



ERITREA & ETHIOPIA

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He just laughed.

-- Testimony to Human Rights Watch

THE HORN OF AFRICA WAR: MASS EXPULSIONS AND THE NATIONALITY ISSUE (June 1998 – April 2002)

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I. SUMMARY

A Deportee's Story

Ethiopian nurse B.H. was working for a humanitarian agency in Addis Ababa when war broke out between Ethiopia and Eritrea in May 1999. Then in her mid-fifties, she had lived in Ethiopia's capital all of her adult life. She traced her ancestry to Ethiopia's former province of Eritrea, which won its independence in 1993. She was widowed in 1989 from her Ethiopian husband—who had no Eritrean heritage—after more than twenty years of marriage. She had lived and raised her two children in Ethiopia.

In June 1998, Ethiopia authorities set in motion a campaign to round up, strip of all proof of Ethiopian citizenship, and deport Ethiopians of Eritrean origin from the country. Along with as many as 75,000 others, B.H. was taken into custody, denied her Ethiopian nationality, separated from her children, and deported to a purported homeland with which she had only distant ties.

In Eritrea, parallel roundups of Ethiopian nationals ensued later in the course of the war. B.H. told Human Rights Watch her story in May 1999 in Asmara, Eritrea's capital, where she is still a refugee.

In September 1998 police sought out B.H. at her work in Addis Ababa and took her to the local police station for questioning by a "processing committee." As they asked her questions, the members of the committee took down information. B.H. noticed that an agent had marked down her nationality as "Eritrean"—although he had never asked her to state her nationality:

I asked him "what was that?"
He said "nationality."
"Why don't you ask me?" I told him.
He just laughed.¹

B.H. said that during her entire ordeal she never doubted that the whole thing was a "terrible mistake" on the part of the Ethiopian authorities. She believed that the expulsion bureaucracy would "soon" discover its mistake and allow her to return to her family; indeed, she said that she patiently waited for that moment to arrive even as she was being transported to the border in a convoy of trucks and buses with 1,500 other deportees.

Five months after her expulsion, B.H. said it was still difficult for her to accept her rejection as an Ethiopian. What was most painful at the time of the interview, however, was her forced separation from her Ethiopian children.

"Expelled—Never to Return"

Ethiopian nurse B.H. and tens of thousands of others were expelled en masse as enemy aliens, in groups of up to thousands at a time. Most were trucked or bussed to the border with Eritrea. Documents proving Ethiopian nationality were confiscated, property rights were cancelled, and travel papers in many instances were marked "Expelled—Never to Return." There was no opportunity for judicial review—or even for appeal of rulings through administrative processes. Thousands were detained for periods from a few days to a few months in difficult conditions; many were ill-treated at the time of their arrest or while in detention awaiting transit to Eritrea. Many endured great suffering while in detention and during grueling journeys to the border.

Denied return to Ethiopia, families like that of B.H. were separated on the discriminatory grounds of ethnic or national origin. Children were either left behind with relatives without Eritrean heritage, or more commonly, even though Ethiopian-born, expelled with their parents and denied the Ethiopian nationality that was their

¹Human Rights Watch interview, Asmara, May 13, 1999. The names of all witnesses are on file with Human Rights Watch.

birthright under Ethiopian law. Although the authorities of independent Eritrea extended the option of Eritrean nationality to those with ties to that country, most of the uprooted retained the hope that they could return to their homes and families in Ethiopia. Reduced to the status of refugees, they confronted the specter of statelessness.

The Ethiopian government also harshly treated Eritreans visiting, working, or studying in Ethiopia whose status as Eritrean nationals—and not Ethiopians—was not in question. They ranged from exchange students studying in Ethiopian universities to officials of state-owned Eritrean companies. Human rights concerns in these cases centered upon treatment in detention, including some cases of torture and persistent patterns of ill-treatment, and the absence of the due process guarantees which should apply even in situations of national emergency.

In Eritrea, a campaign of roundups, detention, and ultimately expulsion of civilians based on ethnicity and nationality paralleled the concerted nation-wide campaign that began in June 1998 in Ethiopia, but began considerably later. Even before authorities began a program of arrest, detention, and expulsion, ordinary Ethiopians living and working in Eritrea's towns and cities were attacked by mobs, sometimes with police participation, in apparent retaliation for Ethiopia's air attacks and battlefield advances. Thousands were subsequently interned in harsh conditions prior to expulsion.

In contrast to Ethiopia's campaign of expulsion, Eritrea did not expel its own citizens. This notwithstanding, Eritrea's roundups and mass expulsion, too, were founded firstly on ethnicity. Individual petitions to remain were not heard; there was no legal redress for those making such claims; and administrative decisions apparently disregarded an individual's personal ties to Eritrea or its citizens. Many of the Ethiopians held in administration detention or interned faced conditions constituting cruel, inhuman, or degrading treatment, often for as long as several months. Deportees lost all they owned, with little prospect of pursuing claims for lost, confiscated, or abandoned property, although the peace agreement's provision for claims in this regard offer some little hope. The operation was a harsh campaign to expel en masse a suspect population in wartime—with potentially lasting consequences for the future of the once warring neighbors.

The War' Staggering Toll

The war that broke out between Ethiopia and Eritrea in May 1998 shattered illusions that the two countries were to be a locus of stability in the Horn of Africa. The two-and-a-half-year border war claimed a staggering toll in human life and suffering and precipitated violations of human rights and humanitarian law on both sides.

The opposing armies waged a conventional war over a long front for much of the period. The casualties, mainly soldiers, included an estimated 100,000 dead. The conduct of the war devastated the two countries' economies, decimated their draft age youth, displaced whole populations, and led to the flight—or summary deportation—of tens of thousands across the two countries' imperfectly drawn international borders.

Hundreds of thousands were internally displaced and over one million became refugees in the course of the war. Many fled or were deported to other countries in the region as both countries used mass population transfers as a weapon of war. The negotiated end of the war, agreed on December 12, 2000, stopped the fighting—but it failed to resolve the plight of those uprooted from their homes and cut off from their livelihood in both countries, in particular those deported from their own country and stripped of their nationality.

While Ethiopia and Eritrea both now appear to be conforming with the requirements of the peace agreement, the settlement deals primarily with the formal separation of the belligerents' forces, the demarcation of the border, and competing claims for compensation. The issue of the wartime expulsion of tens of thousands of people on grounds of their purported nationality or national origin garnered surprisingly little attention from the international community during the war and remains largely overlooked in the war's aftermath.

This report examines the use of mass expulsions by both parties to the Horn of Africa war—and their far-reaching human costs.

The Deportations

The Ethiopian government is known to have forcibly expelled an estimated 75,000 people of Eritrean origin during the war. The Eritrean government forcibly expelled or took part in the voluntary repatriation of an estimated 70,000 Ethiopians, notwithstanding persistent Eritrean government claims that it had no expulsion policy comparable to Ethiopia's.

Ethiopia's Campaign of Deportations

Ethiopian authorities launched a vast campaign to round up and expel people of Eritrean origin from Ethiopia in June 1998. Most had been born in Ethiopia when Eritrea was still held to be a part of that country—and had no other recognized citizenship other than Ethiopian. Most adults had spent all or most of their working lives in Ethiopia, outside of Eritrea. Ethiopian authorities in June 1998 announced the planned expulsion of residents who posed a security risk to the state, to include members of Eritrean political and community organizations, and former or current members of the Eritrean liberation front.

The Ethiopian authorities moved almost immediately to carry out arrests and to expel Eritreans and those of Eritrean origin in a manner that became increasingly indiscriminate over time. No meaningful steps were made to determine “risk” on a case-by-case basis—or to distinguish between those who had formally assumed Eritrean nationality and Ethiopian nationals distinguished only by their Eritrean origin.

