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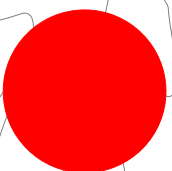
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EXPERT REPORT

Access to Documents
by Eritrean Refugees in the Context of
Family Reunification

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April 2021



This Independent Expert Report

Access to Official Documents by Eritrean Refugees in the Context of Family
Reunification Procedures: Legal Framework, Practical Realities and Obstacles

is commissioned by Equal Rights Beyond Borders (Equal Rights) and its partner the International Refugee Assistance Project (IRAP).

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Disclaimer

The opinions expressed in this document are the sole responsibility of the authors and do not necessarily represent the official position of Equal Rights or IRAP.

This report describes the situation as of January 2021 to the best of the knowledge of the authors. It does not take into account more recent developments, in particular specific changes in practice that might have taken place due to the Covid-19 pandemic. In addition, and given the scarcity of information resources, only aggravated in the context of the pandemic, it is possible that administrative practices in individual cases differ from those described in this report. In particular, and as stressed throughout the report, practice differs in different regions or locations, and is subject to frequent changes. Assessment of individual cases must therefore necessarily primarily rely on the individual testimony of the concerned person.

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ABBREVIATIONS

ACCORD	Austrian Centre for Country of Origin & Asylum Research and Documentation
AIDA	Asylum Information Database
ARRA	Administration for Refugee and Returnee Affairs
BAMF	Federal Office for Migration and Refugees
BBC	British Broadcasting Corporation
CBC	Canadian Broadcasting Corporation
CJEU	Court of Justice of the European Union
COI	County of Origin Information
COIE	Commission of Inquiry on Human Rights in Eritrea (UN mandated)
CRC	Committee on the Rights of the Child
DIS	Danish Immigration Service
DRC	Danish Refugee Council
EASO	European Asylum Support Office
ECHR	European Convention on Human Rights
ECSR	European Committee of Social Rights
ECtHR	European Court of Human Rights
EDAL	European Database of Asylum Law
EMN	European Migration Network
EPLF	Eritrean People's Liberation Front
ERISAT	Eritrean Satellite Television
EU	European Union
EUCFR	EU Charter of Fundamental Rights
ExCom	UNHCR's Executive Committee
HRC	The Human Rights Committee
ICCPR	International Covenant on Civil and Political Rights
ICG	International Crisis Group
ICRC	International Committee of the Red Cross
INS	Immigration and Naturalisation Service
IRB	Immigration and Refugee Board of Canada
IRAP	International Refugee Assistance Project
NGO	Non-Governmental Organisation
NMSP	National Military Service Programme
PFDJ	People's Front for Democracy and Justice
RSD	Refugee Status Determination
TCCE	Transitional Civil Code of Eritrea
TPCE	Transitional Penal Code of Eritrea
UDHR	Universal Declaration of Human Rights
UNCRC	Convention on the Rights of the Child
UNHCR	United Nations High Commissioner for Refugees
UNHRC	Human Rights Council
UKUT	UK's Upper Tribunal (Immigration and Asylum Chamber)

EXECUTIVE SUMMARY

This Independent Expert Report (hereinafter “the report”) is concerned with challenges experienced by Eritrean refugees in Europe in the context of family reunification processes, in particular those relating to strict documentary requirements demanded by some EU Member States, in particular Germany. The report shows that these requirements often hinder the effectiveness of the right to family reunification. Further, those requirements pose unnecessary risks, often placing Eritrean refugees, and their relatives in Eritrea, at serious risk. In presenting its main findings and conclusions, this report uses a methodological approach that combines analysis of primary and secondary data. The data gathering method involved desk research and thirty-nine semi-structured interviews conducted between October and December 2020 with a range of carefully selected sources.

Section 1 begins by setting the context and introducing one of the major issues Eritrean refugees continue to face in family reunification processes, which is related to the requirement of in-person appearance before Eritrean diplomatic missions to comply with evidential requirements. A significant body of international and national jurisprudence urges European national authorities to consider “other” evidentiary standards where refugees are unable to provide official documentary evidence. In addition, Article 11(2) of the EU’s Family Reunification Directive provides that “[a] decision rejecting an application may not be based solely on the fact that documentary evidence is lacking,” a provision which according to the Court of Justice of the European Union (CJEU) does not leave a margin of appreciation to the Member States. This was determined by the CJEU in a preliminary ruling of 2019 (*E. v Staatssecretaris van Veiligheid en Justitie*) that arose from the rejection of an application for family reunification lodged by an Eritrean citizen. In this judgment, the CJEU also urged national authorities to pay particular attention to the situation of refugees and this implies that it is “often impossible or dangerous for refugees or their family members to produce official documents, or to get in touch with diplomatic or consular authorities of their country of origin.” (CJEU, *ibid.*, para. 66).

Section 2 outlines the political and human rights situation in Eritrea with emphasis on the country’s National Military Service Programme (NMSP). Whereas it does not purport to be a detailed or exhaustive account of the situation in Eritrea, it helps in providing an improved understanding of the core issues that are discussed in the remaining sections. This section, in particular, outlines the conditions under which the NMSP takes place. It also addresses the problem of widespread and systematic human rights violations that constitute a *prima facie* case of crimes against humanity, as established by various authoritative pronouncements: first by the UN Commission of Inquiry on Human Rights in Eritrea (COIE), and most recently by the Swedish Migration Court of Appeal. In Section 2, the report also shows that there has been no tangible change in the situation of human rights in Eritrea since the signing of the new peace agreement with Ethiopia in July 2018. This has been sufficiently corroborated by credible official sources published over the past two years. In addition, there is a newly erupted armed conflict in the northern part of Ethiopia, in which Eritrean troops are reportedly actively involved and because of which a new wave of Eritrean refugees may continue to flee. The discussion in this section serves as overall background context for the following core sections of the report.

Based on primary data gathered from Eritrean legal practitioners, Section 3 first underlines the lack of institutional infrastructure at the ground level causing deficiencies in the registration of vital events, and overall, in the documentation system. This also makes it impossible for citizens living in rural areas to register or get access to official documents. Section 3 also clarifies the (non-)applicability of the 2015 Civil Code. Although made public in May 2015, it has never been put into effect in the “conventional” way of entry into force of laws in Eritrea and as such, it has not become operational. This finding is supported by first-hand information obtained from a former member of the Law Reform Committee of the Eritrean Ministry of Justice.

Section 3 also analyses the pertinent domestic laws regulating the official documentation system in Eritrea as well as the practice of issuance of official documents, such as national ID cards, passports, and records of vital events, in particular birth, marriage and death certificates. This section also discusses other important documents having probatory value in establishing the identity of individuals in Eritrea, namely, the residence card and the ration coupon. While there is no law in place that recognises these two documents as official identification documents, in practice, at least within Eritrea, these documents can be used in proving the identity of individuals. This section also highlights that the production of records of vital events, in particular birth, marriage, divorce or death certificates, is not a very common practice in Eritrea. Eritrean law recognises religious marriage as one form of valid marriage, and as a result in the local context, religious marriage certificates are considered as valid official documents.

Section 4 discusses the practice of Eritrean diplomatic missions with regard to the provision of diplomatic or consular services, in particular the issuance of official documents. As a matter of standard practice, Eritreans living in foreign countries need to obtain a Power of Attorney from Eritrean diplomatic missions in order to successfully obtain official documents from Eritrea. Once obtained, the Power of Attorney is sent to a relative or friend (agent) of the concerned individual in Eritrea, based on which the agent may be able to obtain the required documentation and send it back to the applicant. Nonetheless, having an agent is not sufficient to get the required documentation. To start with, the provision of any service by Eritrean diplomatic or consular authorities to Eritrean citizens abroad is subject to the fulfilment of two stringent preconditions: the coercive payment of a so-called “2% diaspora income tax” and signature of a self-incriminating statement, widely known as the “regret form.” This tandem procedure is coercive and abusive by its nature. Importantly, a person who is willing to pay the tax cannot do so without signing the regret form, in particular if such person fled the country after the 1998-2000 border conflict with Ethiopia and is within (or approaching) the age limit of the NMSP.

Section 4 further explores the latest practice of Eritrean embassies in particular in Sudan, Ethiopia, Egypt, Uganda and Kenya. This examination is based on the personal account of several Eritrean citizens, as well as on information provided by independent organisations. Reference is also made to the current practice by the Eritrean embassies in Germany and in other European countries. Through a closer examination of the practice of Eritrean embassies in these countries, it is shown that regardless of the “willingness” of some citizens to comply with these two requirements (namely, the diaspora income tax and the regret form), Eritrean embassies also refuse consular services, including the issuance of documents, to those regarded as political opponents to the Eritrean Government (among which the government may also include refugees and asylum seekers or those recognisable as such), as well as to citizens who fled Eritrea after the peace agreement between Ethiopia and Eritrea (including those who cannot prove the date of departure). The wide-ranging discretion of Eritrean diplomatic missions with regard to provision of consular services is an additional factor that hinders access to official documents by Eritrean refugees.

In addition, Section 4 underscores that in Ethiopia full consular services have not yet resumed, and that Eritrean asylum seekers are experiencing difficulties in having their asylum claims registered. Importantly, the section highlights that by making the Eritrean diplomatic or consular authorities aware of the applicant's whereabouts and activities, those requesting official documentation and their relatives are put at serious risk. While the authors are aware that the number of interviews conducted for the findings of this Section may be too low to be entirely representative, this has been due to a lack of organisational and financial resources of the commissioner of the expert opinion. Thus, the authors acknowledge the need for further, more detailed research in this field. Nevertheless, the findings of this report are triangulated by citing several other independent sources, in addition to the expert knowledge of the authors.

Section 5 examines relevant jurisprudence and recent practice in relation to family reunification for Eritrean refugees as a means to identify some best practices in this respect. According to information provided by immigration solicitors in the UK, national authorities in the UK do not demand formal identification (such as ID cards or passports) from Eritrean citizens since decisions on family reunification applications are made on the basis that formal identification does not exist or cannot be obtained from Eritrea. This section also discusses the landmark judgment by the Swedish Migration Court of Appeal of 5 March 2018 in which the Court ruled that it was disproportionate to require Eritrean applicants to obtain Eritrean passports from an Eritrean embassy or consulate abroad given the risks this would pose to them and their relatives in Eritrea. Moreover, the Court also focused its assessment on two other factors: the requirement to pay the 2% diaspora income tax, which according to the Court, would be used for political purposes; and the obligation to sign the regret form, whereby, according to the Court, the concerned individual will accept punishment for not having completed the NMSP. This section further elaborates upon the legal reasoning of the CJEU in *E. v Staatssecretaris van Veiligheid en Justitie*. The CJEU, in particular, referred to the documentation system in Eritrea and the difficulties in obtaining official documents as well as to the personal circumstances of the applicants. In doing so, the CJEU concluded that a concerned national authority must "take into account other evidence of the existence of the family relationship and may not base its decision solely on the lack of documentary evidence." (CJEU, *ibid*, para. 79). The report concludes by summarising the main findings.

1. INTRODUCTION

1.1. *Setting the context*

This report was solicited by Equal Rights Beyond Borders (Equal Rights), together with its partner non-governmental organisation (NGO) the International Refugee Assistance Project (IRAP), and is prepared pursuant to an instruction given to the co-authors by Equal Rights. In particular, the reason for the preparation of this report is the rising number of rejections in recent years of applications for family reunification by Eritrean refugees across the EU, especially by German authorities.¹

A 2017 issue paper by the Council of Europe Commissioner for Human Rights highlights that partly in response to the rapid increase in the number of asylum seekers arriving in Europe since 2015, several European States adopted measures and practises restricting access to family reunification.² Equal Rights warns about the extent to which such restrictive practices affect Eritrean refugees in a number of European countries, and particularly in Germany. In light of the legal and practical barriers that Eritrean refugees face in the course of family reunification applications, the Executive Director of Africa Monitors (a Uganda-based NGO) highlights that:

there is no compressive information on matters pertaining to the issuance of official documents for Eritreans, and this lack of information seems to cause confusion to European authorities in the context of family reunification applications. There is a need for a detailed and comprehensive study on the process and requirements for family reunification and in particular, the difficulties and obstacles that Eritreans face to meet such requirements. Up to now, this has not been comprehensively documented.³

Challenges experienced by Eritrean refugees triggered the need for a tailor-made report that takes into account a holistic approach to the problem at hand, by discussing issues from all potential angles with a view to making such a report readily available for use by national authorities, courts, lawyers and civil society organisations in various European jurisdictions.

In exploring the broader theme of “possibilities for Eritrean nationals to obtain official documentation from Eritrean authorities,” with an emphasis on family reunion applications, the co-authors are instructed to discuss a broad range of issues related to the legal framework, political realities and obstacles involved in the issuance of official Eritrean documents, in particular documentary proof of identity and civil status, or so-called records

1 For Germany, see the statistics for 2018 and 2019 in Deutscher Bundestag (Germany Parliament), “Deliberation on family reunification issues related to Eritrean refugees,” 22 July 2019, <https://dipbt.bundestag.de/dip21/btd/19/118/1911840.pdf> (in German).

2 Council of Europe: Commissioner for Human Rights, “Realising the right to family reunification of refugees in Europe,” June 2017, <https://www.refworld.org/docid/5a0d5eae4.html> (hereinafter “Council of Europe 2017”). For instance, it is being argued the number of subsidiary protection beneficiaries “have increased markedly as the family reunification rights attaching to that status have diminished.” See Council of Europe, *ibid.*, p.14. In particular, the Federal Office for Migration and Refugees (BAMF)’s policy change towards Syrian and Eritrean asylum applications (resulting in higher number of grants of subsidiary protection as compared to previous years) coincided with the legislative change in March 2016 whereby Germany suspended family reunification for beneficiaries of subsidiary protection. See AIDA, “Country Report: Germany,” 2019 Update, https://www.asylumineurope.org/sites/default/files/report-download/aida_de_2018update.pdf, p. 71; Informationsverbund Asyl & Migration, “Rechtsprechungsübersicht: Welcher Schutzstatus ist bei Entziehung vom Nationaldienst in Eritrea zu gewähren?,” 21 June 2019, <https://www.asyl.net/view/detail/News/rechtsprechungsuebersicht-welcher-schutzstatus-ist-bei-entziehung-vom-nationaldienst-in-eritrea-zu-g/> (in German).

3 Telephonic interview with Eyob Ghilazghy, Executive Director of the Uganda-based NGO Africa Monitors (22 October 2020).

of vital events. These are in fact the most common documents Eritrean refugees and migrants continuously try to obtain from or via the involvement of Eritrean embassies.

In the process of applying for family reunification, Eritrean citizens, like citizens from other countries, are compelled to comply with onerous procedural requirements. Whereas numerous barriers have been identified in the course of this research,⁴ one of the major issues Eritrean refugees particularly face is related to strict evidential requirements. In order to prove their identity or family affiliation, Eritrean citizens are often requested to submit, alongside the family reunification application, national ID cards, passports and so-called records of vital events, mainly birth and marriage certificates. As this report will clarify, these documents are not easily accessible for Eritreans who are already outside of the country, while for some, these are not accessible at all. This is coupled with the fact that most Eritrean citizens flee the country without any documents, nor personal belongings. As such, meeting the documentation requirements demanded by some EU Member States (especially German authorities)⁵ often implies the obligation to appear in person at Eritrean diplomatic missions, which in turn poses serious risks for refugees and their relatives.⁶

In relation to evidential requirements for establishing the existence of family links, the European Court of Human Rights (ECtHR) has in particular urged national authorities to consider “other evidence” where the refugee is unable to provide official documentary evidence.⁷ Likewise, according to UNHCR’s Executive Committee (ExCom) Conclusion No. 24, “the absence of documentary proof of the formal validity of a marriage or of the filiation of children should not *per se* be considered as an impediment.”⁸ With regard to family reunification that involves children, the Committee on the Rights of the Child (CRC) has specifically recommended an approach that takes into account “all necessary measures to safeguard the principle of family unity for refugees and their children, including by making administrative requirements for family unification more flexible and

4 Some of the sources consulted for this report have in particular referred to long processing time of applications; short deadlines; financial procedural costs; difficulties in accessing European embassies to lodge an application; problems accessing European embassies as Eritrean citizens often live in remote and/or insecure areas that hinder their movement; difficulties in registering as refugees in certain countries, which however are required to prove the applicant’s “legal” residence for family reunification purposes.

5 This is based on information provided by Equal Rights. This was also the scenario in The Netherlands as articulated by Migration Law Clinic in a 2017 expert opinion on family reunification for Eritrean asylum status holders in the Netherlands. See Migration Law Clinic, “The ‘bewijsnood’ policy of the Dutch immigration service: A correct interpretation of the Family Reunification Directive or an unlawful procedural hurdle?,” May 2017. The practice has since changed following a preliminary ruling in *E. v Staatssecretaris van Veiligheid en Justitie*, C-635/17, CJEU, Judgment of 13 March 2019 (this is explained in the section below and in section 5).

6 A refugee service provider in Egypt raised serious concerns about the requirements demanded by most EU Member States in family reunification applications, in particular the submission of official documents, including identification documents for unaccompanied minors. In doing so, the center highlights that the Eritrean community is the most impacted community in Egypt in that respect. Telephonic interview with Refugee Service Provider in Egypt (21 October 2020).

7 In *Mugenzi v. France*, the ECtHR reiterated that family unity was an essential right for refugees and that family reunification was a fundamental element in enabling persons who had fled persecution to resume a normal life. It emphasised that the applicant’s refugee status meant that their application for family reunification should be dealt with “speedily, attentively and with especial care, considering that the acquisition of an international protection status in proof that the person concerned is in a vulnerable position.” As cited in Council of Europe 2017, p. 22. See also *Mugenzi v. France*, Application No. 52701/09, ECtHR, 10 July 2014, para. 54 (in French) and a summary of the judgment in English by the European Database of Asylum Law (EDAL): EDAL, “ECtHR – Mugenzi v. France, Application No. 52701/09,” <https://www.asylumlawdatabase.eu/en/content/ecthr-%E2%80%93mugenzi-v-france-application-no-5270109>. In the cases of *Mugenzi v. France*, *Tanda-Muzinga v. France* and *Senigo Longue and Others v. France*, the ECtHR also found that the procedure for examining applications for family reunification had to contain a number of elements, including regard to the applicants’ refugee status and the best interests of the children, so that their interests as guaranteed by Article 8 of the European Convention on Human Rights (ECHR) were respected. See ECtHR, “Family reunification procedure: Need for flexibility, promptness and effectiveness,” Press Releases Issue by the Registrar of the Court, ECHR 211/2014, 10 July 2014.

8 ExCom Conclusions on Family Reunion, No. 9 (XXVIII), 1997 and No. 24 (XXXII), 1981.

affordable.”⁹

At EU level, Article 11(2) of the Family Reunification Directive obliges EU Member States to take into account other evidence when the refugee cannot provide official supporting documents.¹⁰ The Directive in particular provides that “[a] decision rejecting an application may not be based solely on the fact that documentary evidence is lacking.” Following a request for a preliminary ruling from a District Court of The Hague (“Rechtbank Den Haag zittingsplaats Haarlem”), the Court of Justice of the European Union (CJEU), on 13 March 2019, clarified the applicability of Article 11(2) of the Family Reunification Directive. The request arose from the rejection of an application for family reunification lodged by an Eritrean citizen and beneficiary of subsidiary protection in the Netherlands. The application was rejected on the grounds of lack of official documentary evidence of the family relationship and the sponsor’s inability to explain the absence of such evidence. The CJEU ruled that according to recital 8 of the Family Reunification Directive authorities must pay special attention to the situation of refugees, which “implies that it is often impossible or dangerous for refugees or their family members to produce official documents, or to get in touch with diplomatic or consular authorities of their country of origin.”¹¹ While acknowledging that EU Member States have a margin of discretion when examining whether there is a family relationship, the CJEU underlined that the margin of discretion afforded to the EU Member States “must not be used in a manner that would undermine the objective of the Directive” or be contrary to the fundamental rights of the EU.¹² The CJEU further emphasised that the European Commission’s Guidelines for the application of Family Reunification Directive make clear that Article 11(2) “is explicit” and does not leave a margin of appreciation.¹³

At national level, there have been also important legal developments with regard to applications for family reunification by Eritrean refugees in the absence of official documentary proof. Notably, the Swedish Migration Court of Appeal (“Migrationsöverdomstolen”) – the highest judicial organ in Sweden for matters of asylum and immigration – in a landmark judgment of 5 March 2018, emphasised the need to consider “alternative” proof of identity for Eritrean refugees in the context of family reunification applications.¹⁴ As will be discussed in Section 5, the Migration Court of Appeal found that it was disproportionate to require Eritrean applicants to obtain Eritrean passports from an Eritrean embassy or consulate abroad given the risks this would pose to them and their relatives in Eritrea. In doing so, the Court underlined that both the ECtHR and EU law require domestic authorities to take into account “other evidence” of the existence of family ties, where refugees are not able to present official documents.¹⁵

In spite of the authoritative pronouncements referred to in the paragraphs above, in Germany, the number of

9 As cited in Council of Europe 2017, p. 19.

10 Twenty-five EU Member States are subject to the Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification (hereinafter “Family Reunification Directive”). It is important to underline that the European Committee of Social Rights (ECSR) requires “the liberal administration” of the right to family reunion (in Article 19(5) of the European Social Charter) so as to meet the specific needs of refugees. ECSR, *Conclusion 2015: Articles 7, 8, 16, 17, 19, 27 and 31 of the Charter*, January 2016, para. 21.

11 *E. v Staatssecretaris van Veiligheid en Justitie*, C-635/17, CJEU, Judgment of 13 March 2019, para. 66.

12 *Ibid*, para. 53.

13 *Ibid*, para. 69. In particular, the CJEU cited paragraph 6.1.2 of the *Communication from the Commission to the European Parliament and the Council on guidance for application of Directive 2003/86/EC on the right to family reunification*, COM(2014) 210 final, 3 April 2014; Most recently, the European Commission has published the following report: *Report from the Commission to the European Parliament and the Council on the implementation of Directive 2003/86/EC on the right to family reunification*, COM(2019) 162 final, 29 March 2019.

14 Migration Court of Appeal (Sweden), UM 2630-17, 5 March 2018. EDAL has published a summary of case in English, which is available from: <https://www.asylumlawdatabase.eu/en/case-law/sweden-migration-court-appeal-5-march-2018-um2630-17#content>.

15 *Ibid*, para. 2.2.

rejected applications for family reunification by Eritrean citizens on the basis of lack of official documentary evidence has risen in recent years.¹⁶ As will be illustrated in Section 5, this is to be contrasted with the practice by other EU Member States, in particular the Netherlands (subsequent to *E. v Staatssecretaris van Veiligheid en Justitie*), and the United Kingdom. This divergence of practice between EU Member States and the persistent barriers to family reunification applications, especially in Germany, triggered the need for a preparation of such a tailor-made report.

1.2. Methodology

This report employs a mix of methodological approaches, involving analysis of primary and secondary data, including analysis of legal sources, policy and practice. The report examines the law and practice of the official documentation system in Eritrea as well as the actual administrative practice of Eritrean embassies. Particular emphasis is given to Eritrean embassies in Sudan, Kenya, Egypt, and Ethiopia, and to some extent Uganda. In the specific context of family reunification procedures, the EU Member States chosen for a more in-depth assessment are Germany, Sweden, the Netherlands and also the former EU member state the UK. The data-gathering methods included desk research and semi-structured interviews, the details of which are discussed in the following paragraphs.

Desk research entailed data gathering from Eritrean legal sources that have direct relevance to the scope of this report. The most important of these laws, which will be featured predominantly in this report, is the 1991 Transitional Civil Code of Eritrea (TCCE).¹⁷ Other laws, such as the Transitional Penal Code of Eritrea (TPCE) and several other proclamations and legal notices will be discussed whenever their provisions are cited in this report. This report does not take into account the provisions of the 1997 Constitution. Although duly ratified in the same year, the Constitution has never entered into force. In 2014, it was officially declared by the President of the country “a dead document.”¹⁸ The 1997 Constitution does not have any practical legal relevance in Eritrea.

In addition, aspects of this report as they pertain to the law and practice of official documentation in Eritrea are based on the first author’s first-hand knowledge about Eritrean law, on account of his previous work experience as Judge of the Central Provincial Court in Asmara (Eritrea) and other places in the country. Eritrean legal professionals, such as former judges, prosecutors and registrars, further corroborate information in this respect. This was done via interviews conducted with those professionals, as part of the total number of thirty-nine interviews conducted for this study. The authors also gathered data from relevant international instruments applicable in Europe; EU law; case law of European and international courts; as well as selected jurisprudence from national courts. The report also relies on academic sources, and reports from international actors – the most important of which are the two major reports (short and long versions) of the UN Commission of Inquiry on Human Rights in Eritrea (COIE).¹⁹ This research takes into account case law and other relevant information

16 Deutscher Bundestag (Germany Parliament), “Deliberation on family reunification issues related to Eritrean refugees,” 22 July 2019, <https://dipbt.bundestag.de/dip21/btd/19/118/1911840.pdf> (in German).

17 The authors are cognizant of certain issues related to the 2015 version of the Eritrean Civil Code, which is not operational law. This issue will be further discussed in Section 3 below.

18 Eritrean Television, “Interview of President Isaias Afwerki”, 30 December 2014, <https://www.youtube.com/watch?v=keehnnP-FoDk>.

19 *First Report of the Commission of Inquiry on Human Rights in Eritrea*, A/HRC/29/42, 4 June 2015 (hereinafter “First COIE Report Short Version”); *First Report of the Detailed Findings of the Commission of Inquiry on Human Rights in Eritrea*, A/HRC/29/CRP.1, 5 June 2015 (hereinafter “First COIE Report Long Version”); *Second Report of the Commission of Inquiry on Human Rights in Eritrea*, A/HRC/32/47, 8 June 2016 (hereinafter “Second COIE Report Short Version”); *Second Report of the Detailed Findings of the Commission of Inquiry on Human Rights in Eritrea*, A/HRC/32/CRP.1, 8 July 2016 (hereinafter “Second COIE Report Long Version”).

that was available to the authors until January 2021.

In addition to desk-based research, the authors conducted semi-structured interviews with thirty-nine individuals in the following geographic distributions: Canada, Egypt, Ethiopia, Germany, Kenya, the Netherlands, Norway, Sudan, Sweden, Switzerland, the UK, the USA, and Uganda. Most of the interviews were conducted over the phone. On a few occasions, interviews were – at the request of the interviewees – conducted over email, with interviewees responding to questions in writing. Interviews conducted over the phone are cited as “telephonic interviews;” and interviews conducted via email are cited as “interviews.” The interviews were conducted between October and December 2020.

Eleven of the interviewees are former Eritrean legal professionals, including judges, prosecutors, registrars or law graduates. Two interviewees are former diplomats who worked in various diplomatic posts of Eritrea. The authors also conducted interviews with NGO representatives, researchers, asylum lawyers, staff members and representatives of independent organisations working for the protection of refugees in the Netherlands, Sweden and Egypt, and a Research Centre in Sudan. In addition, the authors conducted interviews with sixteen Eritrean refugees (beneficiaries of international protection) and long-time residents in some of the countries cited above.

Primary data has been triangulated, whenever possible, by credible secondary sources, such as the two major reports of the COIE (cited elsewhere in this report) and other academic and institutional sources.

The authors identified the interviewees with inputs from the knowledge of their wide networks of contacts. Where appropriate, the interview notes were forwarded to the interviewees for their revision. Although full interview notes are not attached to this report, synthesis of the interviewed sources’ statements and extracts relevant to the scope of this report are included and discussed therein. The interviewed sources are listed at the end of this report.

The interviewees consulted were informed about the purposes of the study and the interview and the fact that their responses would be included in a report to be made publicly available. Research in the context of Eritrea, in particular, on situation of human rights in the country, requires a heightened level of caution in protecting the identity of interviewees and that of their relatives. Therefore, primary sources are cited in accordance with their own request. Some of the interviewees are referred to by their name and/or the name of their organisation; and others are anonymous for their personal safety and fear of reprisals against them and their relatives. In this regard, the methodology is compliant with the standard approach followed by Country of Origin Information (COI) reports on Eritrea, the most recent examples being: a 2020 report by the Danish Immigration Service;²⁰ a 2019 report by the European Asylum Support Office (EASO);²¹ and a 2017 report by the Ministry of Foreign Affairs of The Netherlands (Directorate for Sub-Saharan Africa).²² These COI research publications are further written in alignment with the EASO COI Report Methodology.²³

20 DIS, “Eritrea: National service, exit and entry, COI Report,” 20 January 2020, commissioned by the DIS and the Danish Refugee Council (DRC), https://www.ecoi.net/en/file/local/2024189/Eritrea_rapport_27012020.pdf (hereinafter “the Danish COI Report 2020”).

21 European Asylum Support Office (EASO), “Eritrea: National service, exit, and return, COI Report, September 2019, https://coi.easo.europa.eu/administration/easo/PLib/2019_EASO_COI_Eritrea_National_service_exit_and_return.pdf (based on research conducted by the Swiss State Secretariat for Migration) (hereinafter “EASO COI Report 2019.”)

22 Ministry of Foreign Affairs of The Netherlands, “Country of origin information report on Eritrea,” 6 February 2017, <https://bit.ly/3csOauO> (hereinafter “the Dutch COI Report 2017.”).

23 EASO, “Country of Origin Information (COI) Research Methodology,” June 2019, https://coi.easo.europa.eu/administration/easo/PLib/2019_EASO_COI_Report_Methodology.pdf.

The methodological approach also benefits from identical qualitative research methods used by the authors in their own research and work, which have been cited approvingly by relevant stakeholders and courts of law, in particular the UK's Upper Tribunal (Immigration and Asylum Chamber) (UKUT) – the highest judicial organ in the UK on matters of asylum and immigration.²⁴

Before turning to the following sections, the following clarifications about terminology are important. In this report, the term “refugee” is used in its broad sense, encompassing refugees under the 1951 *Convention Relating to the Status of Refugees*, other international protection beneficiaries, and asylum seekers. Where the context demands differentiation, the report refers to “beneficiaries of subsidiary protection” or “subsidiary protection beneficiaries” to distinguish them from “refugees” as per EU law. Similarly, where the context demands distinction, the report uses the term “asylum seekers” to refer to individuals who have applied for international protection and whose asylum claims are still being processed.

With regard to the NMSP, the authors note that other sources use the term “national service programme.” For purposes of this report, due to the overwhelming aspect of the military component of the programme, the authors believe that the term “national military service programme” (or “NMSP”) is more accurate than the other option.²⁵ Lastly, this report uses the following words or phrases interchangeably to broadly denote the Eritrean political system or the Eritrean polity: “Eritrean Government,” “Eritrea,” “government” and/or “PFDJ.”

24 For instance, the expert opinion of the first author was cited in October 2019 as credible by a judge of the UKUT in an asylum case that has a history of five successive rejections since 2009. The expert opinion was instrumental in overturning all previous decisions on the matter. The first author has also employed identical methods in other recent expert reports, including one solicited by the Minden Administrative Court in Germany in 2020. The second author's paper on the human rights situation in Eritrea that employs a similar methodology was quoted by the UKUT in *MST and Others (national service – risk categories) Eritrea CG* [2016] UKUT 00443 (IAC) – the UK's Country Guidance on Eritrea – (hereinafter “*MST and Others*”), as one of the most recent pieces of evidence indicating that Eritrean deserters forcibly returned run a real risk of suffering ill-treatment. It was also included among the sources used in the review of the UK Home Office Country Information and Guidance on Eritrea on 15 November 2015, prepared for the Chief Inspector of Borders and Immigration and the Independent Advisory Group on Country Information (IAGCI).

25 See in general Daniel Mekonnen, *Transitional Justice: Framing a Model for Eritrea* (VDM Publishing, 2009), pp. 83-90.

2. OVERVIEW

OF THE POLITICAL AND HUMAN RIGHTS SITUATION IN ERITREA

2.1. General political context

Eritrea emerged as a *de facto* independent State in May 1991, when the liberation forces of the then Eritrean People's Liberation Front (EPLF), now People's Front for Democracy and Justice (PFDJ), took control of the entire country by defeating the then occupying forces of Ethiopia. Two years after this, in 1993, the country was officially recognised by the UN as a sovereign State – what is known as *de jure* independence of Eritrea. Since 1991, under the dominant leadership of the PFDJ (the only political party in the country), Eritrea has been ruled under the leadership of President Isaias Afwerki. The country suffers from a generalised climate of impunity for gross human rights violations, in particular since 2001.

Between 1991 and 1997, Eritrea went through a relatively peaceful political transition to a much-anticipated destination of a full-fledged democratic order, which never happened to this date. The journey was halted to a great extent by a new border conflict Eritrea fought with Ethiopia in the period between May 1998 and June 2000. Several issues related to the border conflict with Ethiopia gave way to a dictatorial order of Mr. Afwerki, which manifested itself in full version after a failed political reform effort by senior government officials, aggressively campaigned for by those former officials in 2001 and eventually crushed by Mr. Afwerki in September 2001.

Since September 2001, Eritrea has degenerated to a full-blown dictatorial order of the incumbent President of the State, who has never been elected in a free and fair election since the country's emergence as a *de facto* independent State in May 1991.²⁶ In the process, the country became one of the most repressive political systems in the world, oftentimes mentioned with other repressive regimes, such as North Korea. By way of sustaining its iron grip to power, the government of Mr. Afwerki introduced the NMSP in the form that is described in the following sections. While there are numerous human rights violations that force Eritreans to flee the country, the NMSP and the conditions under which it takes place, or fear thereof, are among the top push factors for flight. In 2014, UNHCR estimated that over 5,000 Eritreans were fleeing the country each month.²⁷

Over the past twenty years, for reasons directly related to the NMSP and the overall crisis of human rights, the country has degenerated into a form of political unit – the very existence of which is predicated on serving the primary interest of regime preservation. From those in power, the most important interest is the insatiable desire for “personal rule” of the State President, as sufficiently articulated by Eritrean social scientist Petros B. Ogbazghi.²⁸ Each of the major problems in Eritrea, causing high levels of human suffering, need to be articulated in the next sub-sections separately.

2.2. Higher levels of militarisation

Although Eritrea also has other forms of human rights abuses committed outside the realm of its controversial scheme of NMSP, the programme in question remains the most important source of major human rights violations in the country, the reason by which hundreds of thousands of Eritreans have sought asylum in various countries over the past years. Due to the pervasive nature of the NMSP, Eritrea has now one of the highest

26 The US Department of State has described Eritrea as “a highly centralized, authoritarian regime under the control of President Isaias Afwerki.” US Department of State, “Country Report on Human Rights Practices 2018 – Eritrea,” 13 March 2019, <https://www.ecoi.net/en/document/2004152.html>.

27 See also UNHCR, “Sharp increase in number of Eritrean refugees and asylum-seekers in Europe, Ethiopia and Sudan,” 14 November 2014.

28 Petros B. Ogbazghi, “Personal rule in Africa: The case of Eritrea,” *African Studies Quarterly*, 2011(12)2, pp. 1-25.

levels of militarisation in the world. The NMSP, the most important feature of which is the military service, started in the form of a limited obligation of 18 months in the early 1990s.²⁹

After the end of the 1998-2000 border conflict with Ethiopia, in 2002 the Eritrean Government launched the Warsay Yikealo Development Campaign (WYDC). Unlike the NMSP, the WYDC was not proclaimed by law. For the NMSP, the relevant laws, including repealed ones, are: Proclamation No. 11/1991, Proclamation No. 71/1995, and Proclamation No. 82/1995, Proclamation No. 89/1996 and Legal Notice No. 27/1996. Notably, Proclamation No. 82/1995, issued on 23 October 1995, introduced a broader age range of military conscription than was previously conceived by Proclamation No. 11/1991. Accordingly, Article 23(2) of Proclamation No. 82/1995 included citizens aged between 40 and 50 years in the so-called national reserve army.³⁰ In practice, men up to the age of 54 and women up to the age of 47 are deemed to be subject to active military conscription, as established by the UK *Country Guidance Case* in the context of the right to “lawful exit from Eritrea.”³¹

Having no legal instrument of its own, the sole purpose of the WYDC was making the NMSP indefinite. In recent years, the government has actually (almost) abandoned use of the WYDC, and in this sense its widespread practice of militarisation is better explained using the other broader term of NMSP. This should not imply a change in the government’s continued practice of comprehensive military conscription along the usual parameters of NMSP. The enduring effect of the WYDC means that since 2002 discharge or demobilisation from the NMSP became impossible. Moreover, abandonment of the WYDC should not be seen as equivalent to abandonment of the NMSP. They are not the same programmes. The former was introduced mainly with the objective of disguising the plan of making the NMSP indefinite. It was abandoned when that objective was successfully internalised in the Eritrean society. In essence, even in the context of Covid-19 – a situation that poses serious health risks for military conscripts at the Sawa Military Training Centre – the government continues actively recruiting new rounds of the NMSP.³²

Eritrean law does not allow for conscientious objection nor alternative service.³³ Moreover, deserting or evading the NMSP, and exiting the country, have been rendered criminal offences.³⁴ These offences are not only punished disproportionately, but they are also treated extrajudicially.³⁵ In addition to being unlimited, the NMSP is also unpaid. Conscripts receive so-called “pocket money” (not a salary)³⁶ often less than Euro 10 per month,

29 See First COIE Report Long Version, para. 109, 1178; *Report of the Special Rapporteur on the situation of human rights in Eritrea*, A/HRC/26/45, 13 May 2014, para. 30; Gaim Kibreab, “Forced labour in Eritrea,” *Journal of Modern African Studies* (2009) 47(1), pp. 41-72.

30 English translation of all Eritrean laws cited in this report is unofficial unless the law under discussion was promulgated in English as well (such as the old retentions of the TCCE, as inherited from the Ethiopian Civil Code of 1960).

31 *MST and Others*, para. 4.

32 See also the discussion in section 2.6 below. According to the former UN Special Rapporteur, in September 2020 “the authorities sent busloads of high school students to Sawa military camp despite the Covid-19 restrictions in place in the country.” See *Statement of Ms. Daniela Kravetz, United Nations Special Rapporteur on the situation of human in Eritrea at the 75th Summit of the General Assembly Social, Humanitarian and Cultural Issues (Third Committee), Interactive dialogue on Eritrea*, 26 October 2020, <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26439&LangID=E>

33 See, for instance, Amnesty International, “Eritrea: 20 years of Independence but still no freedom,” 2013.

34 See, for instance, UNHCR, “Eligibility guidelines for assessing the international protection needs of asylum seekers from Eritrea,” HCR/EG/ERT/11/0, 20 April 2011, pp. 11-12; *MST and Others*, para. 345.

35 This has been extensively reported by the various COIE reports. Additionally, some of the sources in the Danish COI Report of 2020, including a diplomatic source, corroborated that the commonly named “shoot-to-kill policy” at the border continues to be implemented. See Danish COI Report 2020, p. 35, paras. 68-71. In her report of May 2020, the former UN Special Rapporteur also stated that “[s]cores of individuals continue to disappear in the Eritrean prison system.” See *Report of the Special Rapporteur on the situation of human rights in Eritrea*, A/HRC/44/23, 11 May 2020, para. 82.

36 Article 22(1) of the Proclamation No. 89/1996 states that “[t]he citizen who upon termination of military training enters into a 12-months

which thus hinders their ability to ensure “an existence worthy of human dignity” for themselves and their families.³⁷ There is no stipulated time limit on their working hours. Moreover, conscripts are deprived of adequate food, access to water, access to hygiene facilities and adequate accommodation.³⁸ They further live under threat of violence, inhuman conditions, and are often subjected to unnecessary and extremely tough trainings and work conditions disproportionate to their physical and psychological capabilities (which in some instances have resulted in death of conscripts).³⁹ Arbitrary detention, torture, extrajudicial killings, disproportionate punishment for absenteeism, sexual and gender-based violence, restricted freedom of movement and prohibition of religious observance characterise the NMSP.⁴⁰

Whilst part of the population is assigned in civilian job responsibilities, individuals in such assignments are similarly considered soldiers and make up part of the NMSP. According to Proclamation No. 82/1995, they can be mobilized anytime to serve in the army or in active military service. All conscripts, including those assigned to civilian jobs, are denied their right to pursue their own professions and the opportunity to work in their field of choice. They are further deprived of livelihood and economic opportunities. Additionally, they are often forced to live in a new place of residence, isolated from their previous social relationships as well as identity. This, in turn, also affects children, who are unable to visit their fathers and extended family members, or to stay in contact with them. In the absence of adults, most children are compelled to work in the family’s farm (or other businesses) to contribute to the family’s subsistence.⁴¹

Furthermore, the government significantly deprives its citizens of their individual liberty forcefully and often violently. Although not officially acknowledged by the government, the NMSP is effectively used to regiment able-bodied members of society under strict military discipline, creating for the government an enabling environment to persistently squash any potential challenge of resistance or disobedience. The pervasive, abusive and indefinite nature of the NMSP has now given rise to the emergence of a society functioning in very “abnormal” ways, prompting two experts (German Nicole Hirt and Eritrean Abdulkadir Saleh Mohammed) to employ a specific sociological term, known as “social anomie,” describing the situation.⁴² This problem represents a complete societal breakdown of moral values, standards or guidance for individual members of society based on which individuals try to achieve certain life aspirations.

In scientific terms, pervasive levels of militarisation are conventionally measured in terms of the total number

of active national service is entitled to pocket money.”

37 Article 23 of the Universal Declaration of Human Rights (UDHR) states that: “Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.”

38 Sara Palacios-Arapiles, “Asylum Decision-Making in the Context of the Eritrean Military/National Service,” Forthcoming Thesis. During the course of her doctoral research so far, Palacios-Arapiles has carried out fieldwork in various locations in Europe from October 2019 to March 2020 where she interviewed a total of 50 Eritrean refugees and asylum-seekers. The research project’s information is available at the website of the UK Research and Innovation: <https://gtr.ukri.org/projects?ref=studentship-1927756> (hereinafter, “Palacios-Arapiles’ forthcoming thesis”); See also Sara Palacios-Arapiles, “The true human rights situation in Eritrea: the new UK Home Office Guidance as a political instrument for the prevention of migration,” *Refugee Law Initiative Working Papers Series* (2015) No.14, p. 11; Palacios-Arapiles, Sara, “The Eritrean Military/National Service Programme: Slavery and the Notion of Persecution in Refugee Status Determination,” *Laws* (2021) 10(2), 28, available at: <https://www.mdpi.com/2075-471X/10/2/28>.

39 *Ibid*, p. 14; Palacios-Arapiles’ forthcoming thesis.

40 First COIE Report Short Version, paras. 25, 29, 41, 55-65.

41 Palacios-Arapiles’ forthcoming thesis.

42 Nicole Hirt and Abdulkadir Saleh Mohammed, “Dreams don’t come true in Eritrea’: Anomie and family disintegration due to the structural militarisation of society,” *Journal of Modern African Studies*, (2013) 51(1), pp. 139-168. See also in general Kibreab, “Forced Labour in Eritrea;” David O’Kane and Tricia Hepner (eds.), *Biopolitics, Militarism, and Development: Eritrea in the Twenty-First Century* (Berghan Books, 2009).

of people in a given country, who are subject to a militarised way of life in comparison to the total population of that country. According to a leading research and policy institution on human security, the International Crisis Group (ICG), the maximum limit of military mobilization is normally considered to be 10% of the total population of any normally functioning society.⁴³ A society may cease to function in a normal way, if the number goes beyond this level. In other words, this gives rise to the phenomenon of “social anomie,” as established by Hirt and Saleh. At one point (in 2010), Eritrea’s level of militarisation was said to be 23% of the total population. In actual sense, this means that 103% greater than the rate that is conventionally considered to be a healthy level of militarisation.⁴⁴ To our knowledge, the government’s practice of militarisation has continued unabated with no significant change on the high level of percentage noted by previous studies.

In 2014, the COIE was established by the Human Rights Council (UNHRC) in Geneva to investigate alleged violations of gross international human rights law in Eritrea,⁴⁵ which cover many of the violations committed in the context of the NMSP. The establishment of the COIE was a follow-up to previous reports done by the UN Special Rapporteur on the situation of human rights in Eritrea (hereinafter “the UN Special Rapporteur”) since 2012. The findings made by the COIE and by the UN Special Rapporteur are remarkably consistent. The reports of the COIE in particular were supplemented by satellite imagery of Eritrean military camps and detention centres in which various human rights violations take place, as also explained to the COIE by numerous Eritrean refugees and asylum seekers.⁴⁶ By way of understanding the pervasiveness of the human rights violations taking place in Eritrea, the authors consider it helpful to outline in the following sub-section of the COIE’s own assessment, and in particular its conclusions on a *prima facie* situation of crimes against humanity in the country.

2.3. *A prima facie case of crimes against humanity*

Based on a 2-year intensive investigation of the troubling situation of gross human rights violations in Eritrea, the COIE observed that in Eritrea, “even conjectured thoughts are used to rule through fear in a country where individuals are routinely arbitrarily arrested and detained, tortured, disappeared or extra judicially executed,”⁴⁷ thus concluding with the following bold assertion: “It is not law that rules Eritreans, but fear.”⁴⁸ Eritrea is also described by the COIE as a country known for its “wholesale disregard for the right to liberty and security of its citizens.”⁴⁹ To our knowledge, Eritrea is the only country in the world without a working constitution (written or unwritten) and a functioning parliament, regardless of the democratic or non-democratic nature of such constitution or parliament.

There is one particularly relevant aspect of the COIE reports that the authors would like to underscore. According to these reports, there is a *prima facie* case of crimes against humanity in Eritrea, which is described by the COIE in the following terms. Following tentative findings it made in its first report of 2015, in its second and most important report of 2016, the COIE made a more definitive conclusion on the issue of crimes against humanity. It did this by saying that there are reasonable grounds to believe that crimes against humanity have

43 International Crisis Group (ICG), “Eritrea: The siege state, (Africa Report No. 163, 21 September 2010), p. 13. See also Daniel Mekonnen, “Engineering a failed state,” in *Social Watch Annual Report*, 2012, pp. 108-109.

44 Mekonnen 2012.

45 *Resolution adopted by the Human Rights Council: Situation of human rights in Eritrea*, A/HRC/RES/26/24, 14 July 2014.

46 First COIE Report Long Version, Annex VI, pp. 468-476.

47 First COIE Report Short Version, Summary, p. 1 and para. 38.

48 *Ibid*, para. 38.

49 Second COIE Report Short Version, para. 60.

been committed in Eritrea since 1991 in the form of the following core violations: *enslavement, imprisonment, enforced disappearance, torture, other inhumane acts, persecution, rape and murder*.⁵⁰ In its 2015, the COIE noted:

... the high frequency of occurrence of the human rights violations documented and corroborated during the investigation, the number of victims and the replication of the violation during a certain period of time; the type of rights violated; and the *systemic* nature of these violations, meaning that they cannot be the result of random or isolated acts of the authorities.⁵¹

As concluded by the COIE, and as also established by the relevant corpus of international human rights law related to crimes against humanity,⁵² when committed in a persistent, widespread and systematic manner, which is the case in Eritrea, the catalogue of violations listed above take the form of crimes against humanity – these being among the most severe crimes under international human rights law. That these crimes amount to crimes against humanity has been recently corroborated by the Swedish Migration Court of Appeal in a judgment of 14 June 2019.⁵³

The above judgment transpired in the context of an application for international protection by an Eritrean asylum seeker who was excluded from protection as a refugee as the Court considered that there was a special reason to assume that she had been involved in the commission of “crimes against humanity” while in Eritrea.⁵⁴ Although the authors may contest that the asylum seeker was actually involved in the commission of the crime as only conduct that would comply with the structure of *actus reus* and *mens rea* can lead to exclusion,⁵⁵ its confirmation that the human rights violations in Eritrea constitute crimes against humanity is the first authoritative pronouncement by a court of law in this regard.

In very similar fashion, in 2014 a court of first instance from Canada also rendered a landmark judgment in which it stated that due to the prevailing situation in Eritrea victims of human rights violations cannot receive fair trial in the country for cases related to allegations of gross human rights violations (such as forced labour, slavery and torture) in which involvement of the Eritrean Government is presumed. This judgment, first delivered by the Supreme Court of British Columbia,⁵⁶ was later confirmed by two appellate courts in two separate occasions, namely: the Court of Appeal for British Columbia⁵⁷ and the Supreme Court of Canada.⁵⁸ This entire process was described by Canadian lawyers representing the victims as an instance representing Canada’s

50 Second COIE Report Short Version, Summary, p. 1, paras. 59-95.

51 First COIE Report Short Version, para. 23 [emphasis added].

52 For further on this, see in general Daniel Mekonnen, “The case for crimes against humanity in Eritrea: Assessing the reports of two UN fact finding missions,” *Journal of International Humanitarian Legal Studies* (2016), 7, pp. 221-256.

53 Migration Court of Appeal (Sweden), UM17559-18, 14 June 2019.

54 *Ibid.*

55 The Swedish Migration Agency excluded the asylum seeker on the same basis, yet the Administrative Court in Malmö declared that the asylum seeker was a refugee on appeal. While for the Court in Malmö it was clear that the asylum seeker had participated in a criminal act in a prison in Eritrea, the Court emphasised that she had become a prison guard because of the NMSP and her opportunity to terminate her employment may be considered as non-existent. According to the Court, the fact that she did not request relocation or in any other way try to change her situation cannot be of decisive importance as she was being subjected to forced labour combined with serious penalties if she failed to do her job. However, the Swedish Migration Agency appealed against the judgment by the Administrative Court in Malmö, which was later overturned by the Swedish Migration Court of Appeal. The present authors are writing a separate note on this.

56 *Araya v. Nevsun Resources Ltd.* 2016 BCSC 1856.

57 *Araya v. Nevsun Resources Ltd.*, 2017 BCCA 401. See in particular paras. 47 and 48 of the ruling, and the summary of the ruling in which the court said “appeal dismissed,” referring to the Canadian company’s request to quash the ruling of the court of first instance.

58 *Nevsun Resources Ltd. v. Araya* 2020 SCC 5.

first-ever mass tort claim for slavery in a contemporary setting proceeding to trial.⁵⁹ The Supreme Court of Canada, however, will not pronounce on the merits of the case as the parties reached a settlement in October 2020.⁶⁰

2.4. *Dire socio-economic situation*

Eritrea has one of the poorest socio-economic situations in the world. For instance, in UNDP's *Human Development Index* (HDI) ranking, it is oftentimes ranked among the lowest global performers. In the 2019 version of the HDI, Eritrea was ranked 182 out of 189 countries assessed by the report.⁶¹ In socio-economic terms, at present time Eritrea is suffering from a dual humanitarian crisis necessitated by Covid-19 and the invasion of the desert locust. The latter is a persistent problem experienced by all countries in the Horn of Africa. In the case of Eritrea, it is particularly problematic due to the prevailing lack of transparency and the deep-seated political crisis of the country. Regarding Covid-19 restrictions, Eritreans are also experiencing daunting challenges. At the time of writing, Covid-19 restrictions imposed since March 2020 remain in place with far-reaching implications on food security and other vital elements of survival in the country.

One of the most enduring effects of on-going Covid-19 restrictions includes the total lockdown of public transport at the national level since March 2020, making people's lives extremely difficult. For instance, an Eritrean woman with citizenship in a European country, who recently returned to Europe from Eritrea, had to go from the city centre in Asmara (the capital city) to the airport on foot due to lack of public transport. The woman had to pay local labourers to have her luggage transported manually to the airport while she managed her own movement to the airport.

Due to the lack of other economic opportunities in the country, small pieces of land owned by families usually serve as the exclusive source of families' livelihood in Eritrea. However, the Eritrean Government often seizes properties, including families' lands and houses, and utilises forced evictions.⁶² This is done as a form of reprisal or punishment or due to personal interests of the rulers.⁶³ In such instances, owners are not compensated either with another piece of land or house, nor economically. Besides the seizure of properties, the Eritrean Government disposes at its convenience of the fruits produced by private lands and farms and forcefully uses

59 CFM LLP, "Supreme Court of Canada hands down landmark human rights ruling against Canadian mining company," 28 February 2020, https://www.newswire.ca/news-releases/supreme-court-of-canada-hands-down-landmark-human-rights-ruling-against-canadian-mining-company-897130856.html?fbclid=IwAR1jXoYoYhM2b_TjrxWwWehMDIZQPGJO-F3kyos3RxBbWQ_XiKFBU3zWtfQ.

60 In a Twitter update of 15 October 2020, <https://twitter.com/realjamesyap/status/1316788734726221826>, one of the lawyers of the plaintiffs (James Yap) announced as follows: "The parties to several lawsuits related to Nevsun Resources Ltd.'s involvement in the Bisha Mine in Eritrea have settled the lawsuits. Terms are confidential. The settlement brings a mutually satisfactory conclusion to over 5 years of litigation related to the Bisha Mine." In the early stage of the case in 2015, before the delivery of the first and landmark judgment by the Supreme Court of British Columbia, under instructions from the lawyers of the plaintiffs, the first author of this report wrote a legal opinion that was instrumental for the lawyers' legal strategy that has finally led to the pronouncement of the first judgment by the court of first instance on 6 October 2016.

61 UNDP, *HDI*, 2019, <http://hdr.undp.org/en/content/2019-human-development-index-ranking>.

62 The former UN Special Rapporteur reported that, in November 2019, a naval commander "reportedly destroyed several fishing boats and arrested five local Afar fishermen, who have since been missing. Around mid-March 2020, naval troops reportedly arrested at least five Afar fishermen who were selling their fish in the port of Massawa, seizing three of their boats." *Report of the Special Rapporteur on the situation of human rights in Eritrea*, A/HRC/44/23, 11 May 2020, para. 54. Palacios-Arapiles' forthcoming thesis.

63 *Ibid.*; Sara Palacios-Arapiles, "The true human rights situation in Eritrea: the new UK Home Office Guidance as a political instrument for the prevention of migration," *Refugee Law Initiative Working Papers Series* (2015) No.14, p. 17; First COIE Report Long Version, para. 1144; *Statement by the United Nations Special Rapporteur on the situation of human rights in Eritrea after her interactive dialogue at the 29th Session of the Human Rights Council*, 24 June 2015, <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16142&LangID=E>.

the free labour of their owners. These practices constitute serious restrictions on individuals' right to earn their livelihood, which threaten families' freedom and their lives.⁶⁴

Eritrea is oftentimes ranked among the worst global performers in the annual report of World Bank's *Doing Business Index*. In 2020, Eritrea was ranked 189 out of 190 countries.⁶⁵ This problem, which is part of the government's corrupt way of running the economy, has earned the country one of the worst global rankings by Transparency International's *Corruption Perceptions Index*. In 2019, Eritrea was ranked 166 out of 180 countries, with a score of 23, where 100 is very clean and 0 is highly corrupt.⁶⁶

Eritrea's socio-economic deprivation is a direct consequence of the government's deliberate policy of keeping the entire Eritrean society under a perpetual yoke of economic hardship, so that society remains preoccupied with visceral survival issues, thus having no stamina to pay attention to major issues of accountability for gross human rights violations.⁶⁷ The NMSP, which keeps all able-bodied members of the society under a prolonged scheme of unpaid military and non-military service, is the most effective enabler of the government's deliberate policy of economic deprivation. It is supplemented by the practice of food rationing (artificial restriction of demand), as implemented by the ration coupon, one of the major types of official documentation in Eritrea discussed in section 3.4.3 below. The combined effect of such government practices is one of the major causes driving Eritreans from their home country in huge numbers.

2.5. Eritrea as a "concentric circle of prisons"⁶⁸

All in all, Eritrea needs to be understood as a country the sustenance of which is premised on serving the narrow political end of the ruling class, which is nothing but that of a quintessential ideological obsession with regime preservation. Everything that is designed and implemented at policy and practice level has to be orientated in this context. This is true even in the most rudimentary aspects of social life in Eritrea. This was made possible by putting into place a vast and elaborate prison system (formal and informal) so much so that at times it is even difficult to distinguish the difference between the state of being free and not free in an Eritrean context. Reflecting on the country's deep-seated crisis of human rights, a member of the EU Parliament once commented as follows: "The State of Eritrea is organised like a military detention centre under the absolute rule of Isaias Afwerki, a liberation hero turned a ... despot."⁶⁹

Indeed, the country is run like a giant prison system. Using the sociological juxtaposition of Yosief Gebrehiwet, it may be easier to think of Eritrea as a "concentric circle of prisons" rather than as a normally functioning State.

64 Palacios-Arapiles' forthcoming thesis. While not in the context of an Eritrean asylum claim, in *Fei Mei Cheng v. Attorney General of U.S.*, the US Court of Appeals for the Third Circuit found that seizure of property that served as the exclusive source of a family's livelihood "constitutes a severe economic sanction that could threaten the family's freedom if not their lives," and hence qualified as persecutory harm under the 1951 Refugee Convention. *Fei Mei Cheng v. Attorney General of U.S.*, 623 F.3d 175 (3d Cir. 2010) p. 195.

65 World Bank, *Ease of Doing Business Rankings*, 2020, <https://www.doingbusiness.org/en/rankings>.

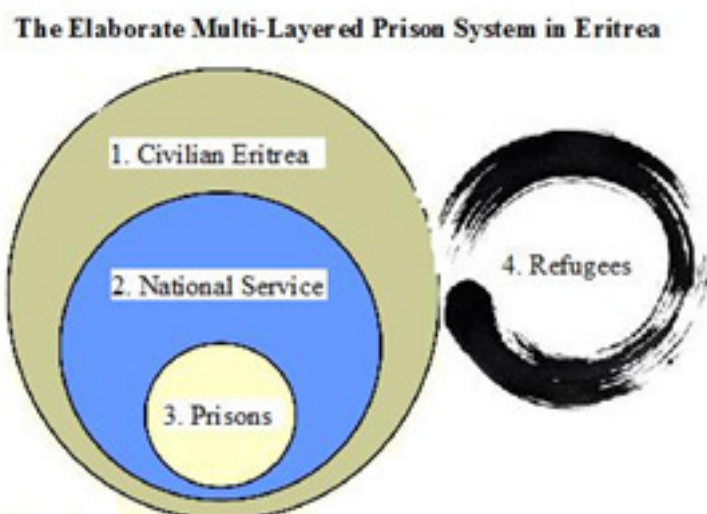
66 See Transparency International, *Corruption Perceptions Index*, 2019, https://images.transparencycdn.org/images/2019_CPI_Report_EN_200331_141425.pdf.

67 See, for example, Michelle Foster, *International Refugee Law and Socio-Economic Rights: Refuge from Deprivation* (Cambridge University Press, 2007), pp. 87-155; Paul R. Gregory, *The Political Economy of Stalinism: Evidence from the Soviet Secret Archives* (Cambridge University Press, 2004).

68 This section relies heavily on Daniel Mekonnen, "Expert report written to the 10th Chamber of the Minder Administrative Court in Germany," August 2020.

69 Question asked at the European Parliament by Marc Tarabella, EU MEP from Belgium, 29 August 2014, <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+WQ+E-2014-006413+0+DOC+XML+V0//EN&language=en>.

In this way, it presents itself as an “Elaborate Multi-Layered Prison System,” wherein one is confronted by “a prison in a prison within a prison,” as shown in the following illustrative diagram developed by Gebrehiwet:⁷⁰



In light of the pervasive and all-rounded level of political repression in Eritrea, even the largest yellowish part of the circle, the so-called “Civilian Eritrea,” cannot be suitably described as a range free from the perils of whimsical government authority. The range under discussion can be rightly likened with a living room excessively suffocated by unhealthy breathing air in which one survives only by drawing perennially closer to the window. In this metaphoric imagination, an imagined window for the entire “civilian population” of Eritrea would be the common border with Ethiopia and/or Sudan through which many people flee the country the moment they realise an imminent and real danger to their life or personal liberty.

2.6. *The situation after July 2018*

It needs to be underscored that over the past twenty years, the Eritrean Government’s perennial excuse for maintaining higher levels of militarisation was its unresolved stalemate with neighbouring Ethiopia, related to the complex residual matter emanating from the 1998-2000 border conflict.⁷¹ The stalemate was officially resolved in July 2018 with the advent of a new prime minister in Ethiopia (Abiy Ahmed) earning the 2019 Nobel Peace Prize. In September 2018, the border between Eritrea and Ethiopia reopened, but only until December 2018.⁷² Nonetheless, relations with Ethiopia are stalled again due to a major loophole of the new peace process that did not take into account another deteriorating political crisis in the northern part of Ethiopia (the Regional State of Tigray), with which Eritrea shares its longest border of more than 1000 kilometres. As of early November 2020, the Federal Government of Ethiopia and the Regional State of Tigray have been engaged in

⁷⁰ Yosief Ghebrehiwet, “Discontent at the top: How indispensable is the prison system to the Eritrean defence forces?,” Part II, 24 March 2013, <https://www.asmarino.com/articles/1694-ii-discontent-at-the-top-how-indispensable-is-the-prison-system-to-the-eritrean-defense-forces5>.

⁷¹ However, the NMSP in its current form cannot be justified even in a time of public emergency, which threatens the life of the nation. First, derogation from the right not to be arbitrarily deprived of life; the right not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment; and the right not to be held in slavery or servitude, among others, is not permitted under any circumstances, including public emergency situations. Second, any measures derogating from Eritrea’s obligations under the ICCPR and other international human rights instruments, must be officially proclaimed.

⁷² Statement by Ms. Sheila B. Keetharuth, Special Rapporteur on the situation of human rights in Eritrea at the 73rd session of the General Assembly, 24 October 2018, <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=23774&LangID=E>.

a large-scale armed conflict in which involvement of Eritrean troops has been widely reported, including by international media outlets that have cited sources closer to the US-American and British governments.⁷³ Because of this new development, the Eritrean Government has already started new and intensified *giffas* (namely, rounding-up of people for military conscription), as confirmed by the BBC.⁷⁴

The most recent fact-finding mission to Eritrea was conducted from 26 September to 3 October 2019 by the Danish Immigration Service (DIS) together with the Danish Refugee Council (DRC). This was conducted in the context of providing an update of the situation in Eritrea after the signing of a peace agreement between Ethiopia and Eritrea. Significantly, the mission findings, which were further supported by several other sources outside of Eritrea, reveal that since the peace agreement with Ethiopia there have been no changes in the duration of the NMSP or with regard to exemption from NMSP.⁷⁵ The Danish COI report of 2020, resulting from the fact-finding mission, further highlights that evasion or desertion from national service remains punishable, there have been no indications of change and that Eritrean nationals still need to obtain an exit visa to leave the country legally.⁷⁶ Similar observations were also made in the EASO COI report of September 2019, the fieldwork research of which (including in Eritrea) was conducted by the Swiss State Secretariat for Migration.⁷⁷ Recent asylum figures also underpin the lack of tangible changes in the country. On 24 October 2018, the UN Special Rapporteur reported that with the border between Eritrea and Ethiopia reopening in September 2018, during the period 12 September to 12 October 2018, a total of 9,905 refugees were registered at the Endabaguna Reception Centre in northern Ethiopia, while 2,838 were awaiting registration.⁷⁸

According to UNHCR's *Global Trends* of 2018, published on 19 June 2019, Eritrea remained the ninth largest country of origin with 507,300 refugees at the end of 2018 – an increase from end-2017 when this population stood at 486,200.⁷⁹ UNHCR also reported that, in 2018, the number of Eritrean asylum seekers awaiting decisions was 78,600, which placed Eritrea among the countries of origin with a significant number of pending asylum applications.⁸⁰ According to Eurostat, during the last two quarters of 2019 there was a slight increase in the number of asylum applications from Eritrean nationals, compared with the last quarter of 2018 and the first quarter of 2019. The number of first-time asylum seekers from Eritrea in the EU-27 increased by 15% (345) in the fourth quarter of 2019 compared with the same quarter of 2018.⁸¹ In the EU-27, the highest numbers

73 Simon Marks "U.S. Urges withdrawal of Eritrean troops from Ethiopia," Bloomberg News, 11 December 2020, <https://www.bloomberg.com/news/articles/2020-12-11/u-s-urges-withdrawal-of-eritrean-troops-from-ethiopia>; Phil Stewart, "Exclusive: U.S. says reports of Eritrean troops in Ethiopia's Tigray are 'credible,'" Reuters, 11 December 2020, <https://www.reuters.com/article/ethiopia-conflict-eritrea-usa-exclusive/exclusive-u-s-says-reports-of-eritrean-troops-in-ethiopia-tigray-are-credible-idUSKBN28L05Q>; Lord Alton of Liverpool (Member of the British Parliament), "In a recent meeting with senior members of the Foreign, Commonwealth and Development Office Parliamentarians were briefed on recent developments in Tigray," 16 December 2020, <https://www.davidalton.net/2020/12/16/in-a-recent-meeting-with-senior-members-of-the-foreign-commonwealth-and-development-office-parliamentarians-were-briefed-on-recent-developments-in-tigray/>.

74 BBC Tigrinya, "ኣብ ዝተፈለለዎ ዘባታት ኤርትራ ጽዑቕ ግፉይ ይካየድ ከምዘሎ ተሓቢሩ" (Intense round-ups taking place in different parts of Eritrea), 5 November 2020, <https://www.bbc.com/tigrinya/news-54820933>.

75 Danish COI Report 2020.

76 *Ibid.*

77 EASO COI Report 2019.

78 Statement by Ms. Sheila B. Keetharuth, Special Rapporteur on the situation of human rights in Eritrea at the 73rd session of the General Assembly, 24 October 2018, <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=23774&LangID=E>.

79 UNHCR, "Global trends: Forced displacement in 2018," 20 June 2019, <https://www.unhcr.org/5d08d7ee7.pdf>, p. 17.

80 *Ibid.*

81 Eurostat, "File: Table 1 - First time asylum applicants in the EU-27 by citizenship, Q4 2018 – Q4 2019," last modified on 17 March 2020, https://ec.europa.eu/eurostat/statistics-explained/index.php?title=File:Table1_-_First_time_asylum_applicants_in_the_EU-27_by_citizenship_Q4_2018_%E2%80%93_Q4_2019.png.

of Eritrean first-time asylum seekers in the fourth quarter of 2019 were registered in Germany, followed by France, Belgium, Sweden and Denmark.⁸²

Some European countries also express concerns about the human rights situation in Eritrea. For instance, during the Interactive Dialogue with the UN Special Rapporteur at the 43rd Session of the HRC on 26 February 2020, the representative of the UK highlighted that the UK continues to press for specific reforms including for “the National Service; freedom of religion or belief for worshippers of unregistered religions; and the release of arbitrarily detained individuals, including journalists.”⁸³ Likewise, the representative of Germany has stated that human rights in Eritrea are “severely restricted,” and that “democracy and the rule of law are not guaranteed, the political system is repressive.”⁸⁴ In light of this, Austria, Belgium, France, Germany, the Netherlands and Australia proposed the renewal of the mandate of UN Special Rapporteur. The proposal was adopted on 12 July 2020, leading to the renewal of the mandate of the UN Special Rapporteur to continue to assess and report on the situation of human rights in Eritrea.⁸⁵

Overall, the situation of human rights in Eritrea has not changed. In fact, in certain areas it is worsening. The most recent and important example in this regard is a mass arrest of civilians that took place on 30 August 2020 in a village known as ባሕን (Quazien or Kwazien), in the central highlands of Eritrea, involving the detention of more than 700 male civilians (virtually all male villagers above the age of 15 up to the age of 80).⁸⁶

82 Eurostat, “File: Table4 - Thirty main citizenships of first-time asylum applicants by destination country in the EU 27, 4th quarter 2019,” last modified on 17 March 2020, <https://bit.ly/2Pepdu8>.

83 Foreign & Commonwealth Office, “UK statement for the Interactive Dialogue with the UN Special Rapporteur on Eritrea,” 26 February 2020, <https://www.gov.uk/government/speeches/un-human-rights-council-43-uk-statement-for-the-interactive-dialogue-with-the-un-special-rapporteur-on-eritrea>.

84 DW, “Eritrean refugees in Germany struggle to reunite with family,” 17 June 2020, <https://www.dw.com/en/eritrean-refugees-in-germany-struggle-to-reunite-with-family/a-53840858>.

85 *Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General*, A/HRC/44/L.8, 13 July 2020.

86 This information is based on recent and confidential interviews conducted in the course of October 2020 with exiles having closer affinity with some victims or residents of Quazien. One possible explanation for the mass arrest is alleged potential links with a prominent political figure in exile, Mesfin Hagos, who has recently launched a new political campaign that has created widespread momentum in various Eritrean diaspora segments. A few days before the mass arrest of 30 August 2020, some residents of the village were by interrogated by government entities for alleged links with Hagos. This was also reported by the UN Special Rapporteur on 26 October 2020. See *Statement of Ms. Daniela Kravetz, United Nations Special Rapporteur on the situation of human in Eritrea at the 75th Summit of the General Assembly Social, Humanitarian and Cultural Issues (Third Committee), Interactive dialogue on Eritrea*, 26 October 2020, <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26439&LangID=E>.

3. THE LAW AND PRACTICE OF THE OFFICIAL DOCUMENTATION SYSTEM IN ERITREA

3.1. *Operational clarifications*

3.1.1. **Systemic deficiencies in the documentation system in Eritrea**

Arguably, Eritrea has a fairly sufficient body of laws (although fragmented) related to the issuance of identity documents such as IDs and passports and records of vital events, in particular birth, marriage and death certificates. Without overlooking the need to properly update and harmonise the relevant laws and the system of vital records in Eritrea, the problem remains mostly at the implementation level. In other words, it relates to the lack of the necessary institutional infrastructure at the ground level. In fact, this is one of the major problems highlighted in all of the interviews that we have conducted with Eritrean legal practitioners who previously worked in the country as judges, public prosecutors, registrars and lecturers in law.⁸⁷

There is a major problem associated with failure of the establishment of the relevant institutions of vital records originally envisaged by the 1960 Ethiopian Civil Code – the main source of the TCCE. In the old Ethiopian code, drafted by French legal scholar Rene David, there were close to one hundred legal provisions that sought to introduce a modern system of vital records, apparently inspired by the French model of the day, but that have never been given effect in a holistic way to this date (at least in Eritrea). Taking into account the Ethiopian socio-economic reality of the 1960s, which was also applicable to Eritrea since Eritrea was part of Ethiopia at the time, those provisions were not put into effect immediately. They were temporarily suspended by Article 3361 of the Ethiopian Civil Code until such time as they would come into effect by a special order to be published in the *Negarit Gazeta* of the time – the Ethiopian version of a gazette of official laws.

Among the most important provisions that were suspended by Article 3361 of the old Ethiopian Civil Code, were Articles 48-55, 59-61, 64-66, 68-71, 74-99, and 129-133. These provisions are related to matters such as: the appointment of civil status officers in all levels of the administrative structure; definition of the duties of civil status officers; the modalities of how a register of vital events shall be kept in each administrative structure; and how copies and extracts of such records are to be issued to concerned individuals. The provisions were never reinstated in Eritrea after the country's independence in 1991. To understand this, it is necessary to compare the relevant amendments provided by Proclamation No. 2/1991 (i.e., the legislation that promulgated the TCCE and effectively the TCCE itself). The relevant amendments appear in Title I, page 13 and Title II, page 41 of the amending law.

It is true that the amending law, that is, the Proclamation No. 2/1991, tries to capture the essence of the entire institutional apparatus that was originally envisaged by the numerous articles cited above (namely, the repealed ones). It does this in a disorderly fashion, by incorporating Article 5 of the Civil Code of the EPLF into the TCCE. The Civil Code of the EPLF is the law that was used in the so-called “liberated areas” of Eritrea before the country was fully liberated in May 1991, namely before the formal promulgation of the TCCE in 1991. Although Article 5 of the Civil Code of the EPLF envisages the establishment of an institution of vital records in every local administration, it does not provide details on how this could be done and the institution envisaged in this provision has never materialised in a holistic way.

⁸⁷ In particular, this problem was clearly articulated by Amanuel Yohannes, former Presiding Judge of the Northern Provincial Court in Eritrea, who now lives in the Netherlands and works as an intercultural mediator and a COI expert on Eritrea. He is indeed one of leading experts on vital records in Eritrea.

Failure to operationalise the old provisions of the Ethiopian Civil Code and the institution envisaged therein gave rise to a situation where the present TCCE tries to address the issue of vital records in a haphazard fashion, leading to an insufficient institutional framework and incongruent practice in everyday life.⁸⁸ This observation corresponds to comments made by Günter Schröder about the markedly inconsistent nature of official conduct of business in Eritrea, which he explained as follows:

In its governmental practice the Eritrean Government habitually ignores the official Proclamations and Legal Notices, when it suits its interest. Its governmental practice overwhelmingly is based on internal directives, which were never made public, or on oral instructions usually emanating directly from the autocratic president. This reflects the “governance practice” of the EPLF during the liberation struggle, which the political leadership of Eritrea has not outgrown after independence.⁸⁹

Schröder’s observation mirrors some other views expressed by some of our interviewees. Zecarias Gerrima, for instance, notes that after Eritrea’s de facto independence in 1991 the government did not introduce the robust administrative structure needed for the implementation of a functioning official documentation system. He adds that until about seven years ago, the government used to issue handwritten passports.⁹⁰ In our view, this is part of the government’s inconsistent practice of its official documentation system.

The above viewpoint is also shared by another interviewee, who points out a markedly inconsistent practice with regard to access to official documents (such as ID cards) depending on which part of the country people live (rural or urban area).⁹¹ In reference to similar challenges related to a birth certificate, Amanuel Yohannes, Eritrean legal researcher and former Presiding Judge of the Northern Provincial Court in Eritrea, opines as follows: “Most Eritreans do not have such a document. With the exception of few who live in major urban areas, the majority of Eritreans do not even know about it. In Eritrea, it is not even a very essential document.”⁹²

Therefore, it needs to be understood that with the exception of structures (albeit weak) established in some major towns or semi-urban areas, which are few in number, there is no systemic and nationwide practice of registration of vital records in Eritrea in ways and manners that are comparable with the practice in most European countries. In fact, in an Eritrean context, one cannot say that there is a consistent and dependable practice or tradition of registering such records. This is one of the most important observations also underscored by one of our interviewees, a former senior Eritrean public prosecutor who worked at the provincial level in three out of the six major provincial areas in Eritrea: Anseba, Gash Barka and Northern Red Sea Province.⁹³

88 Several telephonic interviews with Amanuel Yohannes, former President of the Northern Red Sea Provincial Court in Eritrea (1, 5, 15 and 29 October 2020), who also commented on the basis of arguments he made in a certain unpublished legal opinion he wrote for a Dutch immigration lawyer in 2020. See also Amanuel Yohannes, “Marriage law in Eritrea: Types and methods of proof,” 24 June 2018, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3201871; Amanuel Yohannes, Confidential expert report on birth certificates and other documents from Eritrea, 2020.

89 Günter Schröder, “Marriage, vital events registration and issuance of civil status documents in Eritrea,” May 2017, <https://migrationlawclinic.files.wordpress.com/2017/05/paper-gc3bcnther-schrc3b6der-eritrea-marriage.pdf>, (hereinafter “Schröder 2017”), p. 3.

90 Telephonic interview with Zecarias Gerrima, Deputy Director of the Uganda-based NGO Africa Monitors and Director of Programming at ERI-SAT (2 November 2020).

91 Telephonic interview with an Eritrean Resident in a city in Europe (23 October 2020). This needs to be understood in the broader context of restriction of movement within the country.

92 Amanuel Yohannes, “ጥርፋፋ ስድራቤት ኣብ ሆላንድ” (Family reunification in the Netherlands), 22 August 2019 (unpublished work) (English translation by first author).

93 Telephonic interview with Yohannes Yetbarek, former Head of the Public Prosecution Office of the Gash Barka Province (28 October 2020).

3.1.2. The applicability of the TCCE

In very broad terms, the most important Eritrean law related to the policy and practice of registration of vital records is still the TCCE. There are also proclamations and/or legal notices related to the issuance of certain official documents, in particular national ID cards and passports, as will be discussed. In relation to the TCCE, the following clarification is of paramount importance due to a certain misunderstanding about the official status of the TCCE itself and another document, 2015 Civil Code, what we call here the “alter ego” of the TCCE.

Although made public in May 2015, the 2015 Civil Code has never been put into effect in the conventional understanding of entry into force of laws. However, there are commentators, such as Schröder, who maintain the view that the 2015 Civil Code is operational.⁹⁴ It is this erroneous understanding that requires some clarification, because any assumption of the 2015 Civil Code as operative law completely changes the framework of analysis of the following sections. It is these clarifications to which we now turn.

It bears referring, albeit briefly, to the history of the TCCE itself, which is one of Eritrea’s seven major transitional codes. In addition to hundreds of proclamations and legal notices that have been proclaimed since Eritrea’s de facto independence in 1991 (governing various aspects of socio-economic life in Eritrea), the broader corpus of Eritrean law also consists of the following major codes: The Civil Code, the Civil Procedure Code, the Penal Code, the Criminal Procedure Code, the Maritime Code and the Labour Code. All of these codes are known as the transitional codes of Eritrea. With the exception of the Labour Code, six of them have been inherited from Ethiopia in 1991 with necessary amendments and updates.⁹⁵

All of the transitional codes came into force on 15 September 1991 upon formal promulgation in the Gazette of Eritrean Laws (hereinafter “the Gazette”) – this being the official gazette of laws in Eritrea. For example, the promulgation of the TCCE was given effect by Proclamation No. 2/1991, the formal title of which in Tigrinya reads as follows: ከዋጅ 2: መሰጋገሪ ሕጊ ኬርቲራ (“Proclamation 2: Transitional Civil Code of Eritrea”). In its very first paragraph, the proclamation clearly states that the law “comes into effect on 15 September 1999.” We emphasise on this language, as it is important for our comparison of the language this law uses with that of the 2015 Civil Code.

In Eritrea, laws are not promulgated by an act of parliament, as is the conventional method in many other countries. Eritrea has not had a functioning parliament since February 2002, and even during the time when it had a functioning parliament (the so-called National Assembly of Eritrea), laws were not promulgated by an act of parliament.⁹⁶ Laws would simply enter into force once they were promulgated in the official Gazette and with the explicit language “entry into force” within the law itself. The fact that laws are not formally enacted by an act of parliament makes the Eritrean law-making process a nebulous one (which is fairly and sufficiently discussed in a previous academic contribution on this particular topic).⁹⁷

⁹⁴ Schröder 2017, paras. 20, 58, 90, and 95.

⁹⁵ See in general Yohannes Gebremedhin, *The Challenge of a Society in Transition: Legal Development in Eritrea* (Red Sea Press, 2004); Simon Weledhaimanot and Daniel Mekonnen, “The nebulous lawmaking process in Eritrea,” *Journal of African Law* (2009) 53(2), (hereinafter “Weledhaimanot and Mekonnen 2009”), pp. 171-193; Daniel Mekonnen, “Patterns of legal mixing in Eritrea: Examining the impact of customary law, Islamic law, colonial law, socialist law and authoritarian revolutionary dogma,” in Vernon Palmer et al (eds.), *Mixed Legal Systems, East and West* (Ashgate Publishing, 2015), pp. 151-166.

⁹⁶ See in general Weledhaimanot and Mekonnen 2009, pp. 171-193

⁹⁷ Weledhaimanot and Mekonnen 2009.

Officially, it is not exactly clear which governmental body publishes the Gazette, but the general understanding among Eritrean lawyers is that the Gazette is published in close collaboration between two major wings of the executive branch, namely the Office of the State President and the Ministry of Justice. A particular department in the Ministry of Justice, known as the Department of Legal Services and headed by Mr. Eden Fasil (who also doubles in the role of a legal advisor to the President of the State)⁹⁸ is believed to be the main organ in charge of the publication of the Gazette.

Leaving aside other complex details of the law-making process in the country,⁹⁹ it would suffice, for purposes of this report, to explain the most important aspect of how laws are practically put into effect in Eritrea, which, as stated above, is by their promulgation in the Gazette in which entry into force is explicitly stated. This is in fact the general and consistent¹⁰⁰ practice of promulgation of laws in the country. However, the manner in which the 2015 Civil Code was made public (namely, not promulgated in the strict sense of the term) is markedly different.

First and foremost, contrary to the standard practice in Eritrea, both the 2015 Civil Code and the other three codes that were made public at the same time¹⁰¹ do not contain an explicit statement or clause on entry into force. Second, according to a former member of the Law Reform Committee of the Eritrean Ministry of Justice, who was actively involved in the law reform process, and all the way up to the publication of the new codes in May 2015, the codes are not operational.¹⁰² The codes were made public with the intent of advancing another ulterior political motive: countering the impact of the first and ground breaking report of the COIE that was released in June 2015 (the contents of which were already known to the Eritrean Government at an earlier stage, at least in or around early May 2015).¹⁰³ Third, the fact that the 2015 codes are not operational is also evident from a 2019 report of the Eritrean Government submitted to one of the UN treaty monitoring bodies in Geneva, namely the Committee on the Elimination of Discrimination Against Women (commonly known as the CEDAW Committee). In an effort to elaborate on the definition of discrimination in an Eritrean context, in the report, the Eritrean government cites Article 8 of the TCCE, and not that of the 2015 Civil Code.¹⁰⁴ This is a very clear indication that even the government does not consider the 2015 codes as operational, irrespective of

98 This is a matter of common knowledge among senior Eritrean legal professionals, who worked in the country in various professional responsibilities. See, for example, Gebremedhin, *The Challenge of a Society in Transition*, 2004). On p. 145, Gebremedhin mentions Mr. Eden Fasil as one of the people involved in the revision of Eritrean laws.

99 Weledehaimanot and Mekonnen 2009.

100 Surprisingly, out of many inconsistent things done in Eritrea at the official level, for which the government is regularly criticised, this practice is one of very few examples of consistency and predictability.

101 These include the Civil Procedure Code, the Penal Code and the Criminal Procedure Code.

102 Various informal conversations on previous occasions and most recent telephonic interviews with Habteab Y. Oghubazgi (1 and 27 October 2020). Up to the time of fleeing Eritrea in March 2016, under extremely dangerous circumstances (to avoid real and imminent persecution by the government), Oghubazgi was a judge of the Court of Last Appeal in Eritrea, which is the highest judicial structure in the country and can be rightly considered as the equivalent of a Supreme Court in other jurisdictions. According to the sitting order of the Judges of the Court, he was second in rank, following the Presiding Judge of the Court, who is also the President of the Eritrean Judiciary (the equivalent of a Chief Justice in other jurisdictions). In that sense, although not a formal title, Oghubazgi's rank was the equivalent of a Deputy Chief Justice. Before becoming judge of the Court of Last Appeal, he was the Presiding Judge of the Criminal Bench of the High Court of Asmara. At the Law Reform Committee of the Ministry of Justice, he served as Chair of the Sub-Committee entrusted with the revision and finalisation of the new Penal Code and Criminal Procedure Code. His information about the issue under discussion is more than reliable. The comments he shared in the telephonic interviews are in line with previous comments he made in an unpublished document titled "Explanatory note addressed to the Swiss State Secretariat for Migration," May 2016.

103 Telephonic interviews with Habteab Y. Oghubazgi (1 and 27 October 2020).

104 *Sixth periodic report submitted by Eritrea under Article 18 of the UN Convention on the Elimination of All Forms of Discrimination Against Women*, 12 April 2019, p. 6.

what government officials may have said on different occasions. This raises the question of why the government would cite the TCCE instead of the 2015 version.

A very good answer to the above question can be found in a comment made by Eritrean legal expert, Hanibal Goitom, also Foreign Law Specialist at the U.S. Library of Congress, who expresses doubt about the operational value of the 2015 codes. He specifically cites some conflicting views of the Eritrean Minister of Justice given to the Eritrean national television in May 2015 in which she is quoted as having said that the 2015 laws are operational. Disagreeing with the Minister in a very polite way, Goitom opines: “there is evidence that the transitional laws that had been in place since independence continue to be applied.”¹⁰⁵ He adds as follows:

For instance, the Legal Tender Nakfa Currency Notes Regulations (No. 124/2015), which were enacted in November 2015, months after the publication of the codes, make reference to the transitional laws and not the new codes (art. 6). It is possible that the implementation process could take a few years to complete.¹⁰⁶

Article 6 of the Legal Notice No. 124/2015 defines the penalty that can be imposed for transgression of the regulations in the same Legal Notice. In doing so, the Legal Notice makes reference to the TPCE. From the above, it seems clear that the 2015 codes were published with an ulterior motive of marking some political scores and, as such, they were not intended to become operational laws forthwith (such is the case at least at the time of writing this report). Reliable information obtained from a confidential source in Eritrea, in the course of preparation of this report, also confirms that courts of the land do not cite the new laws in their judgments.

The following sub-sections contain an analysis, sector by sector, of the relevant parts of Eritrean law pertaining to the country’s official documentation system. In keeping with the main objective of this report, the focus is on the law and practice of issuance of passports, national ID cards, so-called residence cards (nay nebarinet), ration coupons, and the registration of some of the most common vital events: birth and marriage (including issuance of certificates proving the occurrence of such vital events). Before moving to a detailed discussion of the relevant laws, it needs to be noted that access to Eritrean legal instruments has been a very difficult task for researchers until 4 September 2020, when the problem was partly resolved by a new initiative known as the Digital Collection of the Gazette of Eritrean Laws. Freely accessible to anyone, the digital collection was released by the Foreign Legal Gazettes Section of the (American) Library of Congress.¹⁰⁷ Previously, there was only one publicly accessible central depository of major Eritrean legal resources, charging exorbitant prices and hosted by a private initiative. The fact that the depository is or was run (or at least registered) by a private individual raises critical questions not only about the requirement of free access to official legislation, but also about copyright over such official documents, which should normally be vested on the State of Eritrea or one of its core entities (for example, the Eritrean Ministry of Justice).¹⁰⁸

105 See, Hanibal Goitom, “New Eritrean codes now available to researchers,” 7 March 2016, <https://blogs.loc.gov/law/2016/03/new-eritrean-codes-now-available-to-researchers/?loclr=bloglaw>.

106 Hanibal Goitom 2016. Needless to say, any signal given by the Government of Eritrea regarding the operational value of the 2015 laws is part and parcel of its narrow political objective of regime preservation.

107 Hanibal Goitom 2016. The interview of the Minister mentioned by Goitom is the following: Eritrean Television, “Interview with Eritrean Justice Minister Fauzia Hashim,” 9 May 2015, <https://www.youtube.com/watch?v=I8WJkNNwZ5E>.

108 The private initiative is available from: <https://erilaws.com/>. A 2017 search of the website, via GoDaddy’s WHOIS lookup tool, showed that the website had a Domain ID of 1866098869_DOMAIN_COM-VRSN. It was created on 9 July 2014 under the registrant name of Luwam Dirar (an individual), whose name is also reflected in the system as “registrant organisation,” with a private registrant email address. Other personal details provided by the lookup tool are omitted herein to protect the privacy of the person, since those details are

3.2. Substance of the law and the practice

In understanding the Eritrean law of vital records, it is important to take into account the following fragmented sections of the relevant laws:

1. The 1991 TCCE, which is an amended version of the old Ethiopian Civil Code of 1960;
2. The law that gave effect to the promulgation of the 1991 TCCE, including its amendments, repeals and additions – which is Proclamation No. 2/1991;
3. Another law that slightly amended Proclamation No. 2/1991 (Proclamation No. 12 of 6 November 1991, the only purpose of which was to reinstate certain provisions of the old Ethiopian Civil Code that were hastily repealed by Proclamation No. 2/1991);
4. And finally, some provisions taken from the Civil Code of the EPLF.

Presently, the following set of provisions are considered as the most important for the regulation of registration of vital records in Eritrea: Articles 57, 58, 62, 63, 72, 73, 100-128, 134-145 of the TCCE as amended and updated by the amending laws cited above (Proclamation No. 2/1991), and Articles 4-9 of the Civil Code of the EPLF. The most important starting point is Article 62 of the TCCE, which sets certain legal periods within which records of vital events (i.e., birth, marriage and death) have to be drawn up. For birth, the period of limitation for registration is three months; and for marriage and death, it is one month. Article 142 of the TCCE pronounces criminal responsibility for failure to report a vital event of birth, marriage or death. Article 623 of the TPCE further defines this criminal responsibility.

3.2.1. The practice deviating from the law

The practice is markedly different from what is stated in the above-cited legal provisions. Observations in this regard were clearly underscored by two of our interviewees, who worked in Eritrea as senior public prosecutors.¹⁰⁹ Almost all other Eritrean legal professionals interviewed in the course of this research study also expressed no recollection of a court case that involved criminal prosecution for failure of the fulfilment of a presumed legal obligation emanating from Articles 62 and 142 of the TCCE and Article 623 of the TPCE.¹¹⁰ This seems to be a settled practice in Eritrea, and in earnest the legal provisions cited above could be described as theoretical stipulations, the practical application of which does not go beyond the books. In fact, registration of vital events is not a very common practice in Eritrea. Accordingly, Yohannes opines that enforcing the criminal penalty envisaged by Article 142 of the TCCE and Article 623 of the TPCE would practically mean prosecuting the majority of residents in Eritrea.¹¹¹ This comes as one of the most important examples of a mismatch of policy and practice in Eritrea.

3.2.2. The subsequent registration of vital records

In general terms, however, in urban areas (and most importantly in the capital city) the process of registration of a vital record is a fairly easy task. What makes this task relatively easy is the legal possibility envisaged in Article 63 of the TCCE. According to this provision, vital records can still be drawn up after the period of

not important for the immediate needs of this report.

109 Telephonic interviews with: Kifleyohanes Yeibio (14 October 2020), Amanuel Yohannes (1, 5, 15 and 29 October 2020), Yohannes Yetbarek (28 October 2020).

110 *Ibid.* Similar views are also expressed (in telephonic interviews) by Habteab Y. Oghubazgi (1 and 27 October 2020), Amanuel Yohannes (1, 5, 15 and 29 October 2020), a former Eritrean Presiding Judge of a Provincial Court of Appeal (30 October 2020), a former Eritrean Judge of the Central Provincial Court (28 October 2020), a former Eritrean Judge of the Central Provincial Court, and a Practicing Lawyer in the USA (4 November 2020).

111 Telephonic interview Amanuel Yohannes (1, 5, 15 and 29 October 2020). See also Schröder 2017, para 88.

limitation indicated in Article 62. In such cases, Article 63(1) makes it clear that such records “shall only have the probatory value of simple information.” If one wants to go beyond a “probatory value” of such documents, they have the option of requesting entry of the records in the official register by a court judgment. This practice changed fundamentally in or around 2007 when the entire task of processing the issuance of vital records was transmitted from courts to local government entities by a common understanding reached between the Ministry of Justice and the Ministry of Local Government.¹¹²

In practice, in the period before 2007, individuals who wanted to register a vital event that had taken place outside of the legal period of time for registration indicated in Article 62 of the TCCE had the option of obtaining a declaratory order based on which officers of civil status would issue a record of vital event. Articles 201 and 202 of the TCCE stipulate similar options in relation to the establishment of the age of a person, which is intrinsically linked with the birth of a person. The practice in this regard was as follows. A person would open a file in a court of law (at a provincial court) in which they bring three witnesses attesting to the circumstances of their birth or marriage, based on which the court issues an order addressed to the local authority or municipality; after which a birth or marriage certificate is issued to the individual(s) by the relevant local administration. Whereas the practice changed in 2007, most of the legal provisions of the TCCE related to that practice are still in force even when the responsibility for doing so has been transmitted from courts to local government entities based on the mutual agreement reached between the two ministries cited above¹¹³ – this being another concrete example of a mismatch between policy and practice.

Importantly, the change of practice in this regard started first without a promulgation of any law. It was formalised in 2012 when the relevant law, that is, Proclamation No. 167/2012, was proclaimed. According to Article 3 of this new law, all powers related to the ascertainment of circumstances related to birth, marriage and death were transferred to local government entities. However, the practice in this regard is still inconsistent. The policy change of 2007 was done few years after the introduction of a so-called new population register, which is now used in major urban areas. Through the popular register, local authorities regularly update marriage statistics. From this system, individuals can obtain a document of probatory value proving their married status. Schröder, for example, cites the case of women, who normally make recourse to such a register in order to prove their married status in relation to NMSP obligations or to obtain a so-called ration coupon (as will be discussed also later).¹¹⁴ However, such a record is not a legal replacement for a formal marriage certificate that can only be obtained from the relevant civil status office (which is in any case affiliated with all local government entities).

Overall, it is important to recall that registration of vital events is not a very common practice, nor a matter of concern for the average Eritrean, and in particular for the overwhelming majority of Eritreans who live in rural areas. In an Eritrean context, the most common cases whereby Eritrean citizens may seek a certificate are in relation to birth, marriage and divorce. Birth and marriage certificates in particular are, in most cases, processed by individuals who want to send such documents to third countries, mostly for family reunification purposes. Otherwise, in Eritrea, there are almost no particular instances in which individuals would be required by public or private entities to present a birth, marriage or divorce certificate.

¹¹² Like many other practices, this was eventually given effect by a circular originating from the Office of the Minister of Justice, the exact date of which was difficult to ascertain (given that such documents are not officially published). Certain aspects of this observation were corroborated by our telephonic interviews with Habteab Y. Oghubazgi (1 and 27 October 2020), Amanuel Yohannes (1, 5, 15 and 29 October 2020), and a former Judge of the Central Provincial Court (28 October 2020).

¹¹³ Ministry of Justice and the Ministry of Local Government.

¹¹⁴ Schröder 2017, paras. 101 and 107.

3.3. The actual practice of the issuance of records of vital events

3.3.1. Birth certificate

The issuance of a birth certificate is not a very common practice in Eritrea. It is also important to note that Eritrean birth certificates look different depending on where and when they were issued. It is also not uncommon to see birth certificates or other records of vital events written with spelling errors, because standardisation is a very common problem in Eritrea. In a typical (Western) European context, a spelling error may indicate some sort of forgery in relation to the document in which the error occurs. In an Eritrean case, this is not always true; misspellings are common and do not necessarily come as indicators of forgery. Therefore, the divergence in the physical features of such documents need not be taken as a potential sign of forgery, as it is sometimes presumed by certain national authorities in Europe. The very issuance of such certificates differs from place to place.

There is one relatively common instance in which the provision of a birth certificate may be needed in an Eritrean context. This is when children are enrolled in primary education. A birth certificate may be needed for establishing their exact age at the first instance of school registration. In such cases, if children do not have a birth certificate, their age can be ascertained in the following ways.

For children born to Christian parents, their age can be ascertained by referring to their baptism certificate, which is nowadays issued by almost all churches in Eritrea. In the highlands of Eritrea, where the predominant religion is that of the Eritrean Orthodox Church, baptism of children is a very common practice, during which registration of birth takes place. According to the tradition of the church, in the case of a baby boy, baptism takes place forty days after birth. In the case of a baby girl, it takes place eighty days after birth. For purposes of registering a child at school or obtaining a family coupon of basic needs at the local administration, a baptism certificate can have the same probatory value as a birth certificate. Zecarias Gerrima, however, underlines that whereas the church may provide baptism certificates, sometimes these certificates are not reliable (in a Western European context), as the name appearing in them may not match with the person's usual name because people in Eritrea often have different baptismal names and calling names.¹¹⁵ From experience, the authors are also cognizant of other problems, such as the following. Religious baptism certificates may contain errors necessitated by conversion of dates from the Geez (Coptic) Calendar to the Gregorian (European) Calendar.

It needs to be noted that in Muslim communities in Eritrea, the issuance of a religious birth certificate is not known, as confirmed by Abdella Khiyar, a former Judge of the High Court of Eritrea.¹¹⁶ This is partly explained by the fact that the very concept of baptism, with which birth certificates are inherently related in the Christian communities, is non-existent in Islam. Alternatively, for children born to non-Christian parents, ascertainment of age may be done by vaccination cards in which the birthdate of a child is also recorded as a matter of routine practice. Vaccination of children is a very common practice in Eritrea nowadays, and almost all newly born Eritrean children have vaccination cards.¹¹⁷ A sample of such a card is attached at the end of this report. How-

¹¹⁵ Telephonic interview with Zecarias Gerrima, Deputy Director of the Uganda-based NGO Africa Monitors and Director of Programming at ERISAT (2 November 2020).

¹¹⁶ Telephonic interview with Abdella Khiyar (15 October 2020). Some of the immigration lawyers interviewed for this report stated that in the very few instances where their Eritrean clients provide certificates relating to births, these are baptism certificates issued by the Eritrean Orthodox Church. However, they have not come across certificates issued by other religious institutions nor by the government. Telephonic interview with Giulia Tranchina, Immigration Solicitor at Wilson Solicitors LLP (28 October 2020); Telephonic interview with Nigel Smith, Associate Solicitor, Paragon Law (5 November 2020).

¹¹⁷ Giulia Tranchina, an Immigration Solicitor at Wilson Solicitors LLP (UK), noted that during her eleven years of experience in representing

ever, a baptism or a vaccination certificate does not necessarily have the equivalent weight of an official birth certificate that may be issued by the local authorities.

In any case, in an Eritrean context, other than in the registration of children for primary school, there is hardly any other instance where individuals may be formally asked to adduce a birth or a marriage certificate by way of proving their identity, age, civil status, or other attributes of personality.¹¹⁸

3.3.2. Marriage certificate

Most of the observations made above about the issuance of birth certificates, including those related to the common problem of lack of standardisation, misspellings, and errors related to the conversion of dates (from Coptic to Gregorian Calendar), are also valid for the issuance of marriage certificates. Indeed, as can be seen from Appendix 2 at the very end of this report, Eritrean marriage certificates are among the classic examples of the problem of standardisation in the issuance of records of vital records. Appendix 2 is a specimen of a municipal marriage certificate issued in Asmara. In the document, the word marriage is misspelled as ‘marrage.’ The error appears in the part of the document, which depicts ‘marriage registration number.’ In this sense, the general assumption that official documents would not feature misspelled words is not always true in the case of Eritrea. In our view, such errors, which are not uncommon in Eritrea, are not to be taken as indicators of a certificate or an official document being fake.

Issuance of marriage certificates by religious institutions is a common practice in Eritrea. For Christians, these documents are issued by the three officially recognised churches: Eritrean Orthodox Church, the Roman Catholic Church and the Evangelical Church. According to Abdella Khiyar, a former Judge of the High Court of Eritrea, with a background in Sharia Law, issuance of religious marriage certificates is also common in Muslim communities. It is normally issued by a religious person known as maezun, who performs the marriage ceremony in the residence of the couple where he also issues the marriage certificate right away; the maezun normally comes to the ceremony with pre-stamped leaves of a booklet from which marriage certificates are issued. Eritrean Muslims can also petition the Sharia courts to obtain a marriage certificate on the basis of a court order, if this is ever needed.¹¹⁹ It needs to be noted that Article 579 of the TCCE recognises religious marriages as one form of valid marriage. As such, within Eritrea, religious marriage certificates can be taken as valid documents.

3.3.3. Death certificate

From all types of records of vital events, a death certificate is the least known official document in Eritrea. From all Eritrean experts interviewed for this study, only one former judge remembers one particular experience related to the issuance of such a document by a court or law – requested by an applicant who wanted to send the

Eritrean clients, she has only seen a vaccination card in one occasion, “which was however very exceptional” as it was brought by an Eritrean woman who fled Eritrea during the time the border with Ethiopia was open right after the peace agreement between the two countries was signed. She further noted that none of her other Eritrean clients, which comprise around 50 (over the last 11 years), had ever provided identity documents. Telephonic interview with Giulia Tranchina, Immigration Solicitor at Wilson Solicitors LLP (28 October 2020). A refugee service provider in Egypt highlighted that most of the Eritrean service users at their centre do not bring official documents including birth certificates. Telephonic interview with Refugee Service Provider in Egypt (21 October 2020).

118 This view is predominant among most of the Eritrean legal professionals interviewed for this report. The most straightforward comment in this regard is that of Yohannes Yetbarek (telephonic interview of 28 October 2020).

119 Telephonic interview with Abdella Khiyar (15 October 2020). Some of the immigration lawyers consulted by the authors noted that they have only come across certificates issued by the Orthodox Church in Eritrea, but not by other religion institutions, nor official marriage certificates issued by the government. Yet, they underline that most of their clients fled Eritrea without any documents. Telephonic interview with Giulia Tranchina, Immigration Solicitor at Wilson Solicitors LLP (28 October 2020); Telephonic interview with Nigel Smith, Associate Solicitor, Paragon Law (5 November 2020).

document to a sibling residing in a foreign country.¹²⁰ In matters related to succession, individuals may petition a court to ascertain their rights as heirs of a deceased person in which context the death of a deceased person may be ascertained indirectly. Other than this, there is hardly any other scenario in which the death of a person is officially reported to the local authorities, and thus a death certificate is obtained accordingly.¹²¹

3.3.4. Authentication of records of vital events

All the documents discussed in the preceding sections, when issued inside Eritrea by non-state actors, such as religious institutions, may serve, depending on the circumstances of the case, as valid probatory documents proving the vital events in respect of which they are issued (be it birth or marriage). In the case of marriage, as in the local context, a religious marriage certificate can also be taken as a valid document (according to Article 579 of the TCCE). When these documents are sent to third countries, questions may arise, as they need to be authenticated by the Department of Consular Affairs of the Ministry of Foreign Affairs. For more details on the actual process see the information provided in Section 4.1.2.

3.4. *The actual practice of the issuance of “identity” documents*

3.4.1. The national ID card

The Eritrean national ID card, also known as tassera or menenet, was introduced in 1992 in preparation for the national referendum that was conducted in 1993. The issuance of the Eritrean national ID cards is governed by Proclamation No. 21/1992 (which was promulgated on 6 April 1992).

In practice, the issuance of ID cards is subject to varying levels of inconsistency. For many years, it was considered as the most important document for the purposes of identification of individuals. Nonetheless, with the emergence of the new types official documents discussed in the next two sub-sections, the relevance of the national ID card has considerably diminished. Presently, the other newly introduced documents can be more important than the national ID card (at least for the purposes of proving one’s identity).¹²² According to the 2017 Dutch COI Report (which provides, in our view, one of the most reliable accounts about how the issuance of ID cards started and how they are presently issued) in 2015 the government started to issue a new version of the national ID card but the distribution has been discontinued ever since.¹²³ As confirmed by the same source, only a limited number of the new version was distributed; the assumption is that the distribution did not last long.¹²⁴

While the practical difficulties in accessing official documents from or via the involvement of Eritrean embassies are discussed in section 4.5, the following example serves to illustrate inconsistencies between the law and the practice in this respect. This example relates to information provided (over the phone) by a consular officer of the Eritrean embassy in Germany to one of our interviewees.¹²⁵ Our interviewee, who is an Eritrean resident in Germany, inquired about the formal application requirements for an Eritrean ID card and a passport. In re-

120 Telephonic interview with a Former Eritrean Judge of the Central Provincial Court (28 October 2020).

121 This is based on first author’s previous work experience in Eritrea.

122 On this, see section 3.4.2.

123 Dutch COI Report 2017, pp. 18-30. See also ACCORD, “Query response on Eritrea: Information on the issuance of ID and identity documents as well as birth and marriage certificates,” 28 May 2020, <https://www.ecoi.net/en/document/2030573>; IRB, “Eritrea: Information on the stamps included in birth certificates (1993-December 2018) [ERI106215.E],” 13 December 2018, <https://irb-cisr.gc.ca/en/country-information/rir/Pages/index.aspx?doc=457678&p1s=1>; IRB, “ERI105812.E Eritrea: Requirements and procedures to obtain a birth certificate, both within and outside the country; information on regional differences (2014-May 2017),” 6 June 2017 <https://www.justice.gov/eoir/page/file/982601/download>.

124 Dutch COI Report 2017, p. 21.

125 Telephonic Interview with Eritrean Resident in Germany (1 December 2020).

sponse, the officer at the embassy informed the inquirer that the first step in the process is to obtain an Eritrean ID card, and after that an application for passport can be processed. In order to do this, the applicant first needs to prove that, among other things, four generations of his or her ancestors are Eritreans. This requirement, which is very difficult by its nature, is not stipulated in the relevant nationality law, which is Proclamation No. 21/1992 (cited above). The key requirement stipulated in Article 2(1) of this law is that a person has to be born to an Eritrean father or mother in order to obtain Eritrean nationality, which, by law, is the first important step in obtaining the Eritrean national ID card. The information provided by this interviewee, however, demonstrates that the Eritrean Embassy in Germany is applying rigorous requirements not stipulated by the relevant Eritrean law, thus making it difficult (if not impossible) for Eritrean refugees in Germany to obtain an Eritrean ID card from the embassy. It bears mentioning that, the Eritrean Embassy in Germany is said to be distributing “provisional ID cards” pending the issuance of the standard ID card from Eritrea. Nonetheless, the requirements for the issuance of both documents are the same; the latter is issued only for provisional purposes pending the arrival of the actual ID card from Eritrea.¹²⁶

3.4.2. The residence card (ጥያ ነባርነት ወረቅት)

While there is no law in place that recognises the residence card as an official identification document, in practice, this document is normally sufficient to prove the identity of individuals. The residence card was introduced in a step-by-step process, starting from 2003 together with the introduction of the population register, supposedly a modern registration system.¹²⁷ Schröder opines that the document was introduced not by law, but by an unpublished directive sent from the Office of the State President to local government entities.¹²⁸ This practice is part of the well-known *modus operandi* of the government by which major policy changes are given effect by presidential or ministerial directives (locally known as “circulars”), rather than by official proclamation or law. It is one of the major reasons that has given rise to a high level of inconsistency in the way things function in the country. In many cases, things are done according to circulars and directives instead of law. Even when there are laws, the government does not always respect those laws.¹²⁹

It needs to be noted that the practice in this regard, including the basic features and details of the document, is not consistent throughout the six regions of Eritrea. What this section describes is mainly that of the Central Region, in which the practice is relatively most common, compared to other regions. However, it must be stressed that the practice is inconsistent throughout the country. Certainly, not every person of Eritrean nationality can be expected to hold a residence card in the form as described here. Some persons do not have a residence card at all, and some have residence cards in other forms, such as, for instance, cards not including all family members.

The residence card is part of a practice that introduced a family register system, which in principle was to be kept in all major administrative sections (although inconsistencies are also observed in this regard). Once the data of all family members is entered in the population register, only one card is issued for each family, but individuals may be given a printout copy on request. The document, when issued to a head of a family (in an Eritrean context, the father), contains basic details of all members of a family, essentially full names and birth dates, including family links (such as parent or offspring), and the region of residence in Eritrea. When issued

¹²⁶ *Ibid.*

¹²⁷ Schröder 2017, para. 105.

¹²⁸ *Ibid.*, para. 106.

¹²⁹ *Ibid.*, para. 7.

to other family members, it may only include the details of the person to whom it is issued. The introduction of this card is also related to the government's need of controlling the population's movement, which is often-times supplemented by random roundups. The card in fact allows its holders to move only within the particular region printed in the card.

According to one of our interviewed sources, Eritreans do not take the residence card with them when they flee the country. This interviewee underlined that Eritrean citizens often flee from a region different than the one appearing in their cards, and as such having the card will put them at greater risk since it explicitly shows that they must not be in another region.¹³⁰

The register is regularly updated depending on the changed circumstances of each family (for example, birth of a new family member, marriage, travel outside the country, conscription to the NMSP, or death). When the population register has to be updated on account of a family member's illegal exit from Eritrea, such an update may have grave repercussions in matters related to access to official documentation by such a family member who happens to be in a third country. As will be seen in sections 4.1 to 4.4 below, the family member in a foreign country will have to perform a complicated official procedure at an Eritrean embassy without which official documents, such as a copy of a record of the population register, cannot be legally obtained. Whilst this issue is problematic to all categories of Eritreans, it poses peculiar challenges in the case of unaccompanied minors as will be discussed again in section 4.7 below.

According to some of the former legal professionals from Eritrea, in practice, issuance of the residence card is more common in urban areas than in rural ones.¹³¹ As a matter of common practice, individuals are asked to present either their residence card or the ration coupon (discussed below), in addition to the old national ID card, whenever they need to have access to social services, such as hospitalisation.¹³² The residence card has also probatory value in terms of establishing some other basic facts, such as the holder's residential address and civil status. In effect, the residence card has become a supplement to the old national ID card in a manner that made the practice of official documentation more cumbersome.

Notably, the issuance of the residence card (as well as of the ration coupon discussed below) is very much associated with the control mechanism that the government has put into place by way of effectively monitoring the fulfilment of obligations of the NMSP. This makes up part of what the COIE describes as "a complex system of travel permits and ID cards, which are required at checkpoints and during identity checks to verify individuals' status with regard to the compulsory national service and that they are duly authorised to travel."¹³³ Those who are within the age range of the NMSP (which is normally between the age of 18 and 50, although sometimes the upper and lower age limit goes beyond that) may also be issued special or temporary pass papers (*menqesaqesi*) to move from one town to another within the country to be able fulfil their military and national duties (if, for instance, a person is deployed in a town or area different from his or her place or residence).

3.4.3. The ration coupon

Like the residence card, there is no law in force that recognises the ration coupon as an official identity document. However, the ration coupon (similar to the residence card discussed above) has become more important

¹³⁰ Telephonic interview with an Eritrean Resident in a city in Europe (23 October 2020).

¹³¹ Telephonic interviews with Amanuel Yohannes (1, 5, 15 and 29 October 2020) and Yohannes Yetbarek (28 October 2020).

¹³² Schröder 2017, para. 107; Dutch COI Report 2017, p. 23.

¹³³ First COIE Report Long Version, para. 443.

than the national ID card within every day life in Eritrea. Moreover, the issuance of ration coupons is likewise linked to the control mechanism exercised by the government. In fact, the primary objective of this document is to control access to basic subsidised commodities that are available only at government owned shops, known as *dkuan hdri* (ድኅን ስድረ), meaning “trust shops” or People’s Shops, as Schröder refers to them.¹³⁴ The Dutch COI Report describes this document as “a handy print-out of the main data of all family members.”¹³⁵ It contains basic details of the family members, copied from the residence card, except that its use is different. The coupon exists only in urban areas; it is not common in rural areas.

3.4.4. The passport

Lastly, the other important document is the passport, which is the most difficult Eritrean document to obtain. In Eritrea, passports are essentially used for international travel, which links to the official policy on exit visas. To our knowledge, together with North Korea, Eritrea is one of the only two countries in the world that require their citizens to obtain an exit visa before they travel abroad. This is one of the most important indicators of the Eritrean Government’s perennial preoccupation with controlling the movement of important segments of the population. That is why access to passports is highly regulated.

In fact, in Eritrea, access to a passport is better conceived of as a privilege than as a right. It is directly linked with a person’s presumed ability to travel outside the country. In Eritrea, citizens within the so-called age limit of the NMSP are not allowed to leave the country legally (or to travel at all). Only a certain category of people, listed by the UKUT in their latest Country Guidance on Eritrea (MST and Others), benefit from the rare opportunity of lawful exit from Eritrea.¹³⁶ We describe these people as forming part of the category of individuals entitled to the “privilege of lawful exit” from Eritrea.

According to MST and Others, the list of individuals who would normally benefit from the rare “privilege of lawful exit” from Eritrea includes: (i) men aged over 54; (ii) women aged over 47; (iii) children aged under five (with some scope for adolescents in family reunification cases); (iv) people exempt from national service on medical grounds; (v) people travelling abroad for medical treatment; (vi) people travelling abroad for studies or for a conference; (vii) business and sportsmen; (viii) former freedom fighters (*tegadelti*) and their family members; and (ix) authority representatives in leading positions and their family members.¹³⁷ Only people within this list may have access to a passport in Eritrea.¹³⁸

However, the practice of issuance of a passport is one of the most arbitrary practices in Eritrea. Indeed, the

134 Schröder, para. 107. See also BBC News (Tigrinya Service), “ኣብ ኣስመራ ቢራ ኣብ ዱካናት ብኩባን ይሸየጥ ኣሎ” (In Asmara, beer is being sold by ration coupon in local shops), 27 October 2020, <https://www.bbc.com/tigrinya/news-54641469>.

135 Dutch COI Report 2017, p. 23.

136 *MST and Others*, para. 4.

137 *Ibid.*

138 A refugee service provider in Egypt has noted, for instance, that “99% of the Eritrean refugees who receive services in [their] centre, don’t bring identification documents (such as IDs, birth certificates, or passports),” and that the rarest document they see is the Eritrean passport. Telephonic interview with Refugee Service Provider in Egypt (21 October 2020). Similarly, a Research Centre in Sudan noted that through their work, they are in regular contact with Eritrean refugees, including with the newly arrived asylum seekers. With regards to identity documents, the Centre highlighted that “most of Eritrean citizens flee the country and as such as, it is not possible for them to bring any documents.” Telephonic interview with a Research Centre in Sudan (20 December 2020). Immigration lawyers in the UK have similarly underlined that their Eritrean clients flee the country without documents. Smith noted that during his years of practice in the UK, none of his Eritrean clients (apart from one, which was a very unusual and exceptional case as he had a passport as he was previously in Saudi Arabia on a business travel), had identity evidence such as IDs or passports. Telephonic interview with Nigel Smith, Associate Solicitor, Paragon Law (5 November 2020). Likewise, Tranchina emphasised that, apart from very few and rare cases, during her 11 years of experience representing Eritrean asylum cases, neither she nor her colleagues have encountered an Eritrean asylum-seeker or refugee presenting an official passport from Eritrea. Telephonic interview with Giulia Tranchina, Immigration Solicitor at Wilson Solicitors LLP (28 October 2020).

above does not mean, for example, that relatives of children under the age of five can easily get a passport for their child. While, within Eritrea, the issuance of passports is subjected to high level of regulation that makes it impossible for anyone outside of the age range indicated above to obtain a passport, the practice by Eritrean embassies is rife with inconsistency. As discussed in section 3.4.1 above, some embassies (such as the one in Germany) ask applicants to fulfil further requirements (besides the ones described in sections 4.2 and 4.3 below) that are not officially provided by the relevant Eritrean law, rendering the issuance of passports (and IDs) de facto impossible.¹³⁹

¹³⁹ See the discussion in note 125 above and the corresponding text.

4. OBTAINING OFFICIAL DOCUMENTS FROM ERITRIAN EMBASSIES

4.1. *The general practice*

The TCCE contains very clear provisions about the issuance of records of vital events by Eritrean diplomatic or consular missions around the world. The following two provisions of the TCCE are the most important examples:

Art. 57 – Consuls of Eritrea.

The consuls of Eritrea shall, within their territorial limits and as regards Eritrean subjects, carry out the duties of officers of civil status.

Art. 72 – Consuls.

1. Consuls of Eritrea in foreign countries shall draw up records only at the request of interested persons.
2. They shall themselves keep the registers of civil status.
3. They shall ensure their custody and conservation and deliver to interested persons extracts from, or copies of, the records in such registers.

In practice, however, Eritrean embassies themselves do not issue birth or marriage certificates or ID cards and passports. They only play the role of a “facilitator.” It shall be noted that while the procedure for the issuance of passports differs from that of birth and marriage certificates, there are two common underlying requirements for the issuance of these documents: the signature of the so-called “regret form”; and the payment the so-called “2% diaspora income tax.” Before turning to these two requirements, we deem important to first clarify the respective procedures for the issuance of different official documents.

4.1.1. Obtaining a passport

When a person applies for a passport at an Eritrean embassy, he or she is required to complete a standard application form of the Eritrean Department of Immigration and Nationality. The completed application form and all accompanying documents are sent to the Head Office of the Department in Asmara, from where all passports are issued. Previously, the old Eritrean passport (namely, the handwritten one) was also issued in certain cases by embassies themselves.¹⁴⁰ Since the introduction of a machine-readable (non-biometric) passport,¹⁴¹ our findings suggest that all passports are now issued in Asmara. However, based on our data, we cannot rule out exceptions to this general practice, since Eritrean passports were also issued in the past in different contexts and in very controversial circumstances (which included the issuance of passports outside official channels and in corrupt ways).¹⁴²

4.1.2. Obtaining vital documents

For the issuance of birth and marriage certificates, or other documents that have to be issued by other public entities in Eritrea, as a first step a Power of Attorney must be processed at an Eritrean embassy. This is done by

¹⁴⁰ This observation is based on data gathered for a previous confidential report of the first author in which context an interviewee revealed that a passport was once issued to him at an Eritrean embassy.

¹⁴¹ This was introduced on 1 May 2010. See Dutch COI Report 2017, p. 22.

¹⁴² Note 138 above.

a written authorisation to delegate a third party to act on one's own behalf in certain legal matters. The Power of Attorney is sent back to a family member, relative or friend in Eritrea.¹⁴³ In law, a Power of Attorney can be given to any person, but in practice, Eritrean embassies often inform applicants to nominate a relative. Before being used for any official purposes, the authorisation document has to be authenticated at the Department of Consular and Communal Affairs in Eritrea, which is one of the two major departments of the Ministry of Foreign Affairs. After this, the authorisation document has to be finally officialised by the Registrar of the High Court of Eritrea.¹⁴⁴ At this stage, the main task is ensuring the legal technicalities of the content of the Power of Attorney, for example, whether the legal action for which agency has been given by the Power of Attorney is a legally performable act or not.¹⁴⁵ All the stages of this process discussed so far, that is, the issuance of a Power of Attorney and the concomitant procedure of authentication in Eritrea, are considered under Eritrean law as juridical acts. As such, and as will be discussed further in section 4.7 below, they can only be performed by adults. After a Power of Attorney is obtained from an Eritrean embassy, it is the concerned applicant who sends it back to Eritrea for authentication and for further legal action.

Once the Power of Attorney is officialised by the Registrar of the High Court of Eritrea (and in almost every case this happens), the authorised person continues to the next step – which is to approach the local offices or courts in the jurisdiction where the main applicant lived before they left Eritrea, and obtain the required official documentation on behalf of the applicant in a foreign country. Once the local authorities or courts issue the documents, they must be authenticated by the Department of Consular and Communal Affairs at the Ministry of Foreign Affairs before they are sent to the applicant in a foreign country. This is a procedure regularly asked for by the authorities of foreign countries.

Finally, when the authorised representative of the main applicant obtains the required document in Eritrea, the document is sent to the main applicant abroad in the same way as the Power of Attorney is initially sent to Eritrea. The applicant and their authorised representative in Eritrea do this at personal levels of interaction.

While the procedure described so far may not be per se problematic (for adults)¹⁴⁶ it can only be initiated after the fulfilment of the other requirements mentioned at the beginning of this section, to which no exceptions are known to the authors. As a matter of general practice, Eritrean embassies provide consular services to Eritreans only if they fulfil the following two preconditions: 1) the signing of the “regret form”; and 2) the payment of the so-called “2% diaspora income tax.”¹⁴⁷ The latter precondition is applicable to all Eritreans abroad. The former is applicable only to those who exited the country after the 1998-2000 border conflict with Ethiopia, most importantly those who are presumed to have exited the country illegally. These two preconditions must

143 Much of the information on how such documents are sent to Eritrea and officialised by the relevant government or public authorities in Eritrea, including the courts, is based on information gathered from Telephonic interview with a former Eritrean Registrar (5 and 28 October 2020).

144 *Ibid.*

145 *Ibid.*

146 However, in cases where documents need to be issued for unaccompanied minors who have left the country illegally, this procedure can be very difficult and sometimes impossible, as discussed in Section 4.7.

147 Relatively, there is a fairly sufficient body of legal and non-legal literature about these two requirements imposed by Eritrean embassies throughout the world on Eritrean citizens who seek consular services. This includes the following reports: DSP-Group and Tilburg University, “The 2% tax for Eritreans in the diaspora: Facts, figures and experiences in seven European countries,” June 2017 (hereinafter “the DSP-Group Report”); *Report of the Monitoring Group on Somalia and Eritrea, Pursuant to UN Security Council Resolutions 751 (1992) and 1907 (2009)*, S/2011/433, 18 July 2011 (hereinafter “Monitoring Group 2011”); *Report of the Monitoring Group on Somalia and Eritrea, Pursuant to Security Council resolution 2002 (2011)*, S/2012/545, 13 July 2012 (hereinafter “Monitoring Group 2012”); Samia Tecle and Luin Goldring, “From ‘remittance’ to ‘tax’: the shifting meanings and strategies of capture of the Eritrean transnational party-state,” *African and Black Diaspora: An International Journal* (2013) 6(2), pp. 189-207; Nicole Hirt and Abdulkader Saleh Mohammad, “By Way of patriotism, coercion, or instrumentalisation: How the Eritrean regime makes use of the diaspora to stabilize its rule,” *Globalizations* (2017), pp. 1-15; David Bozzini, “The fines and the spies: Fears of state surveillance in Eritrea and in the diaspora,” *Social Analysis* (2015) 59(4), pp. 32-49.

to be fulfilled to request a Power of Attorney. According to three individuals interviewed from Germany,¹⁴⁸ in order to request a Power of Attorney, the person has to physically visit an Eritrean embassy to comply not only with the relevant application procedure, but also with the payment of the 2% diaspora income tax and signature of the regret form.

In the following sections, we will analyse each of these two preconditions separately by providing a short historical context on how they started and the present state of affairs in Eritrean embassies.

4.2. *The 2% diaspora income tax*

Eritrea is one of few countries in the world that imposes a so-called diaspora income tax on their citizens abroad. In democratic countries, whose political system is anchored on the well-known principle of “no taxation without representation,”¹⁴⁹ the imposition of diaspora income tax may not be problematic. There may be guarantees of checks and balances, including judicial and non-judicial accountability options, against possible abuse of government power (in the way such tax is collected, or even in the very legitimacy of the tax system in question). Such is not the case in Eritrea. This has been extensively documented by various sources, including an UN group of experts that monitored an international regime of an arms embargo and financial sanctions imposed on Somalia and Eritrea;¹⁵⁰ the COIE;¹⁵¹ and the DSP-Group Report.¹⁵² The discussion below and throughout Section 4, where appropriate, relies on reports by these sources.

4.2.1. **The legal framework**

The diaspora income tax of Eritrea was formally introduced by a law promulgated in 1995 – Proclamation No. 67/1995. Its full title reads as follows: Proclamation to Provide for the Collection of Tax from Eritreans Who Earn Income While Living Abroad (promulgated on 10 February 1995).¹⁵³ Article 2 of this law imposes a 2% income tax on all Eritreans who live abroad by earning income. In practice, embassies collect the tax not only from income earners, but also even from refugees who do not have a formal source of income. In such cases, refugees are expected to pay the tax from social welfare benefits,¹⁵⁴

148 Telephonic interview with an Eritrean Refugee in Germany (9 December 2020); Telephonic interview with an Eritrean Refugee in Germany (10 December 2020); Telephonic interview with Eritrean Resident in Germany (1 December 2020).

149 See in general, Chris Beneke, “The critical turn: Jonathan Mayhew, the British Empire, and the idea of resistance in mid-eighteenth-century Boston,” *Massachusetts Historical Review* (2008) 10, pp. 23-56.

150 Monitoring Group 2011; Monitoring Group 2012; DSP-Group Report.

151 First COIE Report, Long Version, paras. 126, 205.

152 DSP-Group Report.

153 Much of the analysis on this law as presented herein is based on Daniel Mekonnen, “Expert report written for the EEPA-DSP-Group project on the collection of the Eritrean Diaspora Income Tax (EDIT) by Eritrean diplomatic missions around the world,” April 2017.

154 This is a widely known practice that has also been underlined by some of our interviewed sources. For instance, Eyob Ghilazghy noted that Eritrean citizens who ask for consular services are requested to pay 2% of the income generated during the total number of years the person has been abroad, including 2% of the social welfare received when the person has not earned any income. Telephonic interview with Eyob Ghilazghy, Executive Director of the Uganda-based NGO Africa Monitors (22 October 2020). Another interviewed source was reportedly on social welfare when he/she needed consular assistance from the Eritrean embassy in 2018. According to this person, he/she requested a passport for his/her child in a third country to be able to reunite with him/her and his/her spouse in Europe (as other means of proving the daughter’s identity had been rejected by the authorities in the respective country in Europe). He/she noted that, apart from being requested to sign the regret form, he/she had to provide the embassy with proof of his/her income from the tax authorities in the city in Europe where he/she was residing, according to which the Eritrean diplomats calculated the percentage this person owed them (based on the social welfare earned since the person fled Eritrea) and requested him/her to pay the calculated amount of money (which the person paid through a bank transfer to an account number provided by the Eritrean embassy). The spouse had to also comply with these two preconditions. Telephonic interview with an Eritrean Resident in a city in Europe (23 October 2020).

or a fixed amount.¹⁵⁵

Like many other laws of the early 1990s, Proclamation No. 67/1995 was issued only in Tigrinya and Arabic versions.¹⁵⁶ Ostensibly, the law was issued with the objective of revitalising the national economy of Eritrea, which was devastated by a prolonged war of liberation, spanning over 30 years. However, this objective is not clearly spelled out in the law itself. It can only be deduced from other tax laws that were promulgated around the same time. The classic example in this regard is Proclamation No. 62/1994: Proclamation to Provide for Payment of Income Tax (of 5 October 1994). The Preamble of Proclamation No. 62/1994 sets forth some of the primary objectives of the main regime of Eritrean tax law: stimulation of the devastated national economy of Eritrea, and provision of a tax regime conducive to investment. In the first few years, Proclamation No. 67/1995 may have been genuinely used towards this end. However, in recent years, widely confirmed findings suggest that the tax is no longer used for its intended purpose. Coupled with the so-called “regret form,” it has rather become a potent tool of controlling Eritrean diaspora communities.¹⁵⁷

It is true that a policy of taxing the diaspora of a given country may not be per se illegal.¹⁵⁸ In the case of Eritrea, such is not the case. Findings by independent sources, including a major resolution of the UN Security Council, indicate that the tax collection system involves practices that are inherently illegal, such as threats of violence, fraud and other illicit means.¹⁵⁹ Conversely, the Eritrean Government persistently claims that: either the tax is collected in a non-coercive manner and for legitimate purposes, or it no longer takes place after it attracted the attention of the UN Security Council. For instance, on one occasion, the Political Advisor of the Eritrean President noted that there is nothing illegal about the 2% diaspora income tax,¹⁶⁰ this being part of the government’s well-known dismissive stance towards any accusations, regardless of the accuracy of such accusations.

According to Article 3 of Proclamation No. 67/1995, the obligation to collect diaspora income tax rests on the Eritrean Ministry of Foreign Affairs, which is instructed to collect the tax “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.” That is why Eritrean embassies are actively involved in the collection of the tax. Under Article 360 of the TPCE there are clearly defined punitive measures against

155 On this, see section 4.4.1 and more specifically note 182 below.

156 An unofficial English translation of the law is annexed at the end of this report. The Tigrinya and Arabic versions of the law are available from the newly launched database of the Library of Congress: <https://tile.loc.gov/storage-services/service/l1/lleritrea/eritrean-proc-67-1995/eritrean-proc-67-1995.pdf>.

157 Human Rights Watch, as cited by the UKUT, argued that the 2% diaspora income tax is used by the government “to consolidate its control over the diaspora population by denying politically suspect individuals essential documents such as passports and requiring those who live in Eritrea to provide ‘clearance’ documents for their relatives who live abroad – essentially coercion to ensure that their relatives have paid the two percent expatriate income tax demanded by the government.” *MO (illegal exit – risk on return) Eritrea CG* [2011] UKUT 00190 (IAC), para. 62. This has also been emphasised by several of the sources interviewed for this report. For instance, one of the interviewees explained that the tax “started in the 1990s and it was supposed to help rebuilding the country at that time, but there has never been any accounting as to where all that money goes.” He noted that presently, the ruling party charges this tax to people to show that they are still “under the control” of the government – “by paying the tax, Eritreans accept the dominance of the government over them.” Telephonic interview with Zecarias Gerrima, Deputy Director of the Uganda-based NGO Africa Monitors and Director of Programming at ERISAT (2 November 2020). Similarly, Eyob Ghilazghy, the Executive Director of Africa Monitors, highlighted that: “The regret letter and the 2% tax are the way that the Eritrean ruling party uses to keep people in the diaspora as part of the Eritrean system. That’s a way of controlling us and our relatives back home.” Telephonic interview with Eyob Ghilazghy, Executive Director of the Uganda-based NGO Africa Monitors (22 October 2020).

158 See, for example, The Economist, “Diaspora’ tax draws more criticism,” 31 August 2016, <http://country.eiu.com/article.aspx?articleid=34564387&Country=Eritrea&topic=Economy&subtopic=Forecast&subsubtopic=External+sector>.

159 UN Security Council Resolution 2023 (2011), S/RES/2023, 5 December 2011.

160 DSP-Group Report, p. 85.

refusal of payment of any tax.¹⁶¹ As such, collection of the tax is not voluntary, as is oftentimes alleged by representatives of the Eritrean Government.¹⁶²

Besides the 2% diaspora income tax, there is also another Eritrean law based on which Eritrean diplomatic missions collect taxes from Eritreans living abroad. This law is known as the Rehabilitation and Recovery Tax (Proclamation No. 17/1991 of 10 December 1991). It aims at generating revenue in support of disabled freedom fighters, relatives of disabled freedom fighters and the fallen “heroes” (martyrs), and those members of society who sustained injury due to natural catastrophes. Unlike the law on diaspora income tax, this one does not make explicit reference to Eritreans living abroad. It appears that this tax is arbitrarily applied to Eritreans living abroad.

In common parlance, the tax system employed by the diplomatic missions of Eritrea is known as the diaspora income tax. In keeping with that practice, this report also frequently uses the latter phraseology.

4.2.2. The actual practice

The major punitive measure Eritrean embassies impose on people who refuse to pay the diaspora income tax is the refusal of consular services. However, none of the relevant Eritrean laws, namely, the TPCE or Proclamation No. 67/1995 (the diaspora 2% income tax law described in the section above), stipulates such a punitive measure.¹⁶³

In addition, findings by independent sources, including a major resolution of the UN Security Council, indicate that the tax collection system involves practices that are inherently illegal, such as threats of violence, fraud and other illicit means.¹⁶⁴ In 2011, the UN Security Council, guided by numerous reports by the UN group of experts cited above, obliged Eritrean diplomatic missions around the world to “cease using threats of violence, fraud and other illicit means to collect taxes outside of Eritrea.”¹⁶⁵ This instruction (international sanction) was adopted by a formal Resolution of the UN Security Council that remained in force until the end of 2018, and which was based on the Council’s powers to maintain international peace and security (under Chapter VII of the United Nations Charter).¹⁶⁶ This Resolution (which was binding on all Member States) implied that requiring Eritreans to seek consular services from Eritrean embassies was contrary to maintaining international peace and security. Thus far, three countries, namely Canada, Sweden and The Netherlands, have also expelled Eritrean diplomats on different occasions for reasons related to the collection of the 2% diaspora income tax.¹⁶⁷

161 The full version of the Article reads as follows.

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 assessed 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. (Art. 82).

162 On the coercive nature of the 2% diaspora income tax, see in particular section 4.4.2.

163 See, for instance, Monitoring Group 2011, para. 10; Monitoring Group 2012, para. 95 (both reports are cited in UN Security Council Resolution 2023 (2011), S/RES/2023, 5 December 2011); First COIE Report Long Version, paras. 126 – 205; DSP-Group Report.

164 UN Security Council Resolution 2023 (2011), S/RES/2023, 5 December 2011.

165 See also UN Security Council Resolution 2023 (2011), S/RES/2023, 5 December 2011. At times, concerns are also raised as to whether the collection of a tax in a foreign land by a diplomatic mission of another country is compliant with the definition of a diplomatic mission provided by Article 3(1) of the 1961 *Vienna Convention on Diplomatic Relations*.

166 UN Security Council Resolution 2023 (2011), S/RES/2023, 5 December 2011.

167 See, CBC, “Eritrean diplomat ordered out of Canada after ‘tax’ on ex-pats,” 5 June 2013, <http://www.cbc.ca/news/politics/eritrean-diplomat-ordered-out-of-canada-after-tax-on-ex-pats-1.1309691>; Radio Sweden, “Sweden expels Eritrean diplomat,” 5 September 2014, <https://sverigesradio.se/sida/artikel.aspx?programid=2054&artikel=5956803>; DutchNews.nl, “The Netherlands expels top Eritrean diplomat over ‘diaspora tax,’” 18 January 2018, <https://www.dutchnews.nl/news/2018/01/the-netherlands-expels-top-eritrean-diplo->

While the measures were lifted by the end of 2018,¹⁶⁸ it was not because of any change in the practice of Eritrean embassies with regard to their modus operandi of tax collection. The measures were lifted as part of a new geopolitical development that transpired in the Horn of Africa following the 2018 peace agreement between Eritrea and Ethiopia.¹⁶⁹

In addition, from time to time, Eritrean diplomatic missions also impose various sorts of levies aimed at generating funds for specific purposes, using a mix of voluntary and coercive measures. In the Netherlands, most recently, Eritreans were reportedly instructed to pay mandatory contributions for Covid-19 related purposes. Following such reports, the Dutch Minister of Foreign Affairs took some measures that included prohibiting a staff member of the embassy reportedly involved in the collection of funds from working in the embassy's office in The Hague.¹⁷⁰ The measure taken by the Dutch Government was described by the Eritrean Minister of Information as an "[...] unacceptable behaviour to harass the Eritrean Consulate [...] on trumped-up charges of collecting funds for Covid-19 through illicit means."¹⁷¹ The Minister added that Eritrea would take "reciprocal action."¹⁷²

4.3. The "regret form"

Most Eritrean citizens who seek consular services from Eritrean diplomatic missions are required to sign a so-called "regret form." This practice is applicable to all who left the country after the 1998-2000 border conflict with Ethiopia, most of whom are former conscripts of the NMSP. There are also others who may have fled the country shortly before they reached the age of conscription for the NMSP, or those who may have fled before or after the period of time indicated above without performing the NMSP. The Eritrean Government considers all of these people "absconders" or "people who left the country illegally." As a result, before getting any consular services, they are required to formally admit guilt. Briefly explained, the regret form is a document that Eritrean individuals are asked to sign (under ostensible pressure) in which they make self-incriminating statements that can be used against them in future criminal proceedings, including also extrajudicial proceedings in Eritrea. The COIE, for example, stated that: "Such procedure seems to provide a blank cheque to the Government to punish persons outside of judicial proceedings and safeguards."¹⁷³

The regret form, a sample copy of which is annexed at the end of this report, was introduced in the aftermath of the 1998-2000 border conflict with Ethiopia in which context the country is still experiencing a mass exodus

mat-over-diaspora-tax/; DSP-Group Report, pp. 51-52.

168 UN Security Council Resolution 2444 (2018), S/RES/2444, 14 November 2018.

169 See, BBC, "Eritrea breakthrough as UN sanctions lifted," 18 November 2020, <https://www.bbc.com/news/world-africa-46193273>.

170 NU.nl, "Blok neemt stappen tegen Eritrese ambassade na gedwongen geldinzameling" (Blok takes steps against Eritrean embassy after forced fundraising), 28 October 2020, <https://www.nu.nl/binnenland/6086840/blok-neemt-stappen-tegen-eritrese-ambassade-na-gedwongen-geldinzameling.html>.

171 Yemane G. Meskel (@hawelti), Twitter Comment, <https://twitter.com/hawelti/status/1321090559189143559>, 27 October 2020.

172 Yemane G. Meskel (@hawelti), Twitter Comment, <https://twitter.com/hawelti/status/1321091690107752450>, 27 October 2020.

173 See First COIE Report Long Version, para. 442. Interviewed sources have expressed similar concerns. According to Gerrima: "This letter is about giving up your dignity. It does not serve any purpose, but to give away your dignity. The embassy requests you to sign this letter which is very irrational, and that's how they want you to think about it. For instance, as an analogy, it is like if a woman runs away from her abuser and thereafter the abuser asks her to sign a letter regretting having left him." Telephonic interview with Zecarias Gerrima, Deputy Director of the Uganda-based NGO Africa Monitors and Director of Programming at ERISAT (2 November 2020). In addition, Giulia Tranchina noted that Eritrean nationals who left the country illegally (according to Eritrean domestic laws) will have to sign the regret form for consular services, highlighting that "this is of great concern." Telephonic interview with Giulia Tranchina, Solicitor at Wilson Solicitors, UK (28 October 2020).

of its population. The overwhelming majority of people who fled the country over the past twenty years are former conscripts of the NMSP, who are generally viewed by the government as “traitors,” in particular those who fled the country during the border conflict or shortly after the ratification of the Algiers Peace Agreement in December 2000 – the agreement that formally ended the border conflict.¹⁷⁴

According to a former head of a section on consular affairs in a certain diplomatic mission of Eritrea, the regret form was preceded by a different policy.¹⁷⁵ In that version, any consular service was denied to Eritreans within (or approaching) the age limit of the NMSP if they had left the country during or after the 1998-2000 border conflict. The underlying assumption of that policy was that the said group of people were “opportunists” or “traitors” that had left the country at its most difficult time when their service was needed most.¹⁷⁶ However, as explained by Abdella Adem, the former Ambassador of Eritrea to Sudan, the initial policy did not last long, as it proved counterproductive.¹⁷⁷ According to him and a former consular officer, many Eritrean citizens who were denied the issuance of Eritrean passports by Eritrean embassies on the basis of the earlier policy started to obtain passports from third countries, including from those that are traditionally considered by the Eritrean Government as hostile States. This had serious security implications for the Eritrean Government, based on which the policy was reversed and substituted by the regret form.¹⁷⁸

In the regret form, individuals are asked to admit the following: that by leaving the country illegally and by doing so without completing the NMSP, they committed a crime, for which they can be prosecuted once they return to Eritrea. When Eritreans sign the regret form, the most general understanding they have in mind is that they will eventually be prosecuted for the ‘wrong doing.’ One of the most comprehensive investigations thus far done on this particular topic is the 2017 DSP-Group Report, providing a detailed analysis of the matter.¹⁷⁹ Based on more than one hundred in-depth interviews and eight qualitative questionnaires, the report provides an insightful account of the practice of Eritrean embassies in seven European countries (Belgium, Germany, Italy, The Netherlands, Norway, Sweden and the United Kingdom), in particular how they perform the collection of the diaspora tax in tandem with the signature of the regret form. The content of the regret form is quoted by the same report as follows:

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 fulfil my national obligation and that I am willing to accept the appropriate measures when decided.¹⁸⁰

Importantly, unlike the 2% diaspora tax, there is no legal instrument that has provided for the introduction of the regret form. Nonetheless, the fact that the 2% diaspora tax is regulated by law does not mean that this is respected by Eritrean embassies (as explained in section 4.2.2). In the next sub-sections, we will discuss additional problematic aspects of the tandem procedures.

174 However, the Ethio-Eritrean post-war stalemate continued for twenty years until July 2018.

175 Telephonic interview with a Former Consular Officer (3 October 2020).

176 *Ibid.*

177 Telephonic interview with Abdella Adem, Former Ambassador of Eritrea to Sudan (14 and 15 October 2020).

178 *Ibid* and Telephonic interview with a Former Consular Officer (3 October 2020).

179 DSP-Group Report.

180 DSP-Group Report, p. 64.

4.4. *The tandem nature of the diaspora tax and the regret form*

4.4.1. The problem of inconsistency

Over and above the issue of legality involved in the practice of requiring the diaspora tax and the regret form, the manner in which these procedures are implemented is markedly inconsistent and often subject to abuse. For instance, according to a former consular officer, the manner in which the amount of the diaspora tax is assessed is subject to the arbitrary or discretionary decision of the consular officer involved. Normally, such an amount is deducted from the net income of individuals. Individuals who are not involved in gainful economic activity (i.e., unemployed people) are expected to pay the 'tax' from their social welfare benefits. In this sense, the tax regime becomes even more problematic, as it is levied against funds that are not normally considered as revenues of employment or income. The assessment of the amount of the tax is done in a manner that does not follow a common pattern.¹⁸¹ Eritrean citizens who are not in receipt of any income, mostly refugees residing in refugee camps in third countries, are charged a specific sum. The sum varies depending on the embassy or consular officer in charge. It is calculated on the basis of years that the concerned individual has been outside of Eritrea.¹⁸² In elaborating upon the problem of inconsistency, the DSP-Group Report also cites a person who said that his wife was exempted from paying the tax in a typical instance of nepotism, because she knew a person who works at the Eritrean embassy where she was supposed to pay the diaspora tax.¹⁸³ The opposite scenario is also possible. A member of the Eritrean Community in Cairo emphasised that rejections of applications for documents are made on a discretionary basis, noting that Eritrean embassies "may reject the provision of consular assistance 'just because they want to,' without no apparent reason."¹⁸⁴

The following example further serves to illustrate the high level of arbitrariness and discretion in the collection of the diaspora tax by Eritrean consular officers. This account comes from a publicly available recorded conversation between a staff member of the Eritrean Embassy in Stockholm and an Eritrean refugee, who visited the embassy requesting the issuance of a passport.¹⁸⁵ In the conversation, recorded by a hidden camera of the visitor, the consular officer (or the staffer) tells the visitor that with regard to the amount of money the latter has to pay (the tax), the embassy can handle the case in a lenient way. This in turn shows the level of discretion that the staffer has at his disposal regarding assessment of the tax (which is also indicative of the markedly

181 Telephonic interview with a Former Consular Officer (3 October 2020).

182 For instance, according to Ghilazghy, the amount charged by the Eritrean embassy in Sudan to Eritrean citizens in receipt of no income is (or used to be at least) \$30 per year outside of Eritrea. Telephonic interview with Eyob Ghilazghy, Executive Director of the Uganda-based NGO Africa Monitors (22 October 2020). According to a representative of the Eritrean Refugee Community in Cairo, the Eritrean embassy in Egypt also requests a fixed amount from individuals who are unemployed and do not receive any income, which amounts to \$36 per year since the person left Eritrea. Telephonic interview with an Eritrean Refugee Community Member in Cairo (19 October 2020). Similar views are expressed by Dr Milena Belloni. She noted that, while Eritrean citizens are required to pay the 2% tax for consular assistance, "the amount may differ from embassy to embassy – sometimes it is just a sum, other times a percentage of the annual income. It depends on the country and the embassy policies in that country. They are also required to sign the 'regret form.' These practices continue today." Telephonic interview with Dr Milena Belloni, FWO Postdoctoral Fellow at the University of Antwerp and the Human Rights Centre of the University of Gent, and Principal investigator in the project "Exiled and Separated: a multi-sited ethnography of separated refugee families" (6 November 2020). Gerrima also noted that the 2% tax is just "figurative," as there is no consistency in the amounts charged by Eritrean embassies which, according to him, often depend "on the mood" of the consular officer deciding at each time. Telephonic interview with Zecarias Gerrima, Deputy Director of the Uganda-based NGO Africa Monitors and Director of Programming at ERISAT (2 November 2020).

183 DSP-Group report, p. 67.

184 Telephonic interview with an Eritrean Refugee Community Member in Cairo (19 October 2020).

185 See Meron Estefanos, "Eritrean Embassy in Stockholm exposed by Voice of Meselna Delina," 17 September 2011, <https://www.youtube.com/watch?v=KRpY67gDjIc>. The video was recorded by an activist (named Ephrem Tewelde) volunteering at the time with Radio Meselna Delina, a South Africa-based radio run by a dissident group of Eritreans known as the Eritrean Movement for Democracy and Human Rights (EMDHR).

inconsistent practice in this regard.) In the conversation, the visitor expresses concern about an accumulated amount of “income tax” (corresponding to the years of 2008, 2009 and 2010.) In response to his concerns, the consular officer “reassures” him by saying that it would even be ok if he pays only the amount of one month from the year 2009. The officer says this by giving an example of how the assessment can be done in a very “favourable” way, according to the so-called “Gurage style of doing things”: “We will help you. You only need to do the following ... bring [proof of income] for 2009 and 2010, then you pay for 2009, only for one month! We will do it according to the Gurage style, going from 800 to 700 and so on.”¹⁸⁶

In recent years, as a result of closer scrutiny by the international community as well as some stringent measures taken by certain European countries, some embassies have introduced a more intricate method of collecting the diaspora tax and implementing the regret form.¹⁸⁷ As illustrated by the DSP-Group Report, payment of the diaspora tax takes various forms, such as: cash payment at embassies, cash payment in Asmara via a person who travels to Eritrea via courier, or payment via community organisers in different parts of the world.¹⁸⁸ The following chart by the DSP-Group Report is helpful in illustrating the various methods of payment and the inconsistency between Embassies.

186 The original wording in Tigrinya reads as follows: “ክንተሓጋገዝካ ኢና ደሓን፡፡ ጥራይ ንስኻ ክስታይ ጌርካ ምጻእ ... ናይ 2009 ናይ 2010 [ናይ ኣታዊ መረጋገጺ] ኣምጽእ፡ ናይ 2009 ጥራይ ትኸልፍ፡ ሓንቲ ወርሒ! ... ከምዚ ናይ ጉራጌ ክንገብራ ኢና ደሓን፡ 800፣ 700 እንዳበልና ክንወርድ ኢና፡፡” Needless to say, the staffer’s reference to the “Gurage style” of negotiation has a derogatory connotation. Gurage is the name of a major ethnic group in Ethiopia. They are widely known as hardworking traders. At times, non-Gurage people use derogatory references to how the Gurage people make money or how they negotiate strictly in business. By Gurage style, the staffer at the embassy was meaning that the visitor should not worry about the payment he is requested to make, because supposedly it will be calculated in a stingy way like the Gurages would do.

187 On this, see in particular section 4.4.2, where it is discussed in detail how the Eritrean embassy in Germany has introduced a more discreet way of collecting the tax and administering the regret form.

188 DSP-Group Report, pp. 12-13.

Comparative table of modes of collecting the 2% tax and assessment of explanatory factors¹⁸⁹

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	+/-	+	+/-	+	+	+	+

Meaning of symbols: ++ = very strong; + = strong, +/- =mixed; - = weak; -- = very weak or not applicable
Meaning of alphabetic letters: A: paid at the embassy (A1= cash, A2 = transfer to an account) B: paid in Asmara C1: paid cash to a member of the Mahbere Com. ¹⁹⁰

It follows from this chart that Eritreans who reside in Germany are asked to issue their payment in Asmara. Regardless of the method of payment, according to information received from Uganda, Egypt, Sudan, Kenya and various European countries in the course of this research study, these requirements (i.e., the diaspora tax and the regret form) continue to be imposed on Eritrean citizens requesting consular services.¹⁹¹

¹⁸⁹ DSP-Group Report, p. 110. See also other tabular descriptions about the direct and indirect consequences of refusal to pay the 2% diaspora tax income as presented in the DSP-Group Report, pp. 95-96.

¹⁹⁰ *Mahbere Com* (ማክበረ-ኮም) is a very common term used to describe diaspora communities and their leaders organised along the political orientation of the PFDJ, which are used as very effective political campaign groups by agents of the Eritrean Government. Government representatives describe them as apolitical community initiatives, but they are deeply infiltrated by sworn apologists of the government and rogue political elements, such as the notorious Frankfurt-based “Eri-Blood Group,” a group that is known for violent political activities. On Eri-Blood Group, see the detailed account in the DSP-Group Report, pp. 74-76, 78, 106, 115, 128, in which it is described as “a militia group.”

¹⁹¹ Telephonic interviews with, for instance: an Eritrean Resident of Kampala (15 October 2020); an Eritrean Refugee Community Member in Cairo (19 October 2020); a Refugee Service Provider in Egypt (21 October 2020); Dr Milena Belloni, FWO Postdoctoral Fellow at the University of Antwerp and the Human Rights Centre of the University of Gent, and Principal investigator in the project “Exiled and Separated: A multi-sited ethnography of separated refugee families” (6 November 2020); Telephonic interview with Eritrean Resident in a city in Europe (23 October 2020); Telephonic interview with an Eritrean Resident in a city in Europe (14 October 2020). For instance,

4.4.2. The continued nature of the practices

There are claims that in recent years Eritrean embassies and in particular the one in Germany are no longer collecting the 2% diaspora income tax and/or implementing the signature of the regret form.¹⁹² Our findings show that such claims are inaccurate. We have interviewed knowledgeable Eritreans from Germany, all of whom confirmed that the Eritrean embassy there has introduced a more discreet way of collecting the tax and administering the regret form, but it did not at all cease these practices.¹⁹³ This issue will be further discussed in section 4.5.2 below.

Moreover, in spite of various claims by Eritrean Government sources that collection of the 2% diaspora tax is voluntary, there are several indications that show otherwise. First, as discussed in section 4.2.1, Article 360 of the TPCE stipulates punitive measures against refusal of payment of any tax. Another clear indication about the coercive nature of the tax relates to the fact that it is implemented simultaneously with the regret form, which in our view is a tandem procedure. While Eritrean Government representatives have never denied the collection of the 2% diaspora tax,¹⁹⁴ they have not officially admitted the existence of the other side of the tandem process, namely the regret form. Admitting the very existence of the latter procedure would reveal the alignment of the 2% diaspora income tax with the regret form thereby exposing the illicit nature of this “joint” process.

That these processes are inseparable has also been highlighted by several interviewed sources.¹⁹⁵ As a means to illustrate this and to counter recent claims that argue otherwise, we refer in particular to the procedure at the Eritrean embassy in Germany. This particular observation is based on information we gathered in December 2020 from an Eritrean interviewee in Germany.

a Refugee Service Provider in Egypt underlined that the payment of the diaspora tax and the requirement of the regret form “still happen today”, explaining that an Eritrean colleague “recently contacted the Eritrean embassy [in Cairo] for consular assistance, and the embassy highlighted that the first requirement that this individual needed to fulfil is to sign the regret letter.” Telephonic interview with a Refugee Service Provider in Egypt (21 October 2020). In addition, according to a Representative of a Refugee Organisation in Sweden, the 2% tax appears to still be required at the Eritrean embassy in Sweden. In particular, according to this interviewed source, one of the service users was recently required to submit an Eritrean passport in the course of her application for Swedish citizenship, but “as a matter of principle, she does not want to pay the ‘diaspora tax’, nor she wants to put her relatives in Eritrea in danger.” Telephonic interview with a Refugee Organisation in Sweden (20 December 2020). Similarly, a Research Centre in Sudan which works closely with Eritrean refugees and asylum seekers noted that Eritrean refugees often have to pay the diaspora tax. According to their knowledge, “Eritrean citizens have to pay [the tax] to avoid reprisals by the Eritrean Government.” In their opinion, “they do pay it because they fear the Government. Specially, young Eritreans who evaded or deserted the military/national service are at serious risks (this is even according to Eritrean law that establishes punishments).” Telephonic interview with a Research Centre in Sudan (20 December 2020).

192 See Bundestag-Drucksache 19/19355, <http://dipbt.bundestag.de/dip21/btd/19/193/1919355.pdf>, 20 May 2020, where the German government stated this on p. 9: “According to information from the Embassy of the State of Eritrea, the Eritrean representations in Germany do not collect the so-called ‘diaspora tax.’”

193 Telephonic interview with Temesgen Afewerki, Member of the Eritrean Law Society and former Legal Advisor of the Eritrean Investment and Development Bank, currently Translator in asylum cases for the BAMF and a Cultural Mediator for CARITAS (27 November and 1 December 2020); Telephonic interview with Zekarias Kibreab, Author of *Paradise Denied: How I Survived the Journey from Eritrea to Europe*, and Producer of a popular YouTube Channel known as *Mestyat Betna* (“Our Mirror”) (1 and 12 December 2020); Telephonic interview with Samson Solomon, Eritrean Community Organiser in Frankfurt (2 December 2020).

194 See, for example, the opinion of the Political Advisor of the Eritrean State President, cited in DSP-Group Report, p. 85. It shall be noted that what Eritrean Government representatives actually contest is the modality of compliance: whether coercive or voluntary.

195 Telephonic interviews with, for instance, Eyob Ghilazghy, Executive Director of the Uganda-based NGO Africa Monitors (22 October 2020); Telephonic interview with a Refugee Service Provider in Egypt (21 October 2020); Eritrean resident in a city in Europe (23 October 2020); Telephonic interview with Zecarias Gerrima, Deputy Director of the Uganda-based NGO Africa Monitors and Director of Programming at ERISAT (2 November 2020).

The interviewee contacted the Eritrean embassy in Germany in October 2020 with the objective of inquiring about the standard procedure for application for an Eritrean ID card and passport. He was told by a staff member at the embassy that he needs to pay the 2% income tax and sign the regret form. With regard to the payment of the 2% income tax, our source was informed by the embassy that the money is to be paid in Eritrea and for this to happen he needs to appoint a legal representative in Eritrea. With regard to the calculation of the amount of the tax, he was told that there is a fixed monthly rate of Euro 15 per month for those who are below the age of 20 and a fixed rate of Euro 20 per month for those who are above the age of 20, if such individuals do not earn any income from a gainful employment. This means that the amounts mentioned above are to be paid from money refugees receive in the form of social assistance.¹⁹⁶

In addition to the above, we have also interviewed two Eritrean refugees who have been asked by the Eritrean embassy in Germany on two different occasions to pay the 2% diaspora income tax and sign the regret form in order to obtain consular services from the embassy. One of these refugees approached the embassy in December 2018 to obtain an Eritrean ID card,¹⁹⁷ and the other one in April 2019 to obtain a marriage certificate and the birth certificates of his children who are still in an African country awaiting their family reunification process.¹⁹⁸ Although both refugees were willing to be identified by name, on account of their pending cases, we preferred to report their accounts anonymously.

Credible information on the continued collection of the 2% diaspora tax and the regret form by Eritrean embassies in other European cities has also been revealed to the authors in the course of this research. For instance, an Eritrean resident in another European country hosting a large number of Eritrean refugees was reportedly required to fulfil both processes very recently. The particulars of this case are so evident and the experience so recent that we cannot provide further details in order to preserve the anonymity of this source.¹⁹⁹

Similarly, another resident in a city in Europe noted that in order for his/her daughter (who at that time was an unaccompanied minor in Sudan) to be able to reunite with him/her and his/her spouse, they had to apply for a passport for her. While the parents tried unsuccessfully various avenues, they had no other option than to initiate the issuance of a passport for their daughter at the Eritrean embassy in the city in Europe where they were residing. According to this source, they were both compelled to sign the regret form and to pay the 2% diaspora tax (in 2018) against their political stand.²⁰⁰ This person, who wishes to remain anonymous, expressed that, after that, he/she has to be very careful and to keep low profile since Eritrean authorities know about the whereabouts of the family.²⁰¹

In sum, Eritrean citizens who request official documentation at Eritrean embassies are forcefully requested to sign the regret form and to pay the diaspora tax, which are coercive and abusive by their nature. As established by other sources cited herein,²⁰² the 2% diaspora income tax is not a mere tax scheme of the Eritrean Government, but it also makes part and parcel of the widespread network of control and surveillance the government

196 Telephonic interview with Eritrean Resident in Germany (1 December 2020).

197 Telephonic interview with an Eritrean Refugee in Germany (9 December 2020).

198 Telephonic interview with an Eritrean Refugee in Germany (10 December 2020).

199 Telephonic interview with an Eritrean Resident in a city in Europe (14 October 2020).

200 Eritrean Resident in a city in Europe (23 October 2020).

201 *Ibid.*

202 UN Monitoring Group 2011 and 2012; First COIE Report Short Version, para. 27; *Bahlbi vs. Van Reisen*; Bozzini 2015; Hirt and Mohammed 2017; Tecle and Goldring 2013.

has spread throughout its embassies.²⁰³ From the discussion above, it can well be argued that the ultimate objective of the diaspora income tax and the regret form are that of effectively controlling Eritrean diaspora communities, and ensuring the continuance of the quintessential ideological objective of regime preservation back in Eritrea.

Through a closer examination of the practice of Eritrean embassies in selected countries, section 4.5 will further illustrate that (regardless of the “willingness” of some citizens to comply with this tandem procedure)²⁰⁴ Eritrean embassies appear to reject the issuance of official documents to individuals (and their relatives) regarded as political opponents to the Eritrean government and even to refugees and asylum seekers (or those who are recognisable as such), as well as to citizens who fled Eritrea after the peace agreement between Ethiopia and Eritrea.

4.5. Practical realities of Eritrean refugees in obtaining documents from Eritrean embassies

The analysis in this sub-section takes the debate to a more practical level, by focusing on concrete examples of difficulties experienced by Eritrean refugees in obtaining official documents. This will be done by examining the practice of Eritrean embassies in selected African countries, namely Sudan, Uganda, Egypt, Ethiopia and Kenya. These countries host a large number of Eritrean refugees that have pending family reunification cases in several European countries, including in Germany.

Emphasis needs to be given again to the tandem nature of the procedures: the 2% diaspora income tax and the regret form. In particular, it bears repeating that a person who is willing to pay the tax cannot do so without signing the regret form. This applies to individuals who have fled the country after the 1998-2000 border conflict with Ethiopia and who are within (or approaching) the age limit of the NMSP.²⁰⁵ In addition, as explained by some of the interviewed sources, the requirements of the payment of the 2% diaspora income tax and the signature of the regret form must be fulfilled at the Eritrean embassies abroad, as well as at the Eritrean embassies in the respective European countries where the sponsor(s) are based. According to the evidence gathered, all the family members who would eventually reunite are subjected to the fulfilment of such requirements in order for the family reunification applicant abroad to get consular services by the respective Eritrean embassy.²⁰⁶ Yet, as will be discussed in the following sub-sections, if an individual or his/her relatives are regarded as political opponents to the Eritrean Government (including refugees and asylum-seekers, or those recognisable as such) they are reportedly denied consular services, including the issuance of official documents.²⁰⁷ This happens regardless of their “willingness”²⁰⁸ to sign the regret form and to pay the diaspora tax.²⁰⁹ Additionally, requesting

203 On this, see section 4.4 above.

204 None of the Eritrean interviewees consulted for this study voluntarily paid the 2% diaspora income tax or signed the regret form; the ones who did it, or attempted to, were compelled to do so to meet the onerous requirements for family reunification procedures.

205 In this sense, people who left the country before 1998 are treated in a preferential manner, giving rise to critical concerns of discrimination.

206 At least the adults, and in the case of children, the parents on their behalf (as Eritrean embassies do not process any request of official documents made by children). Telephonic interview with Eyob Ghilazghy, Executive Director of the Uganda based NGO Africa Monitors (22 October 2020); Telephonic interview with Eritrean resident in a city in Europe (23 October 2020). See in particular the personal account of the latter source in section 4.4.2.

207 Consular services are also rejected on discretionary bases with no apparent reason. On this, see section 4.4.1 above.

208 *Ibid.*

209 Remarkably, a person who approaches an Eritrean embassy with the aim of securing consular services and then refuses to pay the 2% diaspora income tax and/or to sign the regret form would find themselves becoming a target of political reprisal, including against their family members in Eritrea. Information in this regard is based on previous research work done by the first author in the context of other

official documentation also poses serious risks for the applicants and their relatives, by making Eritrean diplomatic or consular authorities (and hence the Eritrean Government) aware of their whereabouts and activities (details of which are also discussed in the following sub-sections and section 4.6).

The sub-sections below will further provide insights about the practices in several Eritrean embassies after the peace agreement between Ethiopia and Eritrea in July 2018. According to some of the sources consulted between October and December 2020, a new policy was put in place following the new peace agreement between these two countries. The purported reason is as follows: since Ethiopia and Eritrea have now resolved their prolonged stalemate of twenty years, there is now peace in Eritrea, which means that there is no need for people to leave the country, and thus no consular service is to be given to people who left the country after July 2018. However, as illustrated in section 2, in spite of the new peace process, the situation of human rights in Eritrea has never changed. In fact, in certain areas it is worsening, as already discussed in sub-section 2.6 above.

The authors acknowledge that the number of interviews conducted, on which the following sub-sections are based, is relatively small. This has been due to a lack of organisational and financial resources of the commissioners of the expert opinion. Thus, the authors acknowledge the need for further, more detailed research in this field. Nevertheless, the findings are triangulated by citing several reports from independent sources, in addition to the expert knowledge of the authors.

4.5.1. Sudan

The Eritrean embassy in Sudan is one of several embassies in East Africa that have introduced a new *modus operandi* about consular services starting from July 2018. According to Eritrean residents in Khartoum, the Eritrean embassy in Sudan is no longer providing consular services to individuals who have left Eritrea after the new peace process in July 2018.²¹⁰ According to these sources, the Eritrean embassy in Sudan uses a specific methodology in establishing the exact time when individuals have left Eritrea or have entered Sudan. The embassy requests individuals to present a copy of the UNHCR registration paper or any other identification paper given by the local authorities (often by the Commission for Refugees),²¹¹ from which their date of entry to the country can be established. This also means that if an individual cannot prove exactly their date of entry to Sudan as being after July 2018, they do not get any consular services. This also affects individuals who may have entered Sudan before July 2018, but who are unable to adduce documentary proof in this regard.²¹²

Other sources consulted have also provided personal accounts that showcase that consular services in Sudan are also rejected on the basis of the activities and attributed political opinion of the applicant and/or their relatives. For instance, Ghilazghy noted that his wife, after fleeing Eritrea with their three children in 2013, attended the Eritrean embassy in Khartoum to request passports for her and their children so that they could reunite with him in Uganda. However, according to Ghilazghy, his family was denied the issuance of passports

confidential reports. It has also been reported by Human Rights Watch, as cited by the UKUT in *MO (illegal exit – risk on return) Eritrea CG* [2011] UKUT 00190 (IAC), para. 62.

210 Telephonic interview with Eritrean Resident in Khartoum (29 September 2020); Telephonic interview with Eritrean Resident in Khartoum (14 December 2020). A Research Centre in Sudan noted that they have heard about the differences with regards to the issuance of official documents by the Eritrean embassy in Sudan after the peace agreement between Eritrea and Ethiopia. Telephonic interview with a Research Centre in Sudan (20 December 2020).

211 This is the governmental body in charge of RSD in Sudan.

212 Similar accounts were told to us by an Eritrean Resident in Kampala (15 October 2020); Eritrean Resident in Nairobi (5 October 2020); another Eritrean Resident in Nairobi (24 September 2020); Eritrean Resident in Cairo (1 October 2020); Eritrean Resident in Addis Ababa (19 October 2020); another Eritrean Resident in Addis Ababa (5 November 2020); Eritrean Resident in Khartoum (29 September 2020); telephonic interview with an Eritrean Resident in Europe (14 October 2020).

based on his work as a human rights defender.²¹³ Similarly, another Eritrean citizen legally residing in a European city approached the Eritrean embassy in Sudan to apply for a passport for her daughter after she fled Eritrea in 2017. This person was reportedly told that any consular services would be refused unless he/she went back to Eritrea to report for duty. While at the embassy, this person said that he/she experienced a “horrificing interrogation”, “threats” and feared to be kidnapped back to Eritrea.²¹⁴ Further details of the incident at the embassy and in Sudan cannot be explained as it may lead to the identification of this individual who wishes to remain anonymous due to fear of reprisals against the family. Similar concerns are raised by Ghilazghy. He is aware of Eritrean citizens who had to flee from Sudan to Uganda after having being identified as opponents to the Eritrean government by the Eritrean embassy in Sudan.²¹⁵

Additionally, according to a Research Centre in Sudan, between 2001 and 2004, UNHCR halted most of their services at the refugee camps in Eastern Sudan, and the refugee status of those residing there were withdrawn. Many Eritreans were born at the camps, and according to this Centre, they are not provided with IDs or birth certificates (either by Eritrea or Sudanese authorities), nor are they recognised by UNHCR or the Sudanese authorities as refugees. The Centre raised serious concerns about the fact that applications for family reunification by Eritrean citizens residing in these refugee camps are rejected on the basis of lack of formal identity documents.²¹⁶

4.5.2. Ethiopia

We have also gathered evidence indicating that since the reopening of the Eritrean embassy in Addis Ababa in 2018 (after the new peace agreement) no major consular services have thus far resumed, in particular traditional consular services, such as issuance of passports and processing of so-called vital records. During the Covid-19 pandemic, the embassy has provided assistance to some Eritreans who experienced problems in their travel towards Eritrea. With the exception of these, according to various sources, including Eritrean citizens who live in Addis Ababa and who entered the country after July 2018, full consular services have not yet resumed in Addis Ababa.²¹⁷ According to another Eritrean citizen, whose family joined him in Sweden by the end of 2019, his family members came to Sweden from Ethiopia using travel documents issued by the Swedish authorities. This was so because it was not possible for them to obtain consular services from the Eritrean embassy in Ethiopia.²¹⁸

Various sources have in addition expressed concerns about the changes in the asylum registration procedure in Ethiopia, which in turn also affects family reunification processes. In particular, a Representative of a Refugee Organisation in Sweden referred to a meeting between UNHCR and international organizations this summer. According to this source, in this meeting, UNHCR highlighted that the situation for Eritrean refugees in Ethiopia was worsening and that the possibility for them to register with the Administration for Refugee and Returnee Affairs (ARRA)²¹⁹ “has been limited severely.”²²⁰ This also “means that they cannot prove their refugee

213 Telephonic interview with Eyob Ghilazghy, Executive Director of the Uganda-based NGO Africa Monitors (22 October 2020).

214 Telephonic interview with an Eritrean Resident in a city in Europe (23 October 2020).

215 Telephonic interview with Eyob Ghilazghy, Executive Director of the Uganda-based NGO Africa Monitors (22 October 2020).

216 Telephonic interview with a Research Centre in Sudan (20 December 2020).

217 Telephonic interview with two Eritrean Residents in Addis Ababa (19 October 2020); Telephonic interview with two Eritrean Residents in Addis Ababa (5 November 2020).

218 Telephonic interview with an Eritrean Resident in Sweden (1 October 2020).

219 This is the governmental body in charge of RSD in Ethiopia.

220 Telephonic interview with a Refugee Organisation in Sweden (20 December 2020).

status, which is needed for an exit visa from Ethiopia for family reunification processes.”²²¹ This source further referred to information provided by another international organization, according to which “ARRA is no longer registering certain groups of Eritrean refugees”; and that sometimes “parents are registered but not their children.”²²² In addition, Giulia Tranchina, an Immigration Solicitor at Wilson Solicitors LLP (UK) with over 11 years of experience in representing Eritrean clients, noted that she has heard that “in some cases Ethiopian authorities have started refusing the registration of new asylum claims from Eritrean nationals.”²²³

In the context of a newly erupted armed conflict in the northern part of Ethiopia (in the area that borders Eritrea) since early November 2020, Eritrean refugees have reportedly been exposed to various levels of dangers, such as abduction, killing, and forcible return to Eritrea (purportedly by Eritrean troops). This been noted recently by the head of the UN refugee agency.²²⁴ In this regard, it bears referring to the Human Rights Committee (HRC)’s General Comment No. 15, according to which “in certain circumstances” foreigners may enjoy the protection of the International Covenant on Civil and Political Rights (ICCPR) even in relation to entry or residence, for example, when considerations of [...] prohibition of inhuman treatment and respect for family life arise.”²²⁵

Most importantly, in January 2021, we have received credible information from an Eritrean refugee in Ethiopia to the following effect.²²⁶ The information comes from a person who has a pending application for family reunification in the German Embassy in Ethiopia. In relation to the procedure of obtaining official documents from Eritrea, the applicant has been informed by the Family Assistance Program of the International Organization for Migration (IOM) that it is a standard procedure for Eritrean refugees in Germany to pay a 2% diaspora income tax and sign the regret form in order to obtain official documents from Eritrea. According to our source, IOM is currently actively involved in assisting several German Embassies in East Africa in processes related to the family reunification applications submitted by Eritrean refugees. This in turn reveals that the German Embassies in the region, including the one in Ethiopia, are aware of the fact that in order to obtain official documents (or authenticate such documents) Eritrean refugees have to pay a 2% diaspora income tax and sign the regret form in the Eritrean Embassy in Germany. The preconditions requested by the Eritrean Embassy, as noted repeatedly, are not only cumbersome but also illicit by their very nature.

4.5.3. Egypt

The Eritrean embassy in Egypt has also introduced a new policy of refusal of consular services to those who have left Eritrea after July 2018.²²⁷ In addition to this, Eritreans in Egypt also experience additional difficulties

²²¹ *Ibid.*

²²² *Ibid.*

²²³ Tranchina underlined that this is problematic for their international protection, as those who are unable to lawfully reside in a country will “become even more vulnerable because of the lack of legal status.” In doing so, she further argued that “lack of formal proof of status would still not be a valid ground to refuse family reunion’s applications as Eritrean asylum-seekers have nowhere else to go – they cannot return to Eritrea. There are many compelling legal arguments as to why they could still be entitled to realise their right to family reunion.” Telephonic interview with Giulia Tranchina, Solicitor at Wilson Solicitors, UK (28 October 2020).

²²⁴ UNCHR, “Statement attributable to the UN High Commissioner for Refugees Filippo Grandi on the situation in Ethiopia’s Tigray region,” 11 December 2020, <https://www.unhcr.org/news/press/2020/12/5fd3ab2d4/statement-attributable-un-high-commissioner-refugees-filippo-grandi-situation.html>.

²²⁵ HRC, CCPR General Comment No. 15, “The position of aliens under the Covenant, adopted at the Twenty-seventh session of the Human Rights Committee,” 11 April 1986, para. 5.

²²⁶ See Appendix 11.

²²⁷ Telephonic interview with Eritrean Resident in Cairo (1 October 2020). As noted in section 4.4.1, this source (who has worked closely with various refugee service providers in Egypt since 2015) also emphasised that rejections of issuance of documents by the Eritrean embassy in

and risks. According to a refugee service provider in Egypt, obtaining documents from the Eritrean embassy in Egypt is more difficult (or even impossible) for refugees and asylum seekers:

If they are identified as refugees by the Eritrean embassy in Egypt, they don't normally get consular assistance. In those cases, the Eritrean embassy don't want to offer them support and often find the way to prevent them from accessing official documents.²²⁸

This centre also noted that activists in Egypt and/or those are seen as political opponents of the Eritrean government, "have been refused entry to their embassies (and as such, cannot access any consular assistance), and they continue to face protection concerns even outside of Eritrea."²²⁹ The centre further raised concerns about seeking official documents from Eritrean diplomatic missions, as "generally, approaching an Eritrean embassy, does not come without harm, corruption, [the signing of the regret letter], payment of the diaspora tax and bribes."²³⁰ They were also aware of Eritreans who were refused provision of documentation when they could not meet the financial requirement of the Eritrean embassy.²³¹ The centre stressed that Eritrean community members report facing "threats," "surveillance" and "violence" from Eritreans claiming affiliation to the Eritrean embassy and security; and that there are also "reports documenting family members of Eritrean refugees facing targeting in Eritrea."²³² Similarly, an Eritrean refugee community member in Cairo raised concerns about activities of surveillance as follows:

Approaching the Eritrean embassy is of great concern, as the Eritrean Government has secret agents across Egypt. If applicants fail in the family reunification procedure, they will live under fear in Egypt as after approaching the Embassy, their details and whereabouts are known to the government.²³³

This person also noted that the Eritrean embassy in Egypt searched for the personal information of the person seeking consular services as well as information pertaining their relatives in Eritrea through the respective local administration in the country. In particular, he provided evidence indicating that when Eritrean diplomats find that the person has for instance absconded the NMSP or spoken against the government, Eritrean diplomats and those affiliated to the Eritrean embassy monitor and follow closely the concerned individual, including to their homes in Egypt.²³⁴

4.5.4. Uganda

Uganda is another country in which the Eritrean embassy has also introduced a very similar new policy that of the embassies in Ethiopia, Sudan and Egypt following the peace agreement between Ethiopia and Eritrea.²³⁵

Egypt are made on a discretionary basis without no apparent reason.

228 Telephonic interview with Refugee Service Provider in Egypt (21 October 2020). They explain that, while the majority of the Eritrean community in Egypt are refugees, some of the Eritreans in Egypt lived in Saudi Arabia before coming to Egypt, so they arrived in Egypt with an Eritrean passport normally issued by the embassy in Saudi Arabia.

229 Telephonic interview with Refugee Service Provider in Egypt (21 October 2020).

230 *Ibid.*

231 *Ibid.*

232 *Ibid.* In doing so, the Centre noted that this not only happens in Egypt, but that this practice has been well and extensively documented by the reports of the COIE.

233 Telephonic interview with an Eritrean Refugee Community Member in Cairo (19 October 2020).

234 *Ibid.* This person knows the specific details of various incidents through his community work whereby he has assisted members of the Eritrean community in their family reunification processes *inter alia*.

235 Telephonic interview with an Eritrean Resident of Kampala (15 October 2020); Telephonic interview with Eyob Ghilazghy, Executive Director of the Uganda-based NGO Africa Monitors (22 October 2020); Interview with Zecarias Gerrima, Deputy Director of the Uganda-based NGO Africa Monitors and Director of Programming at ERISAT (18 November 2020).

However, according to our Eritrean interlocutor in Kampala, the post-July 2018 consular policy was reversed in mid-October 2020. The reversal was as a result of a strong resistance expressed against the policy by members of the Eritrean community in Kampala. This happened in a recent consultation that took place with the Eritrean diplomatic mission in Kampala. One of our interlocutors in Kampala explained that, compared to other Eritreans in the region, Eritreans in Kampala have a better alternative of accessing official documentation from the local authorities (such as refugee cards or residence permits).²³⁶ This gives them better bargaining power in challenging outrightly arbitrary practices of the embassy.²³⁷ However, this does not imply any change regarding the practice of signing the regret form and payment of the 2% diaspora income tax whenever individuals want to receive consular services from the embassy.

4.5.5. Kenya

According to various sources, including Eritrean residents in Nairobi, the Eritrean embassy in Kenya has also started to refuse consular services, including the issuance of official documents, to Eritrean citizens who left Eritrea after July 2018.²³⁸ In this regard, the Embassy in Kenya has also implemented the new (post-2018) policy applicable to individuals who have left Eritrea after the peace process between Ethiopia and Eritrea.

4.6. *Authoritative pronouncements on risks faced by Eritrean refugees*

In the context of family reunification, the Swedish Migration Court of Appeal found it disproportionate to require family reunification applicants to apply for a passport at the Eritrean embassy to prove the applicants' identity due to the risks this would pose to the applicant and their relatives.²³⁹ The Court in particular ruled that by approaching the Eritrean embassy, the applicants would make the Eritrean government aware of their illegal exit, which could put their relatives in Eritrea at risk of, for instance, deprivation of liberty.²⁴⁰ The judgment also referred to the payment of the 2% diaspora income tax and the regret form, which, according to the Court, are requirements that the applicants will be compelled to fulfil.²⁴¹

Although not directly related to the issue family reunification, the following authoritative pronouncements by the Court of Amsterdam (The Netherlands) and the COIE are also important in understanding the various human rights violations faced by Eritrean refugees from Eritreans affiliated to the Government. In a landmark judgment by the Court of Amsterdam of 2016, the Court found that through the so-called long arm or "extended arm of the State,"²⁴² the Eritrean Government is actively engaged in extraterritorial human rights violations committed against its citizens. In paragraph 4.6 of its judgment, the Court of Amsterdam said that PFDJ's diaspora-based youth movement, known as YPFDJ (Young People's Front for Democracy and Justice): "is to be

236 However, we have also gathered evidence indicating otherwise. According to Ghilazghy, getting a resident permit in Uganda is quite difficult, "particularly for Eritreans who do not normally hold a passport, nor have often the means to get it because one needs to be an investor or university student to get it." Telephonic interview with Eyob Ghilazghy, Executive Director of the Uganda based NGO Africa Monitors (22 October 2020).

237 Telephonic interview with an Eritrean Resident of Kampala (15 October 2020).

238 Telephonic interview with Eritrean Resident in Nairobi (5 October 2020); Telephonic interview with Eritrean Resident in Nairobi (24 September 2020); Telephonic interview with Eyob Ghilazghy, Executive Director of the Uganda-based NGO Africa Monitors (22 October 2020).

239 Migration Court of Appeal (Sweden), UM 2630-17, 5 March 2018.

240 *Ibid*, para. 4.

241 *Ibid*. For an analysis of this judgment, see section 5 below.

242 *Bahlbi vs. Van Reisen*, Case No. C/13/596714/KG ZA 15-1352 CB/MV, Court of Amsterdam, Judgment of 10 February 2016, para. 4.4, unofficial English translation available at: http://www.eepa.be/wcm/dmdocuments/English_translation_plus_Dutch_original_judgment_Bahlbi_vs_Van_Reisen.pdf.

characterized as the extended arm of a dictatorial regime and that through this organization intelligence is being passed to the regime.”²⁴³ This means, in other words, that agents of the Eritrean Government in the diaspora are actively involved in acts of espionage. In a very remarkable similarity, the COIE has also found: “Through its extensive spying and surveillance system targeting individuals within the country and in the diaspora, the Government engages in the systematic violation of the right to privacy.”²⁴⁴ In this sense, instructing Eritrean refugees to go to Eritrean embassies (to request official consular services) ostensibly exposes them to persecutory treatment by the embassies.

While the Higher Administrative Court of Hessen has claimed that Eritreans who have left the country illegally as evaders or deserters have the ability to regularise their position (on return) by paying the diaspora tax and signing the regret form,²⁴⁵ the UKUT had already rejected such claims. The UKUT ruled that “persons who are likely to be perceived as deserters or evaders will not be able to avoid exposure to such real risk merely by showing they have paid (or are willing to pay) the diaspora tax and/have signed (or are willing to sign) the letter of regret.”²⁴⁶ The UKUT in addition noted that the available evidence strongly suggests that policy imperatives of the current Eritrean government are driven “by domestic concerns about the maintenance of control and regulation of their own population.”²⁴⁷ Besides the 2% diaspora income tax and the regret form, to our knowledge, and according to various interviewed sources, the Eritrean Government exercises effective control and surveillance over Eritreans abroad in several ways. For instance, Giulia Tranchina emphasised that most of her Eritrean clients report having their calls intercepted: “during calls, they tend to hear background voices, or a strange ‘bip’. Phone conversations of our clients are monitored, and this way of exercising control over Eritreans by their government has also been reported.”²⁴⁸ There is an excerpt from her interview notes that it is very revealing in this regard:

I have issued about 25 complaints over the past three years for issues pertaining to Eritrean interpreters who are related to the Eritrean Government. These concerning issues include refusal to translate words at asylum interviews with the Home Office and harassment of asylum seekers in the premises of the Home Office during toilet breaks. For instance, the word “torture” is often never translated [...] Home Office Interpreters of my clients have also refused to translate, for instance, that the asylum seeker had mental issues. Sometimes, during breaks, the interpreter threatens the asylum seeker, for instance by telling them that he or she is a prominent member of an Eritrean organisation that supports the regime, so that they later feel threatened to speak out and as a consequence do not articulate their asylum claim properly [...].²⁴⁹

4.7. Access to official documents by unaccompanied minors

4.7.1. The legal basis of minority

Unaccompanied minors experience peculiar problems in their efforts to obtain official documentation from Eritrean embassies. There is also a discrepancy in family reunification procedures, as explained by Barbara Bierhuizen, Legal Advisor of the Dutch Council for Refugees. She notes that: “In addition to the need to pro-

²⁴³ *Bahlbi vs. Van Reisen*.

²⁴⁴ First COIE Report Short Version, para. 27.

²⁴⁵ Higher Administrative Court of Hessen (Germany), Case 10 A 797/18.A, Judgment, 30 July 2019.

²⁴⁶ *MST and Others*, para. 348.

²⁴⁷ *Ibid.*, para. 367. The UKUT argued this in particular in the Court’s assessment on forcible returns.

²⁴⁸ Telephonic interview with Giulia Tranchina, Solicitor at Wilson Solicitors, UK (28 October 2020).

²⁴⁹ *Ibid.*

vide documents, the main problem seems to be the provision of the declaration of consent of the other parent remaining behind. If the other parent is missing or the child does not have any contact with the other parent, the Immigration and Naturalisation Service (INS) rejects the application.”²⁵⁰

There is a need to briefly explain the definition of a minor person, including the legal competence of a minor, under Eritrean law. According to Article 198 of the TCCE, a minor is a person who has not attained the age of eighteen years. Article 199 of the same law stipulates that a minor may not perform juridical acts except in cases provided by law.

In an Eritrean context, the following acts are typical examples of juridical acts: any official transaction that is performed by presenting oneself in front of government officials, courts or consular offices, such as applying for a birth certificate, a marriage certificate, a Power of Attorney, or signing a contract or transacting any other official document of a binding nature. According to sub-articles 1 and 3 of Article 199 of the TCCE, as regards the proper care of their interests, in particular as regards the performance of any juridical act, minors shall be placed under the authority of a guardian. Practical aspects of this issue will be discussed in the sub-sections below.

4.7.2. Possibilities of a minor to obtain official documents in a third country

Due to the legal presumption discussed above, the general understanding is that Eritrean embassies cannot provide consular services to minors, given that the most common services they offer involve the performance of juridical acts. It is difficult to imagine a scenario in which a minor may officially visit an Eritrean embassy for a matter that does not involve the performance of a juridical act. This is so because when Eritrean refugees (unaccompanied minors included) officially visit an Eritrean embassy, they do this with the objective of obtaining a Power of Attorney, which is the first most important step in obtaining other official documents, such as an ID card, a birth certificate or a marriage certificate, which may be needed for asylum applications or family reunification processes.

We have received anecdotal evidence that the request of consular services by minors is not a very widespread practice. However, certain Eritrean embassies have refused to provide consular services to unaccompanied minors citing the legal limitation stipulated by the TCCE – incompetence of minors to perform any juridical act. Then what is the possibility of obtaining the required consular service on behalf of a minor by a parent, or a legal representative, or a guardian? What does Eritrean law say in this regard?

4.7.3. The legal status of guardians of minors

Under Eritrean law, Articles 204 and 205 of the TCCE, parents are the presumed legal guardians of minors. If both parents (or one of them) are alive, they are regarded as the only legitimate guardians who can conduct all juridical acts on behalf a minor. There is one key feature of the Eritrean family law, which provides the concept of a “tutor,” a person who may act in certain cases on behalf a minor, when authorised to do so by the legal guardians of the minor (so to say by the parents of a minor). This is understood from a combined reading of sub-article 2 of Article 199 and Article 217 of the TCCE.

For purposes of this study, Article 217 of the TCCE has particular relevance. It reads as follows: “The father or the mother may, where they think fit, appoint a tutor to the child, reserving to themselves the functions of guardian.” Our interpretation of this article is that the parents, who are the presumed legal guardians of a

²⁵⁰ Interview with Barbara Bierhuizen, Legal Advisor, Dutch Council for Refugees (9 December 2020).

minor, can delegate certain tasks related to their minor child to third parties, referred to in the law as tutors. This can be done through the normal legal process pertaining to Eritrean family law and the appointment of a legal representative or agent, including the issuance of a Power of Attorney. In the case of minors, this can be done only in Eritrea, because the appointment of a legal representative of a minor (when such a guardian is not a parent of the child) is related to the social institution of “family council,” a typical feature of the Eritrean family law, the operationalization of which is possible only by a court of law in Eritrea. There is additional need here for further clarification with regard to the role of a parent or a legal guardian acting on behalf of a minor, depending on whether the guardian is within or outside of Eritrea, assuming that the minor is in all cases in a third country.

4.7.4. When the parent or guardian is in Eritrea

As noted above, when the parent or the legal guardian is in Eritrea, the process of obtaining official documents on behalf of a minor may seem straightforward, as it can be done by the parent. However, when the documents have to be sent to a foreign country, to the minor, the same procedure of authentication discussed in sub-section 3.3 above is applicable. In addition, the following practical difficulties may also arise.

If the unaccompanied minor has left the country illegally, chances may be low for the parents or the guardian in Eritrea to obtain any official documentation on behalf of such a child from the local authorities. This problem is related to regular check-ups the authorities conduct in Eritrea when updating the population register with which two of the most important documents in Eritrea are associated (the residence card and the ration coupon), as already discussed in sub-section 3.4 above. It needs to be remembered that members of a family are immediately flagged out in the family register and the ration coupon as “non-residents” once it is known that they are no longer in the country. If an underage child leaves the country illegally, which happens to be the case in the overwhelming majority of cases known to us, this by itself (illegal exit) is a huge obstacle to the process of obtaining official documents.

The presumption of illegal exit inevitably triggers another chain of questions, such as the fulfilment of the 2% income tax and signing of the regret form, potentially including by the “absconder,” whose legal status as a minor is differently treated under law, if not necessarily in practice.

This takes the matter “back to square one,” to its original complicated status, whereby the absconder may need to start afresh from paying the 2% income tax and signing the regret form, as is required of anyone who has fled the country illegally after 1998.²⁵¹

The above needs to be seen in the context of the settled practice that any person in Eritrea who wants to obtain official documents on behalf of a person who is in a third country is required to produce official documentation (or clearance) from the Eritrean embassy in the country in which the concerned Eritrean lives. This is done to ensure that the person has fulfilled the necessary preconditions required by Eritrean diplomatic missions around the world. These preconditions are nothing other than those pertaining to the payment of the 2% diaspora income tax and the signature of the regret form. Although we have not yet come across a specific case in which a minor was asked by an Eritrean embassy to pay a tax or sign a regret form, depending on the widespread practice of Eritrean embassies throughout the world, we believe that the standard practice in all Eritrean embassies is that no consular service is to be given to any Eritrean, potentially including a minor, without fulfilment of the said pre-conditions.

251 Although this view is partially based on the opinion of various Eritrean experts interviewed for this report, cited elsewhere herein, the first author has also heard this account from various other sources in the context of his long-time research work on Eritrea.

However, as noted in sub-section 4.7.2 above, even if a minor were willing to pay the 2% tax and sign the regret form, our understating is that this would not be possible since the very act of paying the tax and signing the regret form involve elements of juridical acts – for which a minor has no legal competence (at least in legal-technical terms). The next practical question is: whether such acts can be done on behalf of the minor by his parents or legal guardians.

The only, most pragmatic, available option in this regard is for the parent in Eritrea to issue an authorisation for a third person who can approach an Eritrean embassy as a legal representative of both the parent and the minor and thus perform all the necessary juridical acts a diplomatic mission (as discussed in sub-section 4.7.3 above). This is a legal possibility as envisaged in a combined reading of Articles 199(2) and 217 of the TCCE.

However, there are a number of practical obstacles related to the way Eritrean embassies normally function, in particular the challenges related to the payment of the 2% diaspora income tax and the regret form. Given that the primary objective of the said preconditions is that of ensuring strict political loyalty of Eritrean diaspora communities, as shown in this study, it is safe to conclude that agents or legal representatives who act on behalf of minors cannot be free from said preconditions.

4.7.5. A case of a parent in a third country

We examine here one particular issue regarding the practical difficulties that may be experienced by a parent residing in Europe (an applicant), who needs to authorise a person in Eritrea (a representative) with the objective of obtaining on behalf of the applicant a birth certificate of a minor child of the applicant.

The first important step in this regard, like any “ordinary” case processed at an Eritrean embassy, is that the applicant shall be able to issue a Power of Attorney. We use the word “ordinary” to denote the standard practice of Eritrean embassies in this regard, with no intention of doubting the illicit nature of coercing people to pay the 2% diaspora tax and/or sign the regret form. In the present example, the applicant may have no other option but to fulfil the above-cited preconditions in order to obtain a Power of Attorney from an Eritrean embassy, after which the document can be sent to Eritrea and the remaining process (already explained above) follows. This procedure may be complicated if the underage child is flagged out as a “non-resident” or “absconder,” as already discussed in the preceding sub-section.

4.7.6. A case of a deceased parent

If the parents of a minor are not alive, the TCCE envisages circumstances under which a guardian can be appointed for the minor by a court of law. This is done through the standard procedure of appointment of so-called family council, as provided by Articles 210 to 212 of the TCCE. In such cases, the person who is appointed as the guardian of the minor will have to follow the same procedure discussed above if such person wishes to authorise another third person in a foreign country – for the latter to perform certain tasks on behalf of the minor. It needs to be noted that due to certain unique features of Eritrean family law, the procedure regarding the appointment of the so-called family council is very elaborate, involving an intricate legal procedure that has to be approved by a court of law. For Eritreans in a foreign country, this can be an arduous legal procedure.

4.7.7. Summary

To sum up, for unaccompanied minors, the mere fact of them being separated from their parents makes them vulnerable to an extra level of hardship that is not commonly experienced by adults. Although in general terms

minors may be presumed to be exempt from the standard preconditions Eritrean embassies impose on virtually all adult applicants who want to secure consular services, there is another unavoidable dilemma from which there seems to be no escape route. Eventually, when unaccompanied minors visit Eritrean embassies seeking consular services, they are by default involved in some sort of a juridical act, for which they do not have legal competency. The only option is for them to be represented by a legal agent or a delegated guardian (or tutor), the appointment of which can only be done by Eritrean courts. Clearly, unaccompanied minors are at a more disadvantaged position when it comes to accessing official documents from Eritrean embassies.

5. BEST PRACTICES

IN FAMILY REUNIFICATION PROCESSES

From a European comparative perspective, the examination of relevant jurisprudence and recent practice in relation to family reunification for Eritrean refugees is important as a way of identifying some best practices. It must be recalled that Article 11(2) of the Family Reunification Directive stipulates that:

where a refugee cannot provide official documentary evidence of the family relationship, the Member States shall take into account other evidence, to be assessed in accordance with national law, of the existence of such relationship. A decision rejecting an application may not be based solely on the fact that documentary evidence is lacking.

The most recent authoritative interpretation of this provision is found in *E. v Staatssecretaris van Veiligheid en Justitie*.²⁵² This preliminary ruling arose from the rejection of an application for family reunification lodged by an Eritrean citizen and beneficiary of subsidiary protection in the Netherlands. This person affirmed to be the aunt and the guardian (since the death of the biological parents) of a minor of Eritrean nationality residing in Sudan (at the time of the application). The application was rejected on the grounds of a lack of official documentary evidence of the family relationship and the sponsor's inability to explain the absence of such evidence. One of the questions referred to the CJEU by the concerned District Court of The Hague ("Rechtbank Den Haag zittingsplaats Haarlem") was whether Article 11(2) "must be interpreted, in the present circumstances, as precluding the authorities from rejecting the application for family reunification without taking into consideration the specific conditions of the applicant and of the minor." The CJEU emphasised that the European Commission's Guidelines for the application of the Family Reunification Directive make clear that Article 11(2) "is explicit, without leaving a margin of appreciation in that regard, in stating that the fact that documentary evidence is lacking cannot be the sole reason for rejecting an application and in obliging Member States, in such cases, to take into account other evidence of the existence of the family relationship."²⁵³

The CJEU ruled that authorities must pay special attention to the situation of refugees which "implies that it is often impossible or dangerous for refugees or their family members to produce official documents, or to get in touch with diplomatic or consular authorities of their country of origin."²⁵⁴ The CJEU, in particular, referred to the documentation system in Eritrea and the difficulties in obtaining official documents as follows:

In that regard, as is apparent from the file before the Court, [the sponsor] claimed, first of all, that the issuing of death certificates in Eritrea does not fall within the competence of the civil registry services of Asmara (Eritrea), but that of the local authorities, with which, moreover, the issuing procedure varies strongly by region. Next, [the sponsor] noted that she had never possessed such certificates because she came from a modestly sized village, that she left her home only when necessary and that the possession of death certificates was unusual. Finally, it would be impossible to obtain those certificates today, since [applicant] left Eritrea illegally, with the result that requesting such certificates by means of local acquaintances would have exposed them to potential 'dealings with the diaspora' and would have engendered dangers for their family residing in Eritrea and a risk of having to pay a 'diaspora tax'.²⁵⁵

²⁵² *E. v Staatssecretaris van Veiligheid en Justitie*, C-635/17, CJEU, Judgment of 13 March 2019.

²⁵³ *Ibid*, para. 69. In particular, the CJEU cited paragraph 6.1.2 of the Communication from the Commission to the European Parliament and the Council on guidance for application of Directive 2003/86/EC on the right to family reunification, COM(2014) 210 final, 3 April 2014. The CJEU also underlined that the margin of discretion afforded to the EU Member States "must not be used in a manner that would undermine the objective of the Directive" or be contrary to the fundamental rights of the EU. *Ibid*, para. 53.

²⁵⁴ *Ibid*, para. 66. It did so by reference to recital 8 of the Family Reunification Directive.

²⁵⁵ *Ibid*, para. 75. At a hearing on 13 September 2017 in the Netherlands, before referring the matter to the CJEU, the State Secretary abandoned his objection relating to the lack of official documentary evidence of the sponsor's guardianship over the child, "after finding that, under Eritrean law, such guardianship is conferred automatically." As such, the decision to reject the application for family reunification in

In so stating, the CJEU noted that it is not readily apparent that the State Secretary (in the Netherlands) “took account of the way in which the relevant legislation is applied or the fact that the functioning of the civil registry services in [Eritrea] depends on [...] different local contexts.”²⁵⁶ On the evidence brought before the Court, the CJEU underlined that it was not possible to verify whether and to what extent the State Secretary had taken into consideration the personality and specific circumstances of the concerned individuals and the particular difficulties they had encountered before and after fleeing Eritrea.²⁵⁷ The evidence also revealed that the State Secretary did not consider the applicant’s age, his situation both as a refugee in Sudan and before, in Eritrea.²⁵⁸ After this assessment, the CJEU concluded that a national authority must “take into account other evidence of the existence of the family relationship and may not base its decision solely on the lack of documentary evidence.” (CJEU, *E. v Staatssecretaris van Veiligheid en Justitie*, para. 79). As such, depending on the circumstances of the particular case, they “[may] be required to carry out the necessary additional checks, such as holding an interview with the sponsor, in order to rule out the existence of such phenomena.”²⁵⁹

This preliminary ruling led to a change of practice by the national authorities in the Netherlands. According to Barbara Bierhuizen, a Legal Advisor at the Dutch Council for Refugees, Dutch authorities now allow alternative forms of documentation that provide information on the existence of the family ties.²⁶⁰ However, Bierhuizen underlined that “some alternative documents are of nearly no value.” According to her, all alternative documents are investigated by the Document Expert Team of the INS. Where the concerned applicants do not provide official documents, the alternative documents “should be substantial” in order for the INS to offer additional investigations such as a personal interview or DNA tests.²⁶¹ In addition, Bierhuizen explained that “in theory”, it is also possible to explain why there are no official documents on identity and/or family ties, yet, this has to be a “plausible explanation” so as to trigger additional investigations by the INS.²⁶²

As regards lifting evidentiary requirements for Eritrean refugees, a judgment by the Swedish Migration Court of Appeal (the highest judicial organ in the country for matters of asylum and immigration) is of particular importance. In a ruling of 2018, the Court emphasised the need to consider “alternative” proof of identity for Eritrean refugees in the context of family reunification applications.²⁶³ The case concerned an Eritrean woman and her child, both registered as refugees in Ethiopia and who applied for family reunification to join the woman’s husband (and father of the child) and her other child, in Sweden. The Court, on appeal, found it disproportionate to require the Eritrean applicants to obtain Eritrean passports from an Eritrean embassy abroad given the risks this would pose to them and their relatives in Eritrea. At the time of the application, there was no

the main proceedings was “now based solely on the lack of death certificates” for the child’s biological parents “and the implausibility of the explanations provided in that regard” by the concerned sponsor. *Ibid*, paras. 71-72.

²⁵⁶ *Ibid*, para. 76.

²⁵⁷ *Ibid*.

²⁵⁸ *Ibid*, para. 77.

²⁵⁹ *Ibid*, para. 79. According to the CJEU, this is required by Article 11(2) of the Qualification Directive if read in light of Article 7 and Article 24(2) and (3) of the EU Charter of Fundamental Rights (EUCFR).

²⁶⁰ She provided various examples, including ARRA cards, UNHCR registration as well as vaccination cards, ration cards, religious marriage and baptism certificates and pictures. Interview with Barbara Bierhuizen, Legal Advisor, Dutch Council for Refugees (9 December 2020).

²⁶¹ *Ibid*.

²⁶² *Ibid*. However, Bierhuizen noted that, in practice, “it is very difficult” to provide an explanation that is considered “plausible” by the INS.

²⁶³ Migration Court of Appeal (Sweden), UM 2630-17, 5 March 2018. It shall be highlighted, however, that according to a Representative of a Refugee Organisation in Sweden, this ruling has not resulted in a complete overhaul of the practice by the Swedish Migration Agency in this respect. This representative referred for instance to a family reunification case which was recently rejected as the daughter and the wife of the sponsor, who is legally residing in Sweden, do not hold an Eritrean passport. Alongside the application, the mother provided a birth certificate of her daughter (most probably one issued by a church) and her own national ID card. However, the Swedish Migration Agency stated that these were very simple documents which do not contain any veritable insurance of her or the daughter’s identity. Telephonic interview with a Refugee Organisation in Sweden (20 December 2020).

Eritrean consulate/embassy in Ethiopia and the family would have had to embark on a journey to the Sudanese capital of Khartoum in order to seek identity documents from the Eritrean embassy located there. While this fact was brought before the Court, the Court did not refer to it in its assessment. Instead, its assessment focused on three major facts. These included first the payment of the 2% tax to the Eritrean government, money which as established by the Court, would be used for political purposes. Second, the applicants would be compelled to sign a “letter of regret,” wherein they accepted punishment for not having completed their military and national duties. Third, the Court noted that by approaching an Eritrean embassy, the family would make the Eritrean government aware of their illegal exit, which would put their relatives still living in Eritrea at risk of reprisals in the form of, for instance, deprivation of liberty.²⁶⁴ Consequently, the Court held that the appellant and the children were entitled to an alleviation of evidentiary burden with regard to their identities and that it would fall upon the Swedish Migration Agency to complete a DNA test to establish the family’s affiliation.²⁶⁵

In its legal assessment, the Swedish Migration Court of Appeal considered case law by the ECtHR on the application and interpretation of Article 8 of the European Convention on Human Rights (ECHR) on matters relating to the right to respect for family life and family reunification. In particular, it referred to the case of *Mugenzi v. France*²⁶⁶ and the Family Reunification Directive, underlining that both the ECtHR and EU law require domestic authorities to take into account “other evidence” of the existence of family ties, where the refugee is not able to present official documents.²⁶⁷ It also cited previous case law by the Swedish Migration Court of Appeal that had come to the conclusion that, where documentary evidence does not exist, it is also important to take into account the consistency of the information provided by the applicants to assess whether documentary requirements should be lifted.²⁶⁸ With regard to the balance of proportionality between family members’ interest in exercising family life in Sweden and the society’s interest in controlling the entry and stay of non-nationals in the country, the Court noted that it had previously attached greater importance to applicants’ refugee status and their need of international protection.²⁶⁹

According to information provided by immigration solicitors in the UK, neither the Home Office nor the British courts ever ask for formal identification (including IDs or passports) from Eritrean citizens since asylum decisions and decisions on family reunification applications are made on the basis that formal identification does not exist or cannot be obtained.²⁷⁰ According to Tranchina, this is not assessed on a case-by-case basis, but it is rather well accepted that Eritrean asylum seekers and refugees cannot get official documents.²⁷¹ In general, Nigel Smith, Associate Solicitor at Paragon Law (UK) and head of the firm’s private and family immigration department, highlights that in the UK, the Home Office’s published policy does not explicitly require formal documentation for family reunification procedures. He further explains that this policy:

does not estipulate minimum requirements that people must comply with to be successful in the family reunification applications. On the contrary, it leaves the door open for a discretionary decision to be made based on the credibility and consistency of the sponsor’s evidence both in respect of the Immigration Rules and in relation to Article 8 of the ECHR. The refusal to grant family reunification is underpinned by Article 8 of the ECHR, which forms the basis for appealing negative decisions on family

²⁶⁴ *Ibid*, para. 4.

²⁶⁵ *Ibid*.

²⁶⁶ Cited in note 7 above.

²⁶⁷ Migration Court of Appeal (Sweden), UM 2630-17, 5 March 2018, para. 2.2.

²⁶⁸ *Ibid*, para 2.2.

²⁶⁹ *Ibid*.

²⁷⁰ Telephonic interview with Giulia Tranchina, Immigration Solicitor at Wilson Solicitors LLP (28 October 2020); Telephonic interview with Nigel Smith, Associate Solicitor, Paragon Law (5 November 2020).

²⁷¹ Telephonic interview with Giulia Tranchina, Immigration Solicitor at Wilson Solicitors LLP (28 October 2020).

reunification [...] The court would assess whether leave to remain should be granted under the rules and on the basis of the evidence. In those cases where requirements under the immigration rules are not met, applicants could still be granted leave to remain under Article 8 of the ECHR.²⁷²

Significantly, during his years of practice in the UK, none of his Eritrean clients (apart from one which was a very unusual and exceptional case as he had a passport because he was previously in Saudi Arabia on business travel), had identity evidence such as IDs or passports.²⁷³ Similarly, Tranchina emphasised that, apart from very few and rare cases, during her 11 years of experience representing Eritrean asylum cases, neither she nor her colleagues have encountered an Eritrean asylum-seeker or refugee presenting an official passport from Eritrea.²⁷⁴ Both Smith and Tranchina underline that their Eritrean clients leave the country without documents.

With regard to identity evidence, in the case of Eritreans, holding a formal identification issued by an independent third agency such as the International Committee of the Red Cross (ICRC) or UNHCR stating the name and date of birth is acceptable by the Home Office²⁷⁵ or a paper issued by the relevant authority in charge of Refugee Status Determination (RSD) showing that the individual has applied for asylum is enough.²⁷⁶ For entering the UK, the British authorities issue a Uniform Format Form (UFF) that is valid for one entry into the UK to join the sponsor(s).²⁷⁷ This is issued to both adults and unaccompanied minors. Where documentary evidence of, for instance, marriage cannot be submitted with the application, Smith highlights that “the decision maker will determine, on balance, whether the relationship exists and will do so in the absence of formal documentation, if necessary. Such determinations are based on the credibility of the applicants and are necessary in order to deal with situations fairly and justly.”²⁷⁸ In particular, he illustrates this by reference to one of his clients, a Pentecostal Christian from Eritrea, who did not have any marriage certificate (as this is one of the religions banned in Eritrea). Smith underlined that, without documentary proof of the marriage, “the Home Office accepted the relationship as the couple’s statements were consistent with the sponsor’s asylum screening interview. In this case, it was clear to the Home Office that the couple could not submit any formal documentation besides their statements.”²⁷⁹ Both Tranchina and Smith note that in family reunification applications, detailed statements by the applicants that describe the marriage including, if appropriate, how the marriage ceremony took place, and third party evidence in support of the marriage and photographs (only if these exist and can be obtained) are considered by British authorities as well as DNA tests, to prove the family’s affiliation.²⁸⁰

272 Telephonic interview with Nigel Smith, Associate Solicitor, Paragon Law (5 November 2020).

273 *Ibid.*

274 Telephonic interview with Giulia Tranchina, Immigration Solicitor at Wilson Solicitors LLP (28 October 2020).

275 Telephonic interview with Nigel Smith, Associate Solicitor, Paragon Law (5 November 2020).

276 Telephonic interview with Giulia Tranchina, Immigration Solicitor at Wilson Solicitors LLP (28 October 2020). Similarly, an Eritrean refugee in Egypt notes that he assisted two Eritrean unaccompanied minors in their family reunification application to join their brothers in the UK. They were both registered with UNHCR before applying for family reunification: one had the blue card (that is, the ‘refugee’ certificate issued by UNHCR), and the other had the yellow card, which is the card issued by UNHCR to asylum-seekers. Neither of them had Eritrean IDs, and yet, the British authorities did not request them to submit official documents. Whereas one of the children, who applied for family reunification in June 2019, has a UFF to reunite with his brother in the UK, the other one, who applied in November 2019, is still waiting (as his application was delayed due to the current pandemic). The interviewee also notes that UNHCR’s partner organisations, including the International Organization for Migration and the ICRC, help in the family reunification process, mainly in searching for relatives in Europe and in closing applicants’ files with UNHCR before their departure to Europe. Telephonic interview with an Eritrean Refugee Community Member in Cairo (19 October 2020).

277 Telephonic interview with Giulia Tranchina, Immigration Solicitor at Wilson Solicitors LLP (28 October 2020) and Interview with Nigel Smith, Associate Solicitor, Paragon Law (5 November 2020).

278 Telephonic interview with Nigel Smith, Associate Solicitor, Paragon Law (5 November 2020).

279 *Ibid.*

280 Telephonic interview with Giulia Tranchina, Immigration Solicitor at Wilson Solicitors LLP (28 October 2020); Telephonic interview with Nigel Smith, Associate Solicitor, Paragon Law (5 November 2020).

The ECtHR has emphasised that where family reunification involves children, Article 8 of the ECHR must be interpreted taking into account in particular the Convention on the Rights of the Child (UNCRC).²⁸¹ With regards to family reunification that involves Eritrean children, some national highest asylum courts have consequently attached weight to the ECHR and the UNCRC in interpreting their own domestic laws.²⁸² The case of *AT and another* (heard before the UKUT) concerned a mother and a brother (both Eritrean citizens residing in Sudan at that time) of a 17-year-old Eritrean citizen and refugee in the UK. They were refused entry into the UK. Whereas the UK Immigration Rules do not cover family reunion for parents of children, the UKUT noted that Article 8 of the ECHR has been recognised in appropriate cases as the means to achieve family reunification. It further referred to Article 3(1) of the UNCRC on the best interests of the child and the maintenance of family unity in the Qualification Directive. Judge McCloskey found that while the Secretary of State was not under a duty to facilitate reunification for this family in the UK, by virtue of the indirect reliance on international treaties, the individuals' family life rights were factors in the proportionality balancing exercise. Judge McCloskey further noted that British immigration authorities must give effect to international treaties when making immigration decisions that affect children.²⁸³ In his conclusion, Judge McCloskey found that, in the case at hand, the family's separation was contrary to strong and stable societies, reduced the sponsor's contribution to UK society thereby undermining public interest, and could have given rise to a dangerous journey, which he described as follows:

driven to consider alternatives, some of them manifestly dangerous given his youth and unaccompanied and unsupported status. These include the precarious journey involved in attempting to reunite with the [parents] wherever they may be at present. The evidence points to the probability that they are either in Khartoum or the UNHCR refugee camp several hundred kilometres away. The situations in both locations are fraught with danger and imbued with deprivation. Reunification of this family in their country of origin, Eritrea, is not a feasible possibility.²⁸⁴

Consequently, the UKUT found that the government's decision whereby the family was denied entry into the UK interfered disproportionately with the applicants' right to respect for family life under Article 8 of the ECHR.²⁸⁵

Similarly, in *Tuquabo-Tekle v. the Netherlands*, the ECtHR also attached significance to Article 8 of the ECHR. In that case, the applicant was an Eritrean mother who left her minor daughter behind and settled in the Netherlands where she was granted a residence permit on humanitarian grounds. The ECtHR noted that the fact that parents leave their children in their country of origin while they settle abroad is not to be perceived as meaning that they abandon the idea of a future family reunion.²⁸⁶ Accordingly, the ECtHR held that the Netherlands was obliged to admit the daughter under Article 8 of the ECHR, which contains the right to respect for

²⁸¹ *Neulinger and Shuruk v. Switzerland*, Application No. 41615/07, ECtHR, 6 July 2010. See also Council of Europe 2017, pp. 23.

²⁸² *AT and another (Article 8 ECHR – Child refugee – Family reunification) Eritrea* [2016] UKUT 00227 (IAC).

²⁸³ EDAL, "UK - AT and another (Article 8 ECHR – Child Refugee – Family Reunification : Eritrea) [2016] UKUT 227 (IAC), 29 February 2016," <https://www.asylumlawdatabase.eu/en/case-law/uk-and-another-article-8-echr-%E2%80%93-child-refugee-%E2%80%93-family-reunification-eritrea-2016-ukut-227>.

²⁸⁴ *Ibid.*, para. 39.

²⁸⁵ While not with regard to Eritrean refugees, the Swedish Migration Court of Appeal in 2018 similarly attached significance to Article 8 of the ECHR and various provisions of the UNCRC in family reunification that involved a Syrian child. AIDA, "Country Report: Sweden," 2019 Update, https://www.asylumineurope.org/sites/default/files/report-download/aida_se_2019update.pdf, p.12.

²⁸⁶ *Tuquabo-Tekle and Others v. The Netherlands*, Application No. 60665/00, ECtHR, 1 March 2006, para. 46. For instance, the HRC has affirmed that the right to protection of family life in Article 23 of the ICCPR is not "necessarily displaced by geographical separation of such family" nor obviated "by the absence of formal marriage bonds, especially where there is a local practice of customary or common law marriage." *Benjamin Ngambi and Marie-Louise Nébol v. France*, CCPR/C/81/D/1179/2003, HRC, 16 July 2004, para. 6.4.

family life.²⁸⁷

A Court in Sweden reportedly took into consideration evidence indicating that the sponsor, an Eritrean single woman legally residing in Sweden, and her minor daughter in Ethiopia (at the time of application) would be at risk if requested to approach the Eritrean Embassy to obtain official documents. This also implied a dangerous journey to Khartoum, as there was no functioning Eritrean embassy in Ethiopia. The Court, on appeal, consequently reversed the earlier negative decision by the Swedish Migration Agency, and allowed a DNA test and a Swedish travel document to be issued for the minor daughter, thereby softening the evidential requirements stipulated in Swedish law.²⁸⁸

This report explored the law and practice of the official documentation system in Eritrea and in particular of documentary proof of identity and civil status, or so-called records of vital events, such as, in particular, birth, marriage, divorce and death certificates. The focus was on the extent to which these documents are accessible to Eritrean citizens in the country as well as to Eritrean refugees, who are often in need of those documents to meet the requirements for family reunification procedures.

The conclusions drawn by this report are based on primary and secondary data, including extensive amount of information gathered from semi-structured interviews with thirty-nine individuals, including former Eritrean legal professional (judges, persecutors and registrars) as well as asylum lawyers, researchers, and staff members of independent organisations working for the protection of refugees. The report also benefitted from a vast amount of independent country evidence on Eritrea, as reported by the COIE, COI reports by major European entities, and recent judgments by the CJEU, the ECtHR and several domestic courts in Europe.

6. CONCLUSION

The report thereby came to the following main conclusions:

1. **ERITREA DOES NOT HAVE A HARMONIOUS OFFICIAL DOCUMENTATION SYSTEM, AND IN THE LOCAL CONTEXT, THE USE OF RECORDS OF VITAL EVENTS IS NOT A VERY COMMON PRACTICE.**

The report showed that although Eritrea has a fairly sufficient legal infrastructure related to the issuance of official documents, such as national ID cards and records of vital events, there is no systemic and nationwide documentation practice in ways and manners that are comparable with the practice in most European countries. The practice in this regard is markedly inconsistent, differing in different regions or locations, and is subject to frequent changes. In urban areas, there is relatively better access to official documentation compared to rural areas. Even in major urban areas, most Eritreans attempt to obtain copies of their vital records only in instances when they want to send such documents to foreign countries for asylum related matters.

2. **THE PROCESS OF OBTAINING DOCUMENTS FROM OR VIA THE INVOLVEMENT OF ERITREAN DIPLOMATIC OR CONSULAR AUTHORITIES IS REplete WITH ABUSIVE PRACTICES, AS IT REQUIRES ERITREANS TO PAY A SO-CALLED DIASPORA INCOME TAX AND TO SIGN A SELF-INCRIMINATORY REGRET FORM.**

Due to the limited access to official documents inside Eritrea (coupled with the fact that refugees tend to flee the country without documents), evidential requirements for family reunification often imply the obligation to appear in person at Eritrean diplomatic missions. As a matter of general practice, in order to get consular services from Eritrean diplomatic missions, Eritrean citizens are required to pay a so-called diaspora income tax and sign a self-incriminatory regret form, with far fetching implications on their rights and the rights of their relatives back in Eritrea. This report showed that both the collection of the 2% diaspora income tax and the signature of the regret form are implemented in tandem. As shown in this study, these practices are inherently coercive and illicit.

3. **ERITREAN EMBASSIES IN EGYPT, SUDAN, UGANDA, AND KENYA ARE NO LONGER PROVIDING CONSULAR SERVICES TO INDIVIDUALS WHO FLED THE COUNTRY AFTER THE NEW PEACE AGREEMENT WITH ETHIOPIA, SIGNED IN JULY 2018.**

In Ethiopia, although the embassy was reopened in 2018, it has not yet started full consular services. In addition, this report has highlighted that Eritrean citizens who are regarded as political opponents to the Eritrean Government and those who have been formally recognised as refugees or are recognisable as such, may also be refused consular services.

4. **APPROACHING ERITREAN EMBASSIES USUALLY POSES UNNECESSARY RISKS AND PUTS ERITREAN REFUGEES AND THEIR RELATIVES IN ERITREA AT RISK OF HUMAN RIGHTS VIOLATIONS.**

Some of the sources consulted for this report have highlighted that refugees should not be expected to approach embassies, as these are the diplomatic missions of the government from which they have fled and therefore form part of the persecutory regime.²⁸⁹ Besides the requirements of the payment of the 2% diaspora income tax and the signature of the regret form, Eritrean embassies (and those affiliated with them) have also implemented other far-reaching activities of surveillance. They rely on a broad network of spies embedded throughout the world in various Eritrean diaspora communities – oftentimes disguised as neutral or apolitical community organisers. Interviewed sources in Cairo, Egypt have particularly raised concerns in this regard. Most recently, the Swedish Migration Court of Appeal acknowledged the serious risks that seeking documents from Eritrean embassies poses to the applicants and their relatives in Eritrea, based on which it instructed the immigration authorities of Sweden to consider alternative mechanisms of documentation.

5. **UNACCOMPANIED MINORS FACE PARTICULAR OBSTACLES WHEN IT COMES TO ACCESSING OFFICIAL DOCUMENTS FROM ERITREAN EMBASSIES.**

When unaccompanied minors visit Eritrean embassies seeking consular services, they are by default involved in some sort of a juridical act, for which they do not have legal competency under Eritrean law. Even if a parent or a person authorised by a child's parent is present in Eritrea, chances may be low to obtain any official documentation on behalf of such a child from the local authorities if the unaccompanied minor has left the country illegally. This problem is related to regular check-ups the authorities conduct in Eritrea when updating the population register. Members of a family are immediately cancelled from the family register once it is known that they are no longer in the country, or they have left the country illegally.

6. **THE EXAMINATION OF RELEVANT JURISPRUDENCE BY THE CJEU, SEVERAL NATIONAL COURTS, AND RECENT PRACTICE IN RELATION TO FAMILY REUNIFICATION FOR ERITREAN REFUGEES ALSO SHOWS THE FOLLOWING: IT IS IMPORTANT TO ENSURE THAT DOCUMENTATION REQUIREMENTS IN FAMILY REUNIFICATION PROCEDURES DO NOT PUT REFUGEES AT FURTHER RISK FROM THEIR COUNTRIES OF ORIGIN OR IMPERIL THEIR FAMILY MEMBERS.**

Article 11(2) of the EU Directive on Family Reunification obliges EU Member States to take into account other evidence when the refugee cannot provide official supporting documents. The CJEU has in particular considered the difficulties in obtaining official documents in the Eritrean context as well as the personal circumstances of Eritrean refugees, which led the Court to conclude that a national authority must “take into account other evidence of the existence of the family relationship and may not base its decision solely on the lack of documentary evidence.” (CJEU, *E. v Staatssecretaris van Veiligheid en Justitie*, para. 79).

²⁸⁹Telephonic interview with Refugee Service Provider in Egypt (21 October 2020); Telephonic interview with Giulia Tranchina, Immigration Solicitor at Wilson Solicitors LLP (28 October 2020).

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Barbara Bierhuizen, Legal Advisor at Dutch Council for Refugees (9 December 2020)

Zecarias Gerrima, Deputy Director of the Uganda based NGO Africa Monitors and Director of Programming at ERISAT (18 November 2020)

Telephonic interviews (non-confidential) in alphabetical order of first names

Abdella Adem, Former Ambassador of Eritrea to Sudan (14 and 15 October 2020)

Abdella Khiyar, Former Judge of the High Court of Eritrea (15 October 2020)

Amanuel Yohannes, Former Presiding Judge of the Northern Provincial Court (1, 5, 15 and 29 October 2020)

Eyob Ghilazghy, Executive Director of the Uganda based NGO Africa Monitors (22 October 2020)

Giulia Tranchina, Solicitor at Wilson Solicitors LLP (28 October 2020)

Habteab Y. Oghubazgi, Former Judge of the Last Court of Appeal (the highest judicial organ in Eritrea) (1 and 27 October 2020)

Kifleyohanes Yeibio, Former Judge and Public Prosecutor at Provincial Level (14 October 2020)

Medhanie Habtezhgi Zemam, Member of the Eritrean Law Society (30 October 2020)

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Nigel Smith, Associate Solicitor, Paragon Law (UK) (5 November 2020)

Samson Solomon, Community Organiser in Frankfurt (2 December 2020)

Temesgen Afewerki, Member of the Eritrean Law Society and former Legal Advisor of the Eritrean Investment and Development Bank; Translator in asylum cases for the BAMF and Refugees and Cultural Mediator for CARITAS (27 November and 1 December 2020)

Yohannes Yetbarek, Former Head of the Public Persecution Office of the Gash Barka Province (28 October 2020)

Zecarias Gerrima, Deputy Director of the Uganda based NGO Africa Monitors and Director of Programming at ERISAT (2 November 2020)

Zekarias Kibreab, Author of Paradise Denied: How I Survived the Journey from Eritrea to Europe, and Producer of a popular YouTube Channel known as Mestyat Betna (“Our Mirror”) (12 December 2020)

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Eritrean Resident in Cairo (1 October 2020)

Eritrean Resident in Germany (1 December 2020)

Eritrean Resident in Kampala (15 October 2020)

Eritrean Resident in Khartoum (14 December 2020)

Eritrean Resident in Khartoum (29 September 2020)

Eritrean Resident in Nairobi (24 September 2020)

Eritrean Resident in Nairobi (5 October 2020)

Eritrean Resident in a city in Europe (1 October 2020)

Former Eritrean Consular Officer (3 October 2020)

Former Eritrean Judge of the Central Provincial Court (28 October 2020)

Former Eritrean Presiding Judge of a Provincial Court of Appeal (30 October 2020)

Former Eritrean Judge of the Central Provincial Court and Practicing Lawyer in the USA (4 November 2020)

Former Eritrean Registrar (5 and 28 October 2020)

Eritrean Resident in a city in Europe (14 October 2020)

Eritrean Refugee Community Member in Cairo (19 October 2020)

Refugee Service Provider in Egypt (21 October 2020)

Eritrean Resident in a city in Europe (23 October 2020)

Representative of a Refugee Organisation in Sweden (20 December 2020)

Research Centre in Sudan (20 December 2020)

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Proclamation No. 4/1991, Transitional Penal Code of Eritrea (15 September 1991) (Tigrinya)

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European Convention European Convention on Human Rights (1953)

European Social Charter (1961, revised 1996)

Universal Declaration of Human Rights (1948)

International Covenant on Civil and Political Rights (1966)


Municipality of Asmara
Public Registration office
Certificate of Birth

Public Reg. No. 121
Registration No. ASC000

This record of birth is registered in public Registration office of Zoba Maakel
(Municipality of Asmara)

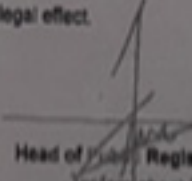
Given Name	Ri
Father's Name	Di
Born At	C
Birth Date	01- July -19'
Birth Time	00:00:00
Sex	Female
Nationality	Eritrean
Mother's Name	Or M
Address	D. 'at

The Public Registration Office of the Zoba Maakel, Asmara Eritree, made the registration of Birth on 04-02-20' based on Sub Zoba Administration document 20' 110'

This birth certificate is issued for the purpose of any legal effect.

Asmara: -07-20'




Head of Public Registration office
Tesfemichael Tesfeldet
Division Head of Public Registration
ተስፋፋይ ማህተም
ሪገስትራሽን ኮሚሽን

Certificate No: 01 Registration No. : ASC000

Appendix 1: A specimen of a municipal birth certificate issued in Asmara



Municipality of Asmara
PUBLIC REGISTRATION OFFICE
CERTIFICATE OF MARRIAGE

Certificate No. 31

Marriage Reg. No. 1

This Marriage Certificate is an exact translation of Marriage record in the Public Registration Office Asmara, Eritrea

	BRIDEGROOM	BRIDE
Full Name	N/ I T/ :WE	S NO' UN
Client Id	ASC00'	ASC00'
Birth Date	01-11-19	01-11-19
Birth Place	Asmara, Eritrea	Asmara, Eritrea
Address	Asmara, Eritrea	Asmara, Eritrea

This marriage ceremony conducted according to Orthodox Church in Asmara, on the date of 09-20, here in registered on the basis of article 63/2 of the Eritrean civil code.

The public Registration Office of the Zoba Maakel, Asmara Eritrea made the registration of marriage on 11-20

This marriage certificate is issued for the purpose of any legal effect.

Asmara: 11-05-2016.



Head of Public Registration Office
 Tesfamicheal Tesfaldot
 Division Head of Public Registration
 & Cemetery
 ተስፋሚካኤል ተስፋደሪት
 ኢ/ፌ/ዲ/ሪ/የጽሑፍ ፖ/ዝገባና ጠቅላይ

Luul Sum
 Authentication unit

Printed by: elefah

Certificate No: 31 Registration No: 1

Ministry of foreign affairs
 Consulate & Community Dep.
 Date 07/1/20
 For marriage
 Ref. No. 0000
 Fee 75 Nula
 Signature

Appendix 2: A specimen of a municipal marriage certificate issued in Asmara



Appendix 3: A specimen of the 1993 national Eritrean ID card



Appendix 4: A specimen of the Eritrean passport

ቀ. መዝ.
 ቆይታ 03-10-2008
 No.
 Date 15-06-2008

ናይ ቃል ኪዳን ምስክር ወረቀት
MARRIAGE CERTIFICATE

ስም መርገዥ
 ቤገነት ትውልድ ዓ.ዓ.
 ስም መርገዥ
 ቤገነት ትውልድ ዓ.ዓ.
 ቃል ኪዳን ጸሐፊ ስም ክርስቲያን

 የ/ስብከት/ዞን
 ጉ/የ/ስብከት ጉ/ዞን
 ክታም መርገዥ ክታም መርገዥ
 ስም አባ ገስፋ ክታም
 አራኛው 1ኛ ስም ክታም
 2ኛ ስም ክታም
 3ኛ ስም ክታም

Name of Bridegroom
 Nationality ERITREAN Place of Origin
 Name of Bride
 Nationality ERITREAN Place of Origin
 Church

 Diocese/Zone
 Sub Diocese/Sub Zone
 Sig. Bridegroom Sig. Bride
 Name of Priest Sig.
 Best Man 1st Sig.
 2nd Sig.
 3rd Sig.

ግሥተዮ ስም ክርስቲያን 10-10-2008
 Church Official Seal
 አመላካሪ ስም ክርስቲያን
 Church Administrator

Appendix 5: A specimen of a marriage certificate issued by the Eritrean Orthodox Church



دولة إرتريا

STATE OF ERITREA

وزارة الصحة

MINISTRY OF HEALTH

የዴ. ቁልፍ ፅብዮትን ጥፅን መከታተል ካርድ

بطاقة متابعة صحة ونمو الطفل

CHILD HEALTH AND GROWTH PROMOTION CARD

እሃዱ ሕክምና

ዞግ

Health Facility

اسم العيادة

Zoba

الاقليم

ንኡስ ዞግ

ዓዲ/ብተግ

Sub Zoba

المديرية

Village/Town

القرية/المدينة



ምሉእ ስም ቁልፍ

ጾታ

Full Name of Child

اسم الطفل بالكامل

Sex

الجنس

ስም እደ

Mother's Name

اسم الوالدة

ዝተወለደሉ/ዝተወለደትሉ ዕለት

Date of Birth

تاريخ الميلاد

ከወለድ ከሉ/ከላ ዝነበር/ራ ከብደት

Birth Weight

الوزن عند الولادة

ካርድ ዝተጥቀሰሉ/ትሉ ዕለት

Date of First Visit

تاريخ الزيارة الاولى

ቁጽሪ መዝገብ

Registration Number

رقم التسجيل

Appendix 7: A specimen of a vaccination card

Translation Made and Certified by The America Team for Displaced Eritreans

The "Form of Regret" or "Taesa" -- ጣዕሳ

Immigration and Citizenship Services Request Form

1. Full Name _____ Gender _____
2. Full Name as it appears in passport _____
3. Village of origin _____ 4. Date of Birth _____
5. Eritrean Identity No. _____ Place of Issuance _____
6. Mother's Name _____
7. Your Unit/work before you left the country _____
8. Reasons for Leaving the country _____

9. Place/ border you used to leave the country _____
10. Date you left _____
11. Countries you have been to including the dates of stay in these countries after you left Eritrea _____
12. If you used Travel Documents to enter these countries, what country did you get them from? _____
13. Your job in the current country of residence _____
14. Current Address: Country _____ City _____
15. National obligations you fulfilled after leaving the country _____

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.

Signature _____ Date _____

<u>For Official use</u>	
Official's recommendation _____ _____ _____	
Name and signature of the official _____	Date _____
Consular Affairs office: Country _____	City _____

NB. Cancellation and deletion not accepted

Appendix 8: A specimen of a regret form, a screenshot from the DSP-Group Report 2017

Appendix 9: Proclamation No. 67/1995

Proclamation Promulgated to Provide for the Collection of Tax from Eritreans who Earn Income while Living Abroad.

1. Short Title

This proclamation shall be cited as “Proclamation Promulgated to Provide for the Collection of Tax from Eritreans who Earn Income while Living Abroad, Proclamation No. 67/1995”.

2. Payment of Tax

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.

3. Collection of Tax

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.

4. Entry into Force

This Proclamation shall enter into force on 1 January 1995.

Asmara, 10 February 1995
Government of Eritrea

(Unofficial Translation from Tigrinya)

አዋጅ ቁጽሪ 67/1995

ካብ ኤርትራ ወጻኢ እናንበሩ እቶት ንዝረከቡ ኤርትራውያን ግብሪ ንምኽፋል ዝወጽአዎ ለዋጅ።

1. ሓጺር ላርላሰቲ

እዚ ለዋጅ፣ዚ “ካብ ኤርትራ ወጻኢ እናንበሩ እቶት ንዝረከቡ ኤርትራውያን ግብሪ ንምኽፋል ዝወጽአዎ ለዋጅ ቁጽሪ 67/1995” ተባሂሉ ከጥቀስ ይኽእል።

2. ምኽፋል ግብሪ

ዝኾነ ካብ ኤርትራ ወጻኢ ዝኾነ ሰራሕ (employment)፣ ካብ ክራይ ዝንቀሳቐስን ዘይቀሳቐስን ንብረት፣ ካብ ንግዳዊ፣ ሙያዊ ወይ ዝኾነ ካልእ ዓይነት ስርሓትን ንጥፈታትን ኣገልግሎትን እቶት ዝረከብ ኤርትራዊ ዜጋ፣ ካብ ዝተጸረየ እቶቱ (net income) ከከም ኩነታቱ ኣብ ወወርሒ ወይ ኣብ ዓመት ክልተ ሚእቲ (2%) ግብሪ ይኽፍል።

3. ምእካብ ግብሪ

ሚኒስትሪ ወጻኢ ጉዳያት ነዚ ብመሰረት ዓንቀጽ 2 ናይዚ ለዋጅ፣ዚ ዝኸፈል ግብሪ ብመገዲ ኤምባሲታት ቆንሲላታትን ካልእት ልኡካትን ተኸታቲሉ ናይ ምእካብን ብቁጥታ ኣብ ናይ ሚኒስትሪ ፋይናንስን ልምዓትን ናይ ባንክ ኤርትራ ናይ ግምጃ ሕሳብ (treasury account) ናይ ምምሕልላፍን ሓላፍነት ይህልዎ።

4. ኣብ ግብሪ ዝውዕለሉ

እዚ ለዋጅ፣ዚ ካብ 1ጥሪ ፡1995 ዓ.ም ጀሚሩ ኣብ ግብሪ ይውዕል።

ኣስመራ 10 ሰኔት፡ 1995

መንግስቲ ኤርትራ

REQUIREMENTS FOR THE FAMILY REUNIFICATION...

REQUIREMENTS FOR THE FAMILY REUNIFICATION APPLICATION TO GERMANY - IOM ADDIS ABABA

INFO FAP ETHIOPIA <info.fap.et@iom.int>

An

****Please scroll for German, Tigrinya, and Somali version****

****በይዘትም ንጀርመን፣ ንትግርኛን ሶማልኛን ንምርከብ ንታሕቲ ይውረዱ****

****Fadlan hoos riix hadaad rabto qeybta Jarmalka, Tigraiga ama Soomaliga****

Dear

We are contacting you from the Family Assistance Programme (FAP) at the International Organization for Migration (IOM) regarding your appointment registration, for the family reunification, at the German Embassy in Addis Ababa, booked under the reference number . With this e-mail, we would kindly like to inform you about the new application procedures.

When the German Embassy visa section starts to accept applications, for the family reunification to a refugee or subsidiary protection holder in Germany again, the visa application submission will **only** take place at the IOM office in Addis Ababa and applicants will no longer visit the German Embassy.

IOM will collect complete applications only. Therefore, before your appointment, make sure to check the required documents and complete them on time. The required documents can be found at this link: <https://addis-abebe.diplo.de/blob/1605538/6517e06be240ac7a5fc5c53d5182360f/fact-sheet-on-family-reunion-for-somali-and-eritrean-refugees-data.pdf>

For all Eritrean applicants:

Please be aware that the authentications from the Eritrean Ministry of Foreign Affairs are required for all Eritrean certificates. Applications without the required documents and authentications are considered incomplete and could negatively impact your visa application process.

To obtain the required documents/authentications, Eritrean refugees in Germany must sign a so-called "declaration of repentance" and pay 2% income tax at the Eritrean Embassy in Germany (2% of your own net income per month) to the Eritrean state.

This approach has been approved by German courts. The Administrative Court of Berlin ruled on June 1, 2018 that applicants cannot be stopped to contact the Eritrean authorities. (VG Berlin, decision of June 1, 2018 - VG 1 L 126.18)

However, Eritreans with a recognized refugee status should inform their German Immigration Authorities (zuständige Ausländerbehörde) before contacting the Eritrean Embassy in Germany.

We will contact you again when your appointment date is approaching. In the meantime, we remain available to provide more information about the documents required. For further assistance, you can call us, send us an email, or visit our office. We assist in the following languages: English, German, Amharic, Tigrigna, Somali, and Arabic completely free of charge.

Our office location:

International Organization for Migration | Family Assistance Programme | Addis Ababa, Ethiopia. | YeMez Building, Behind Zequala Building | Kirkos Sub City, Wereda 8 | Addis Ababa Ethiopia | Tel: +251 115 181 310

Opening hours:

Monday to Thursday from 8:30 to 12:30 and from 13:30 to 17:30
Friday 8:30 to 13:00

Best regards,

Family Assistance Programme (FAP) – Addis Ababa

Sehr geehrte/r [REDACTED]

Wir kontaktieren Sie vom Family Assistance Program/Familienunterstützungsprogramme (FAP) der Internationalen Organisation für Migration (IOM) bezüglich Ihrer Terminregistrierung für die Familienzusammenführung bei der deutschen Botschaft in Addis Abeba, die unter der Referenznummer [REDACTED] gebucht wurde. Mit dieser E-Mail möchten wir Sie über das neue Bewerbungsverfahren informieren.

Sobald die Visastelle der deutschen Botschaft anfängt Anträge für die Familienzusammenführung zum anerkannten Flüchtling oder Subsidiären SchutzträgerIN anzunehmen, erfolgt die Einreichung der Visumanträge nur noch im IOM-Büro in Addis Abeba. Antragsteller werden nicht mehr bei der deutschen Botschaft vorsprechen.

Bei IOM sollten nur vollständige Anträge eingereicht werden. Überprüfen Sie daher vor Ihrem Abgabetermin unbedingt die Vollständigkeit der erforderlichen Unterlagen. Die Liste der erforderlichen Antragsunterlagen finden Sie unter folgendem Link:

<https://addis-abeba.diplo.de/blob/1792752/8b4a2d73d15c2e7ef3df4f88adf33d38/merkblatt-familienzusammenfuehrung-somalischer-eritreischer-fluechtlinge-data.pdf>

Für alle eritreischen Antragsteller:

Bitte beachten Sie, dass für alle eritreischen Zertifikate/Urkunden die Überglaubigungen vom eritreischen Außenministeriums erforderlich sind. Anträge ohne die erforderlichen Urkunden und Überglaubigungen gelten als unvollständig und können sich negativ auf Ihr Visumantragsverfahren auswirken.

Um die erforderlichen Urkunden und Übergabungen zu erhalten, müssen eritreische Flüchtlinge in Deutschland eine sogenannte „Reueerklärung“ unterzeichnen und 2% Einkommensteuer bei der eritreischen Botschaft in Deutschland (2% Ihres eigenen Nettoeinkommens pro Monat) an den eritreischen Staat zahlen.

Dieser Ansatz wurde von deutschen Gerichten genehmigt. Das Verwaltungsgericht von Berlin hat am 1. Juni 2018 entschieden, dass die Antragsteller nicht aufgehalten werden dürfen, um Kontakt mit den Behörden Eritreas aufzunehmen. (VG Berlin, Beschluss vom 1. Juni 2018 – VG 1 L 126.18 V)

Eritreer mit anerkanntem Flüchtlingsstatus sollten jedoch ihre zuständige Ausländerbehörde informieren, bevor sie sich an die eritreische Botschaft in Deutschland wenden.

Wir werden uns erneut bei Ihnen melden, wenn sich Ihr Termin nähert. In der Zwischenzeit stehen wir Ihnen weiterhin zur Verfügung, um weitere Informationen zu den erforderlichen Antragsunterlagen bereitzustellen. Für weitere Unterstützung können Sie uns anrufen, uns eine E-Mail senden oder unser Büro besuchen. Wir unterstützen Sie in folgenden Sprachen: Englisch, Deutsch, Amharisch, Tigrigna, Somali und Arabisch völlig kostenlos.

Unser Bürostandort:

Internationale Organisation für Migration | Familienhilfeprogramm | Addis Abeba, Äthiopien. | YeMez-Gebäude, hinter dem Zequala-Gebäude | Kirkos Sub City, Wereda 8 | Addis Abeba Äthiopien | Tel: +251 115 181 310

Öffnungszeiten:

Montag bis Donnerstag von 08:30 bis 12:30 Uhr und von 13:30 bis 17:00 Uhr

Freitag 8:30 bis 13:00 Uhr

Mit freundlichen Grüßen,

Family Assistance Programme (FAP) – Addis Ababa

MudaneMarwo [REDACTED]

Waxaan kaa la soo xiriiraynaa Hay'adda Caalamiga ee Socdaalka (IOM) ku saabsan diwaangelinta ballantaada, ee isu-keenida qoyska, ee safaaradda Jarmalka Addis Ababa oo ku diiwaangalsan lambarka tixraaca [REDACTED] E-maylkani, waxaanu si naxariis leh kuu la socodsiinaynaa nidaamyada codsiga cusub.

EQUAL RIGHTS BEYOND BORDERS

Equal Rights Beyond Borders is a non-governmental and non-profit organization, working for the rights of asylum seekers with offices in Berlin, Athens Chios and Kos. In Athens, on Chios and Kos, we offer free legal aid and representation in asylum procedures, detention and related issues. The offices are specialized on family reunification procedures. In Berlin, we focus on research, advocacy and strategic litigation on further related illegal administrative practices in Germany. Equal Rights Beyond Borders conducts extensive litigation on the right to family reunion in the Dublin System and in the embassy procedure, as well as in cases of illegal returns to Greece.

IRAP

International Refugee Assistance Project

The International Refugee Assistance Project (“IRAP”) is a dynamic and growing nonprofit legal, policy, and advocacy organization that works to develop and enforce a system of legal and human rights for refugees and displaced people. IRAP operates offices in the U.S. (New York City and Washington, DC), Jordan (Amman), Lebanon (Beirut), and Germany (Berlin). We provide direct legal assistance to refugees and other displaced people seeking safety through resettlement and complementary pathways. In addition, through litigation and advocacy, we work to transform the landscape of refugee rights in the U.S. and internationally.

This report was co-funded by



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DER EINZELFALL ZÄHLT