Nollkaemper concluded that “if an investigation were to show that Eritrea uses ‘extortion, threats of violence, fraud and other illicit means’ to collect the tax, the Netherlands would undoubtedly be have the authority to prohibit it from doing so” (2016, p1). Nollkaemper emphasised that whether or not this was the case should be determined by factual empirical research.

This study of the 2% Tax aimed to provide an empirical basis of it. The 2% Tax is not only defined by its legal provisions, but is also defined by its implementation. The conclusions of this study are:

- ③ The 2% Tax lacks legal clarity and consistency in all aspects that were considered in this research: (i) the taxable persons, (ii) its object, (iii) the identification of the taxable event, (iv) procedures, (v) enforcement and (vi) other consequences. In all of these aspects critical elements of rule of law are not in place.
- ③ The 2% Tax is collected in a context in which there is a gross lack of financial management, accountability and transparency. It therefore can be regarded as a fungible resource. Its use can therefore not be established (including whether or not it is compliant with UN SCR 1907 and 2023).
- ③ The 2% Tax is collected as a critical part of a system of surveillance, with specific references to coercion in view of mental and social pressure, extortion, intimidation, fraud and/or blackmail. The specific organisation and modalities relate specifically to the diaspora, but also involves family members by association.
- ③ The 2% Tax is levied and collected by the Government of Eritrea through the Embassies of Eritrea and the organ of the PFDJ, including its branches in Europe.

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## Appendices (separate)

Appendix A Transcripts of recorded visits to Eritrean Embassy (2)

Appendix B Receipt 2% Tax (2)

Appendix C Announcement 2% Tax Immigration Office Asmara (1)

Appendix D Tax Obligation Form (3)

Appendix E Regret Form ( 1)

Appendix F Application Form ID (3)

Appendix G Certificate YPFDJ Conference (1)

Appendix H Laws and Proclamations (6)

DSP-groep BV  
Van Diemenstraat 368  
1013 CR Amsterdam  
The Netherlands  
+31 (0)20 625 75 37

[dsp@dsp-groep.nl](mailto:dsp@dsp-groep.nl)  
KvK 33176766  
[www.dsp-groep.nl](http://www.dsp-groep.nl)