

## **Unofficial translation of the letter of the Dutch ministry of Foreign Affairs on the Eritrean diaspora tax in Europe report**

To: Chair of the second chamber of the Dutch Parliament

Date: 18 September 2017

Subject: Eritrean diaspora tax in Europe

Dear Chair,

In a letter to your Chamber on 15 December 2016 (“Eritrea and the influence of Eritrea in the Netherlands”, kst 22831-125), the Cabinet stated that it would commission a study into the diaspora tax in several European countries. This study was requested by your Chamber as per the motion 119 of Parliament member Karabulut (Kst 22 813-119). The research has now been completed and the Cabinet hereby presents the research report, titled “The 2% Tax for Eritreans in the diaspora”.<sup>1</sup>

### **The DSP-research, background and methodology**

In 2016, several options were explored for investigating “the nature and extent of the diaspora taxation in the European context”, as was requested in the motion. Contact with the European External Action Service (EEAS) in Brussels and with the relevant EU member states showed that no political support or sense of priority for a common European study into this subject existed for other member states.

Following this, the ministry of Foreign Affairs commissioned its own study in seven countries. This study was executed by the DSP-groep in Amsterdam in cooperation with European External Policy Advisors (EEPA) in Brussels and the Tilburg University. The DSP-groep has previously done a qualitative study into the integration of Eritreans and issues in the Eritrean community in the Netherlands for the ministry of Social Affairs and Employment. Among other things, the diaspora tax was covered in this study.<sup>2</sup> The current study builds on this: alongside 23 Eritreans in the Netherlands, Eritreans in Italy (15), Norway (14), Belgium (11), Germany (9), Sweden (8) and the United Kingdom (7) were questioned on the basis of interviews and questionnaires. All of these countries have been formally notified and have been given the opportunity to contribute to this study. With the exception of Belgium, all countries have a relatively large Eritrean diaspora. In addition, 34 international experts were consulted and an extensive literature study on diaspora tax was undertaken.

To the extent known, this study is the first targeted effort to map this tax thus far. The Cabinet therefore wants to thank the authors for the work that was done. Naturally the scope and methodology of the study were constrained by finances and time available, the diversity of the contexts in the studied countries, and the secrecy of the Eritrean diaspora. A substantially larger number of Eritreans would have to be interviewed in order to come to an accurate representation of the Eritrean community.

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<sup>1</sup> “Diaspora tax” and “2% tax” refer to the “Recovery and Rehabilitation Tax” that Eritrea imposes and collects from Eritreans in the diaspora.

<sup>2</sup> The DSP-groep wrote the report “Nothing is what it seems”, which was discussed in the Eritrea-letter of the Cabinet sent on 15 December 2016 (Kst 22831-125) and which was added as an attachment to his letter.

Moreover, individual cases cannot usually be extrapolated to an objectively verifiable image, even if executed with utmost care. The findings of this study should be viewed in light of these circumstances.

The Eritrean embassies in the five countries studied have been approached by the DSP-groep, but have not responded.<sup>3</sup> In addition, the ministry of Foreign Affairs has presented a questionnaire about the diaspora tax to the Eritrean embassy. In response, the Eritrean government stated that Eritrea has provided detailed information on the tax many times over the years and that it considers these new questions a provocation that is, according to Eritrea, typical of the hostility and lack of respect for Eritrea that the Dutch parliament and the Dutch government display.

### **The findings of the DSP-report**

The report covers the following aspects of the diaspora tax:

1. The historical context and the legal basis of the tax.

The report explains that the tax came into existence at the foreign EPLF-offices in the Eighties.<sup>4</sup> Back then, the EPFL fought for independence of Eritrea and helped Eritreans in the diaspora to send money home. Gradually, the custom of sending contributions to the armed struggle via the EPLF-offices came into existence within the diaspora. After independence, such contributions were formalized by means of two proclamations from 1991 and 1995. The DSP-groep argues that there is no clear legal basis for the levying of the diaspora tax, due to the absence of a valid constitution and a legitimate legislative power. The same applies to the sanctions for not paying the tax. The DSP-report states that the consequences of not paying the tax (see point 3) can be seen as forms of coercion. This coercion is aimed at people in the Netherlands and Europe, and family members in Eritrea. The instruments that the Eritrean government allegedly uses are sorted into four categories by the researchers: 1. emotional pressure, 2. Intimidation and fear, 3. punishment and 4. extortion (related to fraud).

2. The context of international law

The report mentions reports of the 'Somalia-Eritrea Monitoring Group' (SEMG) and Resolutions of the UN Security Council, the African Union, the EU and the advice of the Extern Volkenrechtelijke Adviseur (the advisor on international public law).<sup>5</sup> In all of these reports and statements, it is explicitly stated that the levying of a diaspora tax is allowed in principle under international law, but that levying of the tax can only take place without coercion or intimidation.