The first wave of arrests and deportations began on June 12, 1998, targeting people of Eritrean origin in Ethiopia who were prominent in business, politics, or community organizations. In conjunction with this campaign, the Ethiopian government revoked business licenses and ordered the freezing of assets of thousands of individuals of Eritrean origin. Those with bank accounts were informed that their accounts had been frozen and were inaccessible. The government provided no avenue for affected individuals to challenge these actions. The main targets of the deportation campaign after June 1998 were tens of thousands of ordinary people who were deported and dispossessed on the sole basis of their national origin.

In a June 18 broadcast, Ethiopian Foreign Minister Seyoum Mesfin had already put members of the Eritrean-Ethiopian community on notice that their citizenship was to be put to the test. “[I]f the Eritreans are innocent citizens and if they appeal in unity, if they condemn the aggression...[and] raise their voices together with the [Ethiopian] people for the achievement of peace, they will not be under threat.”² The nationality of Eritrean Ethiopians was not questioned in the foreign minister's statement, but the challenge to their standing as “innocent citizens” posed an immediate threat to the entire group. In practice, the selective expulsions of community and business leaders yielded rapidly to wholesale arrests and deportations strictly on the grounds of national origin—on the grounds of presumptive disloyalty.

The expulsion of people from Ethiopia's urban areas generally conformed to a common pattern, with almost all detained and interned prior to being deported—often under very harsh conditions. The majority of the deportees were held for days or weeks, although some were held for as long as several months. A “processing committee” of policemen, security agents, and political officials from the ruling party normally interrogated detainees on their identity, suspected links to Eritrean institutions—and their ownership of property. During the interrogation, the detainees were not given a meaningful opportunity to refute the allegation that they were Eritrean nationals (or security risks), and were denied access to the courts to challenge the legality of their detention or denationalization.

While the detainees were in custody at police stations, officials searched for and confiscated their Ethiopian identification documents, including identity cards, passports, work papers, and driving licenses. Some detainees managed to hold on to some of their identification documents by hiding them—or because they had not had a chance to bring the documents with them when they were detained. The systematic removal or destruction of such documentation was a peremptory measure to deny the individuals concerned basic evidence to substantiate

²“Ethiopian foreign minister explains expulsions,” interview broadcast on Ethiopian TV on June 18, 1998, reported in BBC's *Summary of World Broadcasts*, June 22, 1998

claims to Ethiopian nationality at any future time. This confiscation of documents prior to deportation appears on its face to be recognition of the potential for such documents to counter Ethiopian government claims that it expelled only non-nationals. By stripping deportees of their Ethiopian papers the government was in a sense validating their claims to Ethiopian nationality by foreclosing the option of their close and independent examination.

Prior to their expulsion, the Ethiopian authorities moved urban deportees through a series of increasingly centralized internment sites holding increasingly larger groups of detainees. The majority of the deportees were transported in bus convoys to the northern border. Conditions during the trip to the border were extremely crowded and uncomfortable. The deportees then were made to cross the border on foot to reach Eritrean posts on the other side. Many others of Eritrean origin fled or were expelled across Ethiopia's southern borders with Djibouti and Kenya. Because of limits on the availability of buses, other equipment, and personnel, the Ethiopian government deported no more than 1,500 people at a time.

Individuals of Eritrean origin who lived in rural areas of Ethiopia were also subject to summary deportation or expulsion. Individuals from those rural villages inhabited predominantly by people of Eritrean origins, mostly in the northern Tigray region, typically had to travel on foot from their villages into Eritrea. They were generally not allowed to take personal possessions with them and some were forced to abandon thousands of livestock.

The Ethiopian government arrested, detained, and deported approximately 75,000 people of Eritrean origin without due process of law. Most were told they were being detained because they had voted in the referendum regarding Eritrea's independence—with this cited as evidence they were “Eritreans.” Self-identity with others of the same national origin within Ethiopia's multi-ethnic, multi-national state, the essential criterion for voting in the referendum, was reinterpreted as having been an affirmation of citizenship. Membership in Eritrean cultural, social, or political community organizations was also cited as evidence that people of Eritrean ethnicity had lost their Ethiopian nationality. Classification as “Eritrean” and decisions to deport appeared to have been determined by the processing committees even before most individuals were called in for questioning—with a space on forms identifying nationality routinely filled in as “Eritrean” in advance. The Ethiopian government also forced deportees to sign away their property rights—by demanding deportees sign powers of attorney under threat.

Eritrea's Policy of Internment and Deportation

Eritrea pledged at the outbreak of war that Ethiopian residents would not be penalized for the war, and that they were welcome to stay in the country and to keep their jobs, while offering the option of voluntary repatriation to those wishing to depart. There was no evidence during the first phase of the conflict that Eritrea had a policy to expel Ethiopian residents, although Ethiopian residents suffered considerable abuse. As the conflict dragged on, Eritrea's policy toward Ethiopian residents became increasingly harsh. Thousands had left the country early in the conflict due to economic hardships related to the war and out of concern for their own safety. Increasingly, large numbers of residents were interned and expelled by the Eritrean authorities.

From August 1998 to January 1999, a period of relative calm on the war front, some 21,000 Ethiopian residents of Eritrea left for Ethiopia with the assistance of the International Committee of the Red Cross (ICRC). While Eritrean authorities insisted that these departures were voluntary, a measure of coercion was involved in a number of cases. Indeed, many individuals in this first wave complained upon arrival to Ethiopia of beatings, rape, and the confiscation of their property.

Between February and April 1999, fierce battles were fought on the western and middle segments of the disputed border, but neither party had scored significant gains by the onset of the rainy season in June. However, Ethiopia's retaking of the disputed Badme triangle, on the western front, gave it a certain advantage in the intense propaganda war that the two belligerents fought in the media and on the Internet. During this phase in the war, the Eritrean government appeared to further toughen its policy towards Ethiopians residing in the country, leading to a new wave of internments and forcible expulsions of Ethiopian residents.

The Ethiopian army's major offensive in mid-2000 caused an estimated one-third of Eritrea's three million people to flee their homes. Also displaced were thousands of Ethiopians who had been longtime residents. In the first week of June 2000, Eritrean authorities told Ethiopian citizens living in Asmara "to register with the local authorities in preparation for repatriation." A government spokesman for the foreign ministry in Eritrea denied that the Eritrean government was pursuing a policy of forced repatriation, attributing the directive to a "communication gap," but the interments proceeded anyway. Shortly thereafter, Eritrean authorities acknowledged holding at least 7,500 Ethiopian nationals, and allowed the international press to visit one of several internment sites. Eritrean authorities started expelling larger numbers of Ethiopian residents in earnest in July and August 2000, in several instances without prior information to the ICRC to ensure the safety of deportees as they crossed front lines. The ICRC's request of Eritrea and Ethiopia in early August to agree on common routes for border crossings led to better compliance by the two belligerents with the requirements of safe passage for civilians expelled across the border. Between October 2000 and late 2001, the ICRC accompanied batches of several hundreds of repatriated Ethiopians on a regular basis.

The December 2000 peace agreement established a Claims Commission to decide all compensation claims for loss, damage, and injury related to the conflict and arising from violations of international law. However, monetary rewards alone will be insufficient to compensate for the suffering resulting from the deportations carried out by the two parties. Nor does the Claims Commission appear to be mandated to address the outstanding consequences of the deportations—the nationality status and right to return of those arbitrarily denationalized and the reunification of families sundered by the mass expulsions.