3. The organisation of the tax collection

In chapter 5, the DSP report elaborates on the bodies involved with the collection of the tax, including Eritrean embassies and consulates. The main findings concern the role of the political party PDFJ and the conclusion that the decisions of whom and which part of the income are taxable are arbitrary (and sometimes negotiable). According to the report Eritrean embassies are responsible for the collection of the diaspora tax and they fall under the hierarchy of the

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<sup>3</sup> Note: there is no Eritrean embassy in Norway.

<sup>4</sup> The EPLF is the Eritrean People's Liberation Front, which after independence transformed itself to the ruling single-party government party PFDJ, the People's Front for Democracy and Justice.

<sup>5</sup> This advice was included as an attachment to the Eritrea-letter of the Cabinet on 15 Dec. 2016 (ks22831-125)

government party PFDJ. The local head of the PFDJ is the actual person in charge in the embassies. This person is usually not an Eritrean diplomat.

Next, the manner of the diaspora tax collection is covered in the report, along with the question of whether the tax is voluntary or mandatory. The DSP report states that payment of the taxes is enforced through the refusal of services, especially consular services.<sup>6</sup> The interviewees mention other instruments, such as taking away privileges, social pressure and exclusion. In addition, the DSP report notes vagueness around the procedures, the amounts and especially the consequences of paying or not paying of the diaspora tax.

4. Differences between the countries that were studied

When comparing the taxation in the various European countries, the DSP-groep concludes that several factors are of influence to the *modus operandi*, such as: the presence of an Eritrean embassy, the size and strength of the diaspora and the interest for the diaspora tax shown by the government and politicians of the host country.

5. Perception of the Eritrean tax payers and conclusion

Finally, the authors describe how the Eritreans interviewed experience the diaspora tax and the ways in which they are coerced to pay. The authors summarise that the levying of the tax is accompanied by forms of coercion that give the Eritrean authorities a strong hold on the Eritrean diaspora in the countries that were studied.

### **The UN assessment of the diaspora tax**

Since 2011 the ‘Somalia-Eritrea Monitoring Group’ (SEMG) invoked by the UN has been researching the collection of the diaspora tax by Eritrea and the possible use of the tax revenue for purposes that are sanctioned (for example the purchase of weapons). In these annual reports the SEMG does not comment on the legal basis, but refers to the proclamations that form the basis for the collection of the diaspora tax according to the Eritrean government.<sup>7</sup>

In resolution 2023 (2011), the UN Security Council calls on Eritrea to stop the collection of the diaspora tax. This resolution also dictates UN member states to hold accountable all persons – on their territory – who are guilty of the use of coercion and other illegal means of collecting this tax. The SEMG concludes that taxation by the Eritrean government is increasingly taking place under the radar and is no longer collected ‘door-to-door’ as a consequence of the resolution.<sup>8</sup> According to the SEMG, the focus has shifted to collection on a ‘voluntary’ basis through the organisation of cultural events where the tax is collected and the use of intermediaries that travel to Eritrea with cash. The SEMG also sees the threat of denying consular services as an instrument to force the diaspora to pay the tax.<sup>9</sup> As early as 2013, the SEMG advised the UN member states to call a halt to the collection of the tax via their national police authorities.<sup>10</sup> The main obstacle for tackling tax collection that is accompanied by coercion, fraud and

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<sup>6</sup> Page 86, DSP report. See also: SEMG 2015, paragraph 81.

<sup>7</sup> See for example SEMG 2015, paragraph 89.

<sup>8</sup> SEMG 2012, paragraph 93 and SEMG 2014, paragraph 107

<sup>9</sup> SEMG 2012, paragraphs 95,96, 97.

<sup>10</sup> SEMG 2013, paragraph 133

extortion is the limited amount of police reports filed by Eritreans, due to the fear of possible consequences for themselves or family members in Eritrea.<sup>11</sup>

### **Societal consequences of the Eritrean diaspora tax in the Netherlands**

The means of collection that are described can add to the fact that it is very difficult for Eritreans in the Netherlands to detach themselves from the country that many of them have fled. The Cabinet has labelled this as unacceptable before and this remains unchanged.

The means of collection of the diaspora tax that are described in the report have negative effects on the integration of Eritreans in the Netherlands. Those that do not pay the tax (on time) risk social exclusion and isolation, through which the Eritreans feel pressured to comply with the ‘obligations’ imposed on them. The DSP report states that payment of the tax can sometimes be a requirement for participation in social events and is therefore accepted by a large number of Eritreans in order to avoid possible confrontation with the Eritrean government and prevent crossing the imaginary ‘red line’. The fear that family members in Eritrea will become the victims of non-payment can also play a role.

The combination of the diaspora tax, high dependency on social security payments (50% in 2014) and possible other contributions<sup>12</sup> complicate the already difficult participation of Eritreans in Dutch society. When these people are pressured to give up part of their – in many cases already limited – financial means and sink below the substance minimum, this limits them in the possibilities to integrate and participate in Dutch society. This holds especially true for those that have trouble accessing municipal arrangements for participation and integration, as is the case for many Eritreans that have recently arrived in the Netherlands.

### **Response of the Cabinet**

The Eritrean diaspora forms a heterogenous group that can be divided, inter alia, into three different waves in which they have migrated to Europe. The first wave occurred from 1980-1998. This group fled during the independence war between Eritrea and Ethiopia, the people were proponents of Eritrean independence and these refugees were – or still are – for the majority members of the ELF, later EPLF, which is currently the PFDJ (the ruling government party). From this wave a generation of youth has originated that was born and raised in Europe. A second wave occurred from 1998-2010 and fled for a variety of reasons during and after the border conflicts with Ethiopia. The third and current wave (from 2010) has fled the current regime; the regime that is operated by the party supported by (originally) the first wave. This means that gap exists within the Eritrean diaspora between the recent arrivals and Eritreans that have arrived in the Netherlands at an earlier stage. Furthermore, diverse groups of Eritreans have a different assessment of their government’s activities, such as the collection of diaspora tax. Cultural events that are organised are also experienced completely differently by the various segments within the Eritrean diaspora.

The collection of Eritrean diaspora tax has been a point of attention for the Cabinet for some time. Due to the limitations of the study, the secrecy of the Eritrean communities in Europe and the diffuse and changing approach of collecting the tax, we cannot make conclusive statements about the situation in all

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<sup>11</sup> SEMG 2015, paragraph 85.

<sup>12</sup> These other contributions are described in the earlier DSP report “nothing is what it seems”; it concerns ‘voluntary’ contributions at parties and festivals, collections by the Church, collections for specific projects in Eritrea (that may turn out not to exist), etc.

countries that were studied. However, the DSP report does confirm the earlier analysis that the collection of diaspora tax in the Netherlands takes place in a non-transparent and therefore undesirable manner.

Besides this, the DSP report confirms that the ways of collecting the diaspora tax are complex, due to the many shapes this takes based on the circumstances in a country. In the absence of an embassy (office) the collection can take place via an ‘information office’ as was the case in Norway. When Canada took measures to tackle the staff capacity of the embassy, the tax collection was continued in secrecy, between intermediaries that travelled between Eritrea and Canada. The report does not clearly indicate why the political and media attention varies so much in the studied countries.

Thus, although there is no unambiguous picture, the Cabinet deems it necessary to keep challenging the ways in which the diaspora tax is collected. Below, an overview is given of the measures taken so far and the intended next steps.

### **Measures taken**

- On 16 October 2016 it was decided by ministerial decree that the collection of diaspora tax by Eritrea is prohibited when this is accompanied by fraud, coercion, extortion and other criminal offenses (nr. MinBuza-2016.707235; Staatscourant 2016, nr. 58321). Through this measure, the Public Prosecutor obtained the legal framework necessary to prosecute people that are involved with such collection practices.
- Through active engagement, the Netherlands has succeeded to take up two relevant paragraphs in the Eritrea-resolution that was adopted by consensus at the 35<sup>th</sup> session of the Human Rights Council last June 23<sup>rd</sup>: one paragraph calls upon the Eritrean government to stop the use of threats, extortion and other illegal means when collecting the diaspora tax and the other paragraph calls upon Eritrea to stop using so-called “regret forms”<sup>13</sup>.
- The Eritrean authorities have again – firmly – been addressed about the (means of) collection of the Eritrean diaspora tax in the Netherlands. These conversations took place, among others, in August 2016 and in April 2017 with minister Koenders (Foreign Affairs), and additionally regularly at senior official levels, most recently at the end of July 2017. At the last conversation, a questionnaire about the current DSP study was handed over; no reply has been received on this.

Alongside the measures described above, the Cabinet has taken measures concerning the issues at play in the Eritrean community in the Netherlands in a broader context.

- Several trajectories have been started to improve the integration and participation of Eritreans in the Netherlands. For example, work has been done to produce a guidance; an informative brochure that covers the specific problems within the Eritrean community and that gives municipalities, societal and welfare organisations a framework for action. This guidance is available online from August 2017 at

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<sup>13</sup> By signing these forms, Eritreans accept the responsibility for their illegal exit and for any other crime, if committed, before they left the country illegally, in order to restore their rights to consular services. State Secretary Dijkhoff from the ministry of Security and Justice labelled this practice reprehensible earlier this year, in answer to the parliamentary questions of parliament member Gesthuizen (SP) (ah-tk-20162017-1051).

<https://www.kis.nl/sites/default/files/bestanden/publicaties/handreiking-ondersteuning-eritrese-nieuwkomers-bij-integratie.pdf>

- In addition, the Expertise-unit Social Stability (ESS) of the Ministry of Social Affairs and Employment will expand its network in the Eritrean community to have a better overview of potential societal tensions. In the fall of 2017, ESS is organising two regional meetings in order to seek connections between various groups within the Eritrean community and to sustainably improve the cooperation with municipalities.

### **Planned measures**

1. The Cabinet will hand over the DSP research report to the Somalia and Eritrea Monitoring Group (SEMG) of the UN Security Council, to the Commission of the African Union, to the UN High Commissioner for Human Rights and to the Special Rapporteur for Human Rights in Eritrea.
2. The Cabinet will share the DSP report with EU member states and will introduce the issue of diaspora tax as a part of the European-Eritrean relations that are based on a strategy of pressure and dialogue.
3. The Cabinet will continue putting pressure on the Eritrean embassy in Brussels (co-accredited in the Netherlands) and will keep on making clear its dissatisfaction about the lack of available information and ask for more openness about the manner of collecting the diaspora tax in the Netherlands. When hard measures emerge of intimidation and unlawful coercion in relation to the collection of the Eritrean diaspora tax by the embassy in The Hague, diplomatic measures will not be ruled out.
4. The Cabinet will proactively enter a dialogue with Eritrea with regard to this issue. The Cabinet will continue to discourage the participation of high-level Eritrean authorities at 'cultural' or other diaspora events in the Netherlands.
5. The earlier DSP report about the influence of Eritrea in the Netherlands (covered in the parliamentary letter integral handling of Eritrea and the influence of Eritrea in the Netherlands, 2016) recommended a central point of contact for the Eritrean community or social workers to report incidents and matters related to the Eritrean community. The ministries of Social Affairs and Employment and Security and Justice do not believe that such a point of contract is a meaningful or effective addition to existing options. Instead of a new initiative, there is a need for taking steps in improving the willingness to file police reports among the Eritreans and increasing the trust of the Eritrean community in the Dutch government. From now on, both the guidance and the activities of the ministry of Social Affairs and Employment can aim more concretely at increasing the awareness of existing tools for filing a police report. It is already being made clear to the community that reporting any threats and intimidation to the police is necessary for undertaking any steps.

### **Measures in the justice department**

The levying of diaspora tax by Eritrea and the collection of it in the Netherlands are not unlawful in principle. It only becomes illegal when the collection happens in combination with coercion or threats. The Dutch legal system offers sufficient means of prosecution in such case. Through the ministerial decree mentioned earlier (Staatscourant 2016, nr. 58321) it is formally forbidden to collect diaspora tax through extortion, threat, deception or by use of other unlawful means, or in case the tax revenue is destined for any goals that are in contravention of the weapons embargo of Resolution 1907 (2009) by

the Security Council of the United Nations and the Decision 2010/127/GBVB of the Council of the European Union of March 2010.

As mentioned in the letter of 15 December 2016, the police and the Public Prosecutor are generally already alert to the exertion of pressure, coercion or extortion, because these are illegal practices. In order to prosecute individuals that are guilty of collecting diaspora tax through unlawful coercion and intimidation, criminal prosecution leads are needed. This is why it is of the utmost importance that the members of the Eritrean community file a police report when they experience coercion or threats, so that the Public Prosecutor and the police can follow up on this. The importance of early signalling and stimulation of the willingness to report among Eritreans will be highlighted again in the earlier mentioned guidance to municipalities, societal and welfare organisations.

Beside this, an action framework has been developed in order to further inform and alert police employees to the problems in the Eritrean community. This action framework has since led to a number of reports of facts related to the collection of diaspora tax. The follow-up of the reports depends among other things on the prospect of conviction of these cases. If the Public Prosecutor receives signals of these or other possible illegal activities, it will investigate leads for further criminal investigations and could proceed to convictions.

In conclusion:

In the letter 22831-128/2017D21219 of 10 July 2017 of the registry of the Second Chamber to the Minister of Foreign affairs, the minister is requested to inform the Chamber before Prince's Day (3<sup>rd</sup> Tuesday of September each year) about the execution of the motion Azmani/Sjoerdsma (22831, nr. 109). The Chamber has been informed about this motion in the Eritrea-letter of the Cabinet of 15 December 2016 (kst 22831-125).

Minister of Foreign Affairs, Bert Koenders

Minister of Security and Justice, Stef Blok

Minister of Social Affairs and Employment, L.F. Asscher

Attachments:

- 1) "The 2% Tax for Eritreans in the diaspora - Facts, figures and experiences in seven European countries", DSP-groep Amsterdam, Tilburg School of Humanities, Department of Culture Studies.
- 2) "The 2% Tax for Eritreans in the diaspora" – Appendices