Overlooking these issues will have grave consequences for thousands of war refugees and displaced persons, many of whom are still living in makeshift settlements and relying for their survival on relief handouts. The peace process has ended the bitter conflict between the two nations. However, the issue of the resettlement or return and the compensation of deportees must be addressed squarely. In particular, the nationality status of those whose citizenship was revoked during the expulsion process must be resolved if lasting peace and reconciliation is to return to the Horn of Africa so that the international peacekeepers can return home.

The War and the Question of Nationality

The war's immediate cause was a border dispute in a dry and stony region called Badme—a consequence of territorial fine-tuning left undone when Eritrea won its independence from Ethiopia in 1993. The final details of the borders then seemed inconsequential, as the leaders of the two governments were fast friends—long-time comrades in arms in the fight against Ethiopia's Derg regime.

The question of the nationality of Ethiopians with ties to newly independent Eritrea was also deferred. Eritrea's newly independent government promptly made provisions for residents of Eritrea and returning refugees to establish their Eritrean nationality and citizenship. Ethiopia's government, for its part, imposed no requirements for Ethiopian citizens of Eritrean origin who remained in Ethiopia to reaffirm their Ethiopian nationality. It did not establish procedures for citizens to choose one or the other nationality, Ethiopian or Eritrean, or to otherwise regularize outstanding nationality issues with its successor state, Eritrea. Indeed, in a 1993 pact with the new Eritrea, Ethiopia recognized that until the issue of citizenship was settled in both countries, rights of residence in both territories would be respected. Most members of the Eritrean minority in Ethiopia got on with their lives, never doubting their standing as Ethiopian citizens.

Ethiopian law was clear that those who took up the option of Eritrean citizenship could not then have dual nationality—they could not retain their Ethiopian citizenship. Most Ethiopians of Eritrean heritage had a clear right to Eritrean citizenship, and this was a criterion for their voting in the 1993 referendum on Eritrean independence. At that time, however, Eritrea was a province of Ethiopia; an option to formally take up Eritrean citizenship could only be exercised after independence was won. Most of these Ethiopians whose habitual residence was outside Eritrea had not taken steps either to renounce their Ethiopian citizenship or to affirm their citizenship in post-independence Eritrea after the referendum.

Eritrea's independence was contingent upon the outcome of the referendum—and the outcome was promptly recognized by the Ethiopian government. Yet there was no provision in Ethiopian law or in the terms of the referendum itself that expressly put the Ethiopian citizenship of those voting in jeopardy should Eritrea win independence. To have done so would have marred the referendum by threatening to penalize voters who believed in an independent Eritrea. Only long after the fact and in the context of the outbreak of war did Ethiopia's leaders declare that having voted in the referendum was ultimately in itself evidence of Eritrean citizenship—and by extension a renunciation of their rights as Ethiopians. This was the basis for Ethiopia's campaign to strip of their Ethiopian citizenship tens of thousands of people and to expel them en masse to neighboring countries.

International Standards and Successor States

This report focuses on the Ethiopian government's expulsion or deportation from Ethiopia of thousands of Eritreans and Ethiopians of Eritrean origin—and on the Eritrean government's expulsion of tens of thousands of Ethiopians following the outbreak of war. This account looks at the plight of these uprooted civilians, and in particular those who were expelled by Ethiopian authorities from their own country, their documents stamped "Never to Return."

In the course of the war, both sides violated international standards providing safeguards against arbitrary arrest and restricting the use of administrative detention; barring cruel, inhuman, or degrading treatment or punishment; and forbidding the forcible transfer or deportation of civilian populations. International standards concerning nationality in situations of state succession are less incontrovertible, although certain core principles can be identified. These fundamental standards provide a firm basis to assess the expulsion of people from Ethiopia who had not formally taken up Eritrean citizenship, and as a consequence were rendered potentially stateless.

B.H. and other Ethiopians caught up in the campaign to expel people of Eritrean origin faced many of the same issues confronted in other countries transformed by political upheaval, secession, and the emergence of newly independent states in the 1990s. These were in large part issues of state succession, where one state replaced another in its exercise of sovereignty over a given political territory in conformity with international law. As such, independent Eritrea was a successor state to Ethiopia.

For the successor states emerging from the former Soviet Union and the former Yugoslavia, and the division of Czechoslovakia, as with the secession of Eritrea from Ethiopia, issues of nationality were of the greatest importance—as citizenship has proven essential for the exercise of the full spectrum of human rights. A draft declaration prepared by United Nation's International Law Commission, and submitted to the U.N. General Assembly in 1999, provides useful guidance on the principles of international law relevant to the issue of nationality in successor states.

These principles derive from the basic human right to a nationality, and states' obligations to respect this right. They include the right of those with the nationality of the predecessor state not to be rendered stateless; and the obligation of states to ensure that individuals concerned are informed, within a reasonable time period, of the effect of any new legislation on their nationality. Similarly, the consequences for their status in the predecessor state must be made clear to them should they choose to pursue the option of becoming a national of a successor state.

Of particular relevance to Ethiopia and Eritrea is the principle of nondiscrimination—by which states shall not deny persons concerned the right to retain or acquire a nationality or the right of option upon the succession of states by discriminating on any ground. The absence of due process of law in the denationalization and deportation campaign, in turn, flouts principles prohibiting arbitrary decisions concerning the acquisition and withdrawal of nationality—or options to this end. In particular, this violates the principle that people should not be arbitrarily deprived of the nationality of a predecessor state—in this case Ethiopia—or arbitrarily denied the right to acquire the nationality of the successor state. The principles also require that anyone required to transfer one's residence out of the territory of a state following the voluntary renunciation of that state's nationality be given a reasonable time to do so.

International standards are addressed further below.

Methodology

Human Rights Watch closely monitored the treatment of civilians expelled from Ethiopia and Eritrea during and after the war. In May 1999, the organization conducted a three-week mission to the region to gather information about the mass expulsions. Although denied access to Ethiopia, Human Rights Watch interviewed sixty individuals of Eritrean origin who had been expelled from urban and rural areas in Ethiopia. The interviews were carried out in the Eritrean capital, Asmara, and in an Eritrean-run refugee camp in western Eritrea's Gash-Barka province which sheltered people expelled from rural areas of Ethiopia's Tigray region. Human Rights Watch also interviewed members of the diplomatic community, representatives from local and international humanitarian organizations, representatives from United Nations agencies, and Eritrean government officials on the range of issues covered in this report. Names of those who provided testimonies to Human Rights Watch have been withheld from this report in order to ensure security for them and their family members.

After the outbreak of hostilities between Ethiopia and Eritrea, Human Rights Watch received information about the treatment of Ethiopian residents in Eritrea from Ethiopian government officials as well as nongovernmental organizations and other independent sources. Human Rights Watch also monitored the treatment of Ethiopian nationals inside Eritrea through media reports and contacts on the ground. Human Rights Watch's plans to independently corroborate this information by conducting interviews in Ethiopia with Ethiopian nationals expelled from Eritrea were hampered by the Ethiopian government's refusal to grant entry visas to Human Rights Watch researchers on two occasions: first, in March 1999, and again in April 1999.

Human Rights Watch researchers were able to gather some first-hand testimony about the treatment of Ethiopians in Eritrea during its May 1999 mission to Eritrea. During that mission, Human Rights Watch researchers conducted interviews with a dozen Ethiopian residents and also obtained information from interviews with long-term residents of Eritrea from third countries. The organization also met with the chargé d'affaires of the Ethiopian embassy in Asmara.

This report covers the period June 1998 to April 2002.

II. RECOMMENDATIONS

To the Governments of Ethiopia and Eritrea:

Expulsions and Other Violations

- C Halt all expulsions of individuals with claim to Ethiopian or Eritrean nationality, pending the institution of a fair and transparent process to settle nationality claims.
- C Conduct an independent and impartial inquiry into the expulsions and establish mechanisms to redress abuses, particularly to address the arbitrary deprivation of nationality.
- C Where expulsions have occurred, family unity must be restored. Families should never have been separated during expulsion proceedings and family reunification should be facilitated as a matter of urgency. In particular, deportees who have been separated from family members should be given the option to return to their families in the country from which they were deported. Family reunification should not result in further deportations.
- C Ensure that individuals who have been deported or forced to leave through intimidation are permitted to return to settle business and property affairs.
- C Make public commitments to protect the rights of all residents and foreign nationals under national and international law.

Internment Camps and Detention Centers

- C Individually review the cases of all civilians interned or detained in connection with the conflict to ensure their speedy release. Those accused of criminal offenses should be brought to trial in accordance with international standards of due process.

Nationality and Citizenship

- C Ensure that individuals are not treated in a discriminatory manner in the application of citizenship laws.
- C Ensure that individuals who were expelled or deported who have a genuine and effective link to either state are given the right of option to choose citizenship.
- C Ensure that individuals are not stripped of their citizenship without due process of law and that they have recourse through administrative and judicial measures to exercise all options contemplated in internationally recognized standards regarding nationalities in situations of successor states.
- C Work together to ensure that no individual is rendered stateless.
- C Grant full access to African Union, U.N., and other independent human rights monitors including non-governmental organizations to both countries to investigate allegations of human rights violations, including arbitrary detention, expulsion, deportation, and deprivation of nationality.
- C Cooperate with the international community, especially UNHCR, in the investigation of issues surrounding statelessness and citizenship.
- C Offer those Ethiopian citizens of Eritrean origin who in 1993 voted in the referendum to determine the future of Eritrea the right of option to choose their citizenship.

To the Government of Eritrea:

International Legal Standards

- C Accede to the Convention Against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment and the two optional protocols to the Covenant on Civil and Political Rights;
- C Ratify the two Additional Protocols to the Geneva Conventions.

To the International Community:

To the African Union (A.U.), the United Nations, the European Union, and other parties involved in negotiations on the Ethiopia-Eritrea conflict:

- C Insist that Ethiopia and Eritrea immediately cease all arbitrary expulsions and deportations in accordance with their national laws and international human rights and humanitarian standards.

- C Expedite the work of the Claims Commission established under the December 2000 comprehensive peace agreement between the two parties.
Ensure that the Claims Commission addresses and resolves in a binding manner the socio-economic and humanitarian consequences of the conflict.

To the United Nations High Commissioner for Refugees (UNHCR):

- C UNHCR should continue to pursue its mandate to provide technical advice and assistance to both countries on their nationality laws with a view to ensuring that they are compatible with international standards pertaining to nationality and statelessness, and with the aim of preventing arbitrary deprivation of nationality and statelessness. Where necessary, UNHCR should provide assistance in drafting new or revised nationality laws.
- C Conduct and facilitate seminars and training workshops for government and other public officials in both countries on issues pertaining to nationality and statelessness with a view to raising awareness of the problem.
- C Encourage both governments to accede to and comply with international instruments on the prevention of statelessness.
- C Continue to provide technical advice and assistance to both governments on determining the nationality status of expellees and others whose nationality is disputed or unclear.
- C Support projects with local non-governmental organizations to provide legal assistance to people in Ethiopia and Eritrea in order to, inter alia, establish nationality claims, obtain identity documents, seek restitution or compensation for assets and property left behind, and reunify separated families.
- C UNHCR should allocate adequate staff and resources to adequately address expulsions, arbitrary deprivation of nationality, and statelessness in Ethiopia, Eritrea, and elsewhere in the world.

III. THE CONFLICT BETWEEN ERITREA AND ETHIOPIA

Background to the Conflict

Armed Opposition to the Derg (1974-1991)

The political parties now in government in Ethiopia and Eritrea share a joint history of armed opposition to the former regime in Ethiopia: a brutal military dictatorship known as the Derg, led by Colonel Mengistu Haile Mariam.³ The Tigrean People's Liberation Front (TPLF) dominated the Ethiopian People's Revolutionary Democratic Front (EPRDF), an alliance of ethnically-based liberation fronts, which fought the Derg to obtain more autonomy for their respective regions.⁴

The Eritrean People's Liberation Front (EPLF) carried on almost thirty years of armed opposition to the Ethiopian emperor's rule, and later the Derg, in a movement to liberate Eritrea from Ethiopian control. Eritrea had been a colony of Italy from the turn of the century until 1941 when, during World War II, Italian forces were

³Amharic for committee, the word "derg" refers to the group of radical Marxist officers who ruled with Colonel Mengistu after carrying out a successful coup against Emperor Haile Selassie in 1974. In 1976, two years after gaining power, the Derg launched a two-year campaign against rival Marxist factions, in particular revolutionary students and youth groups. Thousands of urban youth were killed, tortured, and "disappeared" during this period which came to be known as the "Red Terror."

Ultimately, the Derg's political violence and economic policies helped set the stage for large-scale humanitarian disaster when several years of continuous drought struck in the mid-1980s. One million people eventually died of starvation and related disease. Human Rights Watch documented the war crimes and crimes against humanity committed by the Derg. See Africa Watch (now Human Rights Watch/Africa), *Evil Days: Thirty years of War and Famine in Ethiopia*, (New York: Human Rights Watch, 1991).

⁴ Revolutionary students and youth who differed with the Derg fled the Red Terror campaign, and established several insurgent groups in their respective regions, including the precursor of the Tigrean People Liberation Front, which was established in 1975. The Derg carried out a counter-insurgency campaign against the "rebellious" northern provinces of Tigray and Eritrea, targeting civilians through indiscriminate bombings and forcible mass relocations.

defeated by British colonial troops advancing from neighboring Sudan. Many Eritreans expected independence for Eritrea during the decolonization period that followed the war, but the British Military Administration, which governed Eritrea from 1941 to 1952, planned to partition the country between Ethiopia and Sudan. In December 1950, the United Nations instead issued a resolution making Eritrea an autonomous unit federated to Ethiopia. In 1962 Emperor Haile Selassie of Ethiopia unilaterally annexed the territory of Eritrea and proclaimed it a province of Ethiopia.⁵ Eritreans were from that time declared to be Ethiopians: article 9 of the Order declared that “All inhabitants of the territory of Eritrea except persons possessing foreign nationality are hereby declared to be subjects of our Empire and Ethiopian nationals.”⁶

The annexation of Eritrea triggered a decades long war of independence. By 1980, the EPLF had emerged as the dominant liberation front among various competing rebel factions fighting for Eritrea’s independence. The EPLF proposed as early as 1980 that Eritrea’s status vis a vis Ethiopia be resolved by an internationally supervised referendum of the territory’s inhabitants, but the Derg rejected the idea out of hand.

The TPLF started in 1975 as a national liberation front, with the political goal of establishing a “Democratic Republic of Tigray.” It naturally turned to Eritrean liberation fronts for assistance, and ultimately formed a close alliance with the EPLF. The relationship between the two fronts was marked from the onset by significant differences over ideology and military strategy, but pragmatism prevailed as both fronts confronted a ruthless common enemy in the Derg. As the TPLF gained increasing control over territory, it also forged the broader Ethiopian People’s Revolutionary Democratic Front (EPRDF), an alliance with other Ethiopian liberation fronts based on Ethiopia’s various “nationalities.”

In May 1991, the anti-Derg alliance between the EPLF and the EPRDF finally gained control; first the ERPDF took Addis Ababa, then, a few days later, the EPLF won control of Asmara. Following the fall of the Derg, the EPRDF in July put in place a transitional government that was to have led Ethiopia towards democracy.⁷ The EPLF in late May named a provisional Eritrean government to guide the newly liberated Eritrea to formal independence two years later.

Eritrean Independence and Cooperation Between Ethiopia and Eritrea (1991-1998)

The Ethiopian Transitional Government pledged to uphold the right of self-determination for all of Ethiopia’s peoples.⁸ In early July 1991, the new government approved the plan put forward by the Eritrean provisional government to hold a referendum to determine Eritrea’s status.⁹

The Referendum on Eritrean Independence

On April 7, 1992 the Provisional government of Eritrea issued “Referendum Proclamation, No. 22/1992,” which set forth detailed procedures for carrying out the referendum and established the Referendum Commission of Eritrea (RCE) to oversee the planning and implementation of the referendum. In particular, the RCE was

⁵ The emperor promulgated Imperial Order 12/1952 “to provide for the federal incorporation and inclusion of the territory of Eritrea” within the Ethiopian empire.

⁶ “An order to provide for the termination of the federal status of Eritrea and the application to Eritrea of the system of unitary administration of the Empire of Ethiopia,” 22/3 (1962) O. 27, Section 2, Title 5.

⁷ The Transitional Government of Ethiopia was established by the Transitional Period Charter of Ethiopia on July 22, 1991, art. 6.

⁸ The Transitional Period Charter of Ethiopia states:

The right of nations, nationalities and peoples to self-determination is affirmed. To this end, each nation, nationality, and people is guaranteed the right to...[e]xercise its right to self-determination or independence, when the concerned national/nationality and people is convinced that the above rights are denied, abridged or abrogated. Ibid, art. 2(c).

⁹ In a letter to the U.N. secretary-general dated December 13, 1991, the president of the transitional government of Ethiopia, Meles Zenawi, wrote that “the people of Eritrea have the right to determine their own future by themselves ... the status of Eritrea should be decided by the Eritrean people in a referendum to be conducted in the presence of international observers.” Referendum Commission of Eritrea “Referendum ‘93: the Eritrean people determine their destiny,” August 1993, p.13.

charged with “(a) guaranteeing a referendum that is free and fair; (b) identification and registration of eligible voters; c) creation of the mechanism of the referendum; (d) publicizing the referendum and informing voters.”¹⁰

Eligibility for the vote depended upon three criteria.¹¹ First, the individual had to be at least eighteen years of age during the registration period. Second, while still under the federal umbrella of Ethiopian citizenship, the individual had to be an Eritrean “citizen,” as defined by the Provisional Government in its April 6th “Eritrean Nationality Proclamation No.21/1992.”¹² Third, the individual had to possess an “Identification Card”¹³ issued to those deemed by the Eritrean Department of Internal Affairs to be eligible for Eritrean citizenship.¹⁴ Registered voters received a registration card bearing “i) the registrant’s name, ii) his registration number; iii) the location and name or number of his polling station, iv) the name or number of the electoral district in which the registrant is registered to vote; and v) the signature of the registrant.”¹⁵

The RCE considered as eligible voters those individuals to whom the Department of Internal Affairs of the provisional government had issued an Eritrean national identification card. The former referendum commissioner, Amare Tekle, told Human Rights Watch that the referendum identification card was only meant to confirm people’s Eritrean origin, and not Eritrean citizenship, adding “voters couldn’t be citizens of Eritrea, since the Eritrean state didn’t exist at the time of their registration.”¹⁶ Based on these criteria on voter registration, the RCE registered 1,110,745 people during the last four months of 1992; of these, 60,129 were registered in parts of Ethiopia other than Eritrea, 164,842 in Sudan, and 84,370 in other parts of the world, mainly the Middle East, Europe, and North America.¹⁷

A United Nations-supervised referendum on Eritrean statehood was ultimately held from April 23 to 25, 1993. The transitional government of Ethiopia sent a thirteen-person observation mission to observe the polling in Eritrea and actively facilitated the planning and conduct of the referendum elsewhere in Ethiopia.¹⁸

Around the world, over one million people in more than forty countries took part in the referendum.¹⁹ More than 99 percent of voters opted for Eritrea to separate from Ethiopia and become an independent state.²⁰ The vote was certified as free and fair by U.N. observers as well as by the Ethiopian government.²¹ When Eritrea declared its independence, Ethiopia was among the first countries to recognize the new state.

¹⁰ Provisional Government of Eritrea, “Eritrean Referendum Proclamation,” *Gazette of Eritrean Laws*, vol. 2/1992, no. 4, No. 22/1992,” Asmara, April 7, 1992, art. 5(1).

¹¹Provisional Government of Eritrea, “Eritrean Referendum Proclamation,” art. 24.

¹² See discussion of Eritrean Nationality Proclamation.

¹³ The voters “Identification Card” indicated the date and place of issue and the bearer’s name, date and place of birth, gender, occupation, and address. The card did not identify the nationality or national origin of the bearer.

¹⁴ Provisional Government of Eritrea, “Eritrean Referendum Proclamation,” art. 24.

¹⁵ Ibid, art. 27(2)(d).

¹⁶Human Rights Watch interview, Amare Tekle, former RCE commissioner, Asmara, May 12, 1999.

¹⁷ Referendum Commission of Eritrea, “Referendum ‘93,” Final Polling Results,” p. 188.

¹⁸Ibid, p. 198.

¹⁹ The long war for Eritrea’s independence led to the departure of hundreds of thousands of refugees and migrants from Eritrea—most of whom settled elsewhere in Africa, or in Europe or North America. While 73.5 percent voted from polling locations within Eritrea, 26.5 percent voted from other regions in Ethiopia or abroad. According to the records of the Referendum Commission, 60,129 referendum votes came from regions of Ethiopia other than Eritrea. Another 164,842 people of Eritrean origin voted in Sudan. Finally, a total of 84,370 votes were polled from thirty-nine other countries, including countries in Europe, the Middle East, Africa, and North America. Referendum Commission of Eritrea, “Referendum ‘93 Final Foreign Polling Results,” pp. 63 and 189-191.

²⁰1,168,978 individuals took part in the referendum and 99.80 percent voted for Eritrean statehood, Ibid.

²¹The U.N. certified that “the referendum process in Eritrea can be considered to have been free and fair at every stage.” An eighteen-person OAU mission concluded on the basis of its observations that the polling was “free, fair and devoid of significant irregularities.” Announcement by the Special Representative of the Secretary-General on the Referendum in Eritrea, April 27, 1991; Referendum Commission of Eritrea, “Referendum ‘93,” pp. 192-93, 200. Negaso Gidada, head of the Ethiopian government’s delegation to observe the vote in Eritrea and subsequently Ethiopia’s president, declared the polling free and fair and pledged his country’s respect and acceptance of its outcome. Ibid, pp.197-199.

The Short-lived Partnership

The newly-established Federal Democratic Republic of Ethiopia and newly-independent Eritrea initially became close partners. A 1993 agreement between the ministries of internal affairs of the two countries confirmed an earlier agreement to exempt citizens of the other country from entry visa requirements.²² This provision was intended “to promote and further consolidate the historical and cultural relationships long cherished by the peoples of the two countries, further strengthen the affinity and bonds of friendship between them.”²³ Article 2.3 of the same agreement declared that “until such time that the citizens of one of the sides residing in the other’s territory are fully identified and until the issue of citizenship is settled in both countries, the traditional right of citizens of one side to live in the other’s territory shall be respected.”²⁴

In addition to promoting the uninhibited flow of people and goods across their border, the two countries agreed to conduct joint security training programs, and to cooperate on police training and operations, drug-trafficking control, motor-vehicle regulation, and other issues.²⁵ They also established a high-level joint governmental commission to promote political cooperation and economic integration between them. So close were relations between the two countries that in June 1996 President Issayas Afewerki of Eritrea told an Addis Ababa newspaper that the border between Eritrea and Ethiopia was becoming “meaningless.”²⁶

Regional Cooperation

The two countries also worked together on the regional stage. They revived the Intergovernmental Authority on Development (IGAD)—a sub-regional organization with Ethiopia, Eritrea, Sudan, Somalia, Djibouti, Kenya, and Uganda as members—and worked to expand IGAD’s mandate from environmental preservation to economic integration and conflict resolution. Indeed, Ethiopia and Eritrea were initially the driving force behind IGAD’s efforts to settle two of the most protracted and deadly conflicts in the continent, the civil wars in Sudan and Somalia.

Tensions (1994-1998)

Perhaps because the new governments of Ethiopia and Eritrea came to power as allies against a common enemy and therefore felt a great deal of trust for each other, certain aspects of their bilateral relationship—including how to define the citizenship of people of Eritrean origin living in Ethiopia after Eritrea’s independence, and the delineation of their common border—were never resolved in formal agreements. These unresolved issues as well as economic issues gradually led to tensions and hostility between the two countries.

Defining the Nationality of People of Eritrean Origin in Ethiopia

When the Derg regime fell in 1991 and Eritrea gained de facto independence under a provisional government, the nationality of Ethiopians in the new state remained unchanged pending international recognition of the new state. Ethiopia’s failure to establish clear norms regarding nationality in the wake of Eritrea’s secession in 1993 contributed to increasingly acrimonious public debate there as tensions with Eritrea grew in advance of the outbreak of war.

For many, the establishment of an Eritrean provisional government and the promulgation of new laws by both this de facto authority and the new Ethiopian government raised immediate questions over the status of people of Eritrean origin in Ethiopia. Public resentment over the role of people of Eritrean origin in business and government after 1991 coincided with protests at the dominant role of Tigrean leaders in the new government. This criticism was fueled by protests that even as the new Ethiopian leaders restructured the state based on what it defined as its constituent nations and nationalities, the Oromo, Amhara, Somali, and others were underrepresented

²²“Agreement on Security and Related Matters between the ministries of internal affairs of the governments of Ethiopia and Eritrea,” signed in Addis Ababa on May 13, 1994 by Kuma Demeska, minister of internal affairs of Ethiopia and Naizghi Keflu, vice minister of internal affairs of Eritrea, art. 2.1.

²³ Agreement on Security and Related Matters, art. 2.1.

²⁴Agreement on Security and Related Matters, art. 2.3.

²⁵Ibid, art. 1.3.

²⁶ See “Ethio-Eritrean border becoming ‘meaningless,’” in *Press Digest*, vol. III, no. 26, June 27, 1996.

and marginalized, while the Tigrean nationality dominated. Indignation over the standing of those of Eritrean origin, however, was from Eritrea's independence in 1993 readily transformed into a questioning of the loyalties—and ultimately the right to remain as citizens—of members of the Eritrean minority within the new Ethiopia.

Prior to 1991, all people of Eritrean origin born in Ethiopia, whether residing in the province of Eritrea or in other provinces, were Ethiopian citizens.²⁷ Under Ethiopian law in force in 1991, an Ethiopian citizen who acquired another nationality in a sovereign state would lose his or her Ethiopian citizenship, although the law stipulated that such an individual “may always obtain the benefit of Ethiopian Nationality when they return to reside in the country and apply to the Imperial Government for re-admission.”²⁸ The new Ethiopian Constitution promulgated in 1995 defines an Ethiopian citizen as “any woman or man, either of whose parents is an Ethiopian citizen.”²⁹ It further states that “no Ethiopian citizen shall be deprived of his or her Ethiopian citizenship against his or her will.”³⁰ The 1995 Constitution does not address the issue of dual citizenship.

Eritrean law promulgated in 1992 by its then de facto authority provided for dual citizenship in certain defined circumstances. The 1992 Eritrean Nationality Proclamation (Proclamation No. 21/1992) provides that “any person born to a parent of Eritrean origin in Eritrea or abroad is an Eritrean national by birth,”³¹ and defines a person “of Eritrean origin” as one who was resident in Eritrea in 1933.³² The proclamation further directs that “[a]ny person who is an Eritrean by origin or birth shall, upon application, be given a certificate of nationality by the Department of Internal Affairs.”³³ This notwithstanding, the proclamation also anticipates a distinct procedure for those wishing to renounce foreign citizenship, although this was not a part of the process of registration for purposes of the referendum.³⁴

The Ethiopian authorities' central argument on the nationality issue after war broke out was that the fact that thousands of Ethiopians of Eritrean origin registered for—and later voted in—the referendum on Eritrea's independence was evidence that they had assumed Eritrean citizenship. They cited the language of the Eritrean de facto government's act itself, whereby the province's provisional authorities had limited voting rights to “any person having Eritrean citizenship pursuant to Proclamation No. 21/1992 [the Eritrean Nationality Proclamation].”³⁵ This was not, however, the interpretation given at the time of the referendum by Ethiopian authorities—and indeed the terms of the constitution of 1995 provide a strong new safeguard against

²⁷Ethiopian Nationality Law of 1930 provides that “any person born in Ethiopia or abroad, whose father or mother is Ethiopian, is an Ethiopian subject,” art. 1.

²⁸ Ibid, arts. 11 and art. 17 respectively. Similarly, article 18 provides that “An Ethiopian woman having lost her Ethiopian nationality through her marriage with a foreigner may resume it after the dissolution of this marriage by reason of divorce, separation or the death of her husband, if she returns to domicile in Ethiopia and applies to the Ethiopian Government for re-admission to her original Ethiopian nationality.”

²⁹Art. 6-1.

³⁰Art. 33-1.

³¹ Art. 2(1).

³² Art. 2(2).

³³ Art. 2(4).

³⁴ Distinct procedures are envisaged for those in Eritrea or abroad. Article 2(5) states that; “[a]ny person who is Eritrean by birth, resides abroad and possesses foreign nationality shall apply to the Department of Internal Affairs if he wishes to officially renounce his foreign nationality and acquire Eritrean nationality or wishes, after providing adequate justification, to have his Eritrean nationality accepted while maintaining his foreign nationality.”

³⁵ The “Eritrean Referendum Proclamation” defines “Persons Qualified for Registration” for the referendum: “any person having Eritrean citizenship pursuant to Proclamation No. 21/1992 [the Eritrean Nationality Proclamation] on the date of his application for registration and who was of the age of 18 years or older or would attain such age at any time during the registration period, and who further possessed an Identification Card issued by the Department of Internal Affairs, shall be qualified for registration.”

Eritrean Referendum Proclamation (No. 22/1992), art. 24. Article 26 (1) states that to register as a voter and receive the voter registration card, an eligible person was required to present an identity card issued by the Ministry of Internal Affairs to the registration officer in the electoral district office of his residence.

denationalization. According to the former referendum commissioner, neither the ERC, nor the Ethiopian government warned potential referendum voters that registration for and taking part in the referendum jeopardized their Ethiopian citizenship.³⁶

Following the referendum and Eritrea's formal independence, the nationality of Ethiopians of Eritrean origin was increasingly challenged by sectors of the public. Ethiopian authorities, however, as late as 1996 reaffirmed that procedures were still required to give those who wished to substitute their Ethiopian citizenship with that of Eritrea the opportunity to do so. Ethiopians were to be given an option—nationality was not, at that juncture, to be assigned peremptorily by the authorities on grounds either of national origin or through a reinterpretation of the terms of the referendum. In August 1996, the Ethiopian and Eritrean government agreed to settle the issue by asking those involved to choose their nationality. The two sides agreed that “On the question of nationality...Eritreans who have so far been enjoying Ethiopian citizenship should be made to choose and abide by their choice.”³⁷ It was clear that participation in the referendum alone could not and was not construed as their having done so. However, the implementation of a program to inform citizens of their citizenship rights and options and for them to choose their citizenship was stalled. The two governments decided to postpone implementation until they had resolved an unrelated trade issue: whether or not each country would apply the same trade and investment rules that were applied to the country's own citizens to the nationals of the other country.³⁸

Even as tentative steps were made to sort out the nationality issues in the two states, with due regard for the wishes of the people involved, a vocal minority in Ethiopia was voicing growing mistrust of people of Eritrean origin in Ethiopia. This group complained that people of Eritrean origin in the country controlled important segments of the Ethiopian economy and were working against Ethiopia's interests and on behalf of the Eritrean government. These critics did not deny that these people still had standing as Ethiopian citizens, but opposed this on strictly chauvinistic grounds. They complained that those of Eritrean origin had yet to be obliged to choose between the one or the other country, and they pressed for the Ethiopian government to declare people of Eritrean origin in Ethiopia to be aliens under the law.³⁹ As the tensions grew in 1997, the rhetoric grew increasingly shrill.⁴⁰

³⁶ Human Rights Watch interview with Amare Tekle, Asmara, May 12, 1999. The Eritrean Referendum Commission reported that prior to the referendum it launched a civic and voter education campaign using posters, bulletins, videos, and national radio broadcasts in local languages.” That campaign focused on the meaning, purpose, and process of the referendum. See: Referendum Commission of Eritrea, “Referendum ‘93,” Chapter 4: Publicity and Information, pp. 28-35.

³⁷ “Agreed Minutes of the Fourth Ethio-Eritrean Joint High Commission Meeting,” August 18-19, 1996, Paragraph 4.3.4 on “Issues on the Free Movement of People and Question of Nationality.” The agreement between the two countries was arrived at during the Fourth Ethio-Eritrean Joint High Ministerial Commission, a high-level bilateral meeting which took place from August 18 to 19, 1996, in Addis Ababa. The substance of the meeting was summarized in the minutes, which were signed by both delegations.

³⁸ Ibid. Following a summary of the plan to settle the nationality status of people of Eritrean origin in Ethiopia, the minutes state:

“It was decided . . . that the implementation of this agreement should await decision on granting the freedom of trade and to invest in either country for both nationals of Ethiopia and Eritrea. . . . The two sides agreed therefore to continue consultation on the matter pending the outcome of the proposals to be submitted within three months by the economic committee established to look into trade and investment issues.”

Section 4.3.4. See also Section 4.1.3 on “Participation of Nationals in Trade and Investment;” “Ethiopia, Eritrea agree to intensify cooperation,” African News Service, August 21, 1996.

³⁹The newspaper *Tobbia* was particularly vocal in criticizing Eritrea and people of Eritrean origin in Ethiopia. On May 9, 1996, *Tobbia* reported that the foreign minister, Seyoum Mesfin, was playing “a political game of hide and seek” by failing to adequately address the “question of citizenship” as demanded by two deputies of the Council of People's Representatives, including:

How it was made possible for Eritreans, who have not yet taken up citizenship on this or that side, to do as they wish within the Ethiopian economy, how they still held key positions in the Ethiopian civil service (....), about the militarist trend pursued by Eritrea and its new map, about the implication of Eritrea's use of the Ethiopian currency.

Economic Issues

Meanwhile, Eritrea's growing economic independence from Ethiopia triggered increasing tensions between the two states. With Eritrea's independence, Ethiopia became landlocked. The flow of Ethiopian imports and exports therefore largely depended on access to the Red Sea port of Massawa in Eritrea and to the port city of Djibouti to the south. Over time Ethiopia became progressively more dissatisfied with its reliance on the Eritrean port, which it felt led to Eritrea's disproportionate advantage in their trading relationship. The economic ties between the two countries were further strained in 1997 when Eritrea, which had heretofore used the Ethiopian currency, the birr, adopted the nakfa as its national currency. Investment and trade between the two countries now involved foreign currency exchange, slowing the rate of bilateral transactions.

Border Disputes

Controversy over the delineation of the 620-mile common border further exacerbated tensions between Eritrea and Ethiopia. Upon becoming an independent nation in 1993, Eritrea succeeded to 1902 colonization treaty between Italy and Ethiopia, which defined the border between Eritrea and Ethiopia. However, Eritrea's annexation by Ethiopia in 1962 had muddied the demarcation of the border since the colonial boundaries between the two formerly separate states were replaced by administrative boundaries within Ethiopia, some of which had shifted slightly over time. After 1993, both Eritrea and Ethiopia claimed sovereignty over three areas where administrative borders had changed: Badme, in the west of the border region, Tsorona-Zalambessa in the central border region, and Bure in the eastern border region.

Following Eritrea's independence, Eritrea and Ethiopia set up a system of local committees for settling local border disputes. The bilateral arbitration committees set up by the two countries to resolve frequent disputes among communities living along the border failed to calm the border issue. A higher-level joint border commission also proved inadequate to contain tensions.

The War: The Military Confrontation

In May 1998 the simmering border conflict between Eritrea and Ethiopia exploded in a military confrontation in the Badme area when Eritrea sent its army to expel Ethiopian troops stationed there and claimed the area as Eritrean. Weeks of skirmishes followed, and by early June the two former allies were at war.

The two countries battled on three fronts over the three disputed areas of Badme, Tsorona-Zalambessa, and Bure. Fighting took place in cycles: short periods of pitched battle alternated with longer periods of relative lull in which only occasional skirmishes took place. The first period of major battle took place from May through June 1998—followed by seven months of relative quiet during which both belligerents rushed to train hastily-assembled recruits and conscripts. During this period both countries also engaged in a flurry of new arms purchases. Eager international weapons suppliers supplied arms and military instruction, in often cases to both countries simultaneously.

When the fighting resumed in late February 1999, Ethiopia overran Eritrea's defensive lines and recaptured the Badme area, the original flashpoint of the conflict. The Eritreans then repelled an Ethiopian offensive against the southern border town of Tsorona, in the central front, a battle that cost both armies thousands of casualties. This second cycle of fighting came to an end with the approach of the rainy season in late June 1999.

The newspaper said, "None of the questions met with satisfactory replies." "Political hide and seek: the case of the council and officials of the state," *Tobbia*, May 9, 1996, as summarized under the same title in *Press Digest*, vol. III, no. 20, May 16, 1996, pp. 10-12.

⁴⁰ In November 1997, when relations between Ethiopia and Eritrea were already strained, *Tobbia* renewed its call for a clarification of the nationality status of Ethiopians of Eritrean origin: "The question of the status of Eritrean citizens residing in Ethiopia is still pending for inexplicable reasons. If it is assumed that the choice of citizenship of Eritreans has been decided on the basis of the referendum, arrangements should be made by the Ethiopian government to enable those who have voted for Eritrean independence to reside in Ethiopia as foreign nationals."

"Question of Eritrean nationals residing in Ethiopia should be resolved," *Tobbia*, November 27, 1997, in *Press Digest*, vol. IV, no. 49, December 4, 1997.

After repeated attempts by the Organization of African Unity (OAU) to negotiate a truce failed, the fighting reignited with even greater intensity in mid-May 2000 when Ethiopia launched an attack that reached deep into Eritrean territory. Eritrea, apparently hoping to secure a quick cease-fire, withdrew its forces from all contested border territories and redeployed them within uncontested Eritrean territory. After another round of OAU-sponsored negotiations in Algiers, Ethiopia and Eritrea signed a “cessation of hostilities” accord on June 18, 2000. Finally, the two parties signed a comprehensive peace agreement on December 12, 2000.

With the attention of mediators focused on ending the fighting and demarcating the border, the international community gradually became oblivious to the problem of expulsions, after an early chorus of denunciations. The issue of the status of those expelled from Ethiopia remains to be specifically addressed under the current mechanism and processes of the peace package. The principal issue was that many or most of the Ethiopians of Eritrean origin deported were arbitrarily deprived of their Ethiopian nationality in a retroactive response to the vote on Eritrean independence. An outstanding issue was whether they had been rendered stateless and so were eligible for special international protections. Responsibility for this determination primarily lay with the United Nations High Commissioner for Refugees (UNHCR), the U.N. agency with an express international mandate to address this issue with practical remedies.

The status of Ethiopian residents in Eritrea does not appear in dispute. A spokesman for the Ethiopian embassy in Eritrea did not raise this in a May 1999 meeting with Human Rights Watch, noting that the embassy only recognizes carriers of the Ethiopian national identity card as Ethiopian citizens. For their part, Eritrean authorities as a rule did not issue to Ethiopian residents the Eritrean national identity card or passport, nor did they recruit them for employment reserved for nationals.

IV. EXPULSIONS BY ETHIOPIA

Overview of the Expulsion Campaign

As noted, during the course of the war Ethiopian authorities forcibly expelled some 75,000 Ethiopians of Eritrean origin.

On June 11, 1998, approximately one month after the war between Eritrea and Ethiopia began, the Ethiopian government issued a “policy” statement. According to the statement, the “550,000 Eritreans residing in Ethiopia” could continue to live and work peacefully there. The Ethiopian government was committed to ensuring “good and brotherly relations and peaceful coexistence with Eritreans residing both in Ethiopia and Eritrea.”⁴¹ However, as a “precautionary measure,” the statement ordered members of Eritrean political and community organizations to leave the country on account of their suspected support of the Eritrean war effort. It ordered a mandatory leave of absence of one month for people of Eritrean origin occupying “sensitive” jobs.⁴² Those expelled would be allowed to appoint agents to administer their properties, the statement pledged, and their dependents would be given the choice of either staying behind or accompanying them.

The first wave of arrests and expulsions began the following day, on June 12, 1998. In this first wave, the Ethiopian government targeted people of Eritrean origin in Ethiopia who were prominent in business, politics, or community organizations.⁴³ On June 18, 1998, the Ethiopian foreign minister, Seyoum Mesfin, explained that the

⁴¹“Government says never to change policy on relations with Eritreans,” *Press Digest*, vol. V, no. 25, June 18, 1998, quoting the *Ethiopian Herald* of June 13, 1998.

⁴²Ibid. Citing threats to national security, the government laid out in its statement the outlines of an official policy to deport Eritrean citizens residing in Ethiopia and certain categories of Ethiopians of Eritrean origin. The statement promised that senior officials of Eritrean community organizations and local chapters of the ruling Eritrean front who were “involved in activities detrimental to national security” would be expelled from the country. It also singled out for expulsion Eritrean businessmen who had engaged in “spying activities” or raised funds “in support of Sha’bia’s [Arabic for “popular,” a reference to the ruling front in Eritrea] aggression on Ethiopia.”

⁴³In the town of Debre Zeit, for example, members of the local Ethiopian Community Organization and local branches of the Sha’bia party, the political party in power in Eritrea, were targeted in the days and weeks after the Ethiopian Government’s

government planned to expel “a few individuals contributing financial and material support to the war efforts” of the Eritrean government.⁴⁴ The foreign minister explained that while disloyal Ethiopian Eritreans would be expelled, those who supported the Ethiopian government would not be targeted.⁴⁵

In conjunction with this first wave of arrests and expulsions, people of Eritrean origin in Ethiopia who held jobs in what were deemed “security sensitive” sectors lost their jobs under a policy of “enforced leave.” Although the enforced leave policy was announced as a temporary measure pending review of individual circumstances, such individualized reviews apparently never took place, and Human Rights Watch is unaware of any case in which a person subject to the enforced leave policy was later reinstated in his or her job.

During the early phase of the Ethiopian government's campaign against individuals of Eritrean origin (and against undisputed Eritrean nationals), Ethiopian authorities also sought to purge individuals of Eritrean origin and of Eritrean nationality from international and regional organizations based in Addis Ababa. Thus, Ethiopian authorities pressured the OAU, the U.N.'s Economic Commission for Africa (ECA), and international aid organizations to arrange for the departure of employees who were Eritreans or of Eritrean origin. In some cases, Eritreans and individuals of Eritrean origin who worked for international and regional organizations were simply expelled by the Ethiopian government without notice or consultation with the employing organization.⁴⁶ By June 1999, thirty-eight U.N. employees and dozens of employees of the OAU had been expelled.

The Ethiopian government also targeted people with experience or training in the Eritrean military. On June 13, 1998, the police were instructed to begin “selective questioning” of individuals who had undergone military training in Eritrea.⁴⁷ Up to 1,500 former Eritrean soldiers and graduates of the national service in Eritrea were sent from these interrogations directly to internment camps where smaller numbers later joined them. A spokesperson for the Ethiopian government explained that the arrests were undertaken in order to safeguard national security and that individuals of Eritrean origin who led a “peaceful life” would not be affected.⁴⁸

However, despite the Ethiopian government's policy statement of June 11 that only individuals deemed to pose “a security risk to the state” faced expulsion, after June 1998, the Ethiopian government was expelling mostly ordinary people. The justification for these expulsions was simply the expellees' suspect status as “Eritreans”—a determination usually arrived at without input from the expellees and which they were not permitted to challenge administratively or judicially.

In many cases, people were identified to the local authorities as “Eritrean” by co-workers, neighbors or other informants. Lists of people identified as “Eritrean” were occasionally published in newspapers and other periodicals. For example, on June 10, 1998, the newspaper *Fiameta* published an article calling the U.N. ECA in Addis Ababa a second “Embassy of Eritrea” and naming people of supposed-Eritrean origin who were prominent within the organization. A letter to the editor published the following month in the same newspaper listed another fifteen “Eritreans” employed at ECA.⁴⁹

declaration. Witnesses told Human Rights Watch that after the secretary of the local branch of Sha'bia was arrested, police escorted him home from prison so that they could search the house for party documents. When he returned to the police lock-up, witnesses saw that his teeth had been broken. The detained party secretary told the other detainees that the police had beaten him and tried to get him to name members of the Sha'bia party, Human Rights Watch interviews, Asmara, May 1999.

⁴⁴“Ethiopian foreign minister explains expulsions,” interview broadcast on Ethiopian TV on June 18, 1998, reported in BBC's Summary of World Broadcasts, June 22, 1998.

⁴⁵ Ibid.

⁴⁶ For example, in mid-1998, Ethiopia's Ministry of Foreign Affairs informed Japan's International Cooperation Agency that a senior local employee must leave the country because he posed unspecified risks to national security. The agency's requests for clarifications went unanswered. In late October 1998 the employee was arrested. He was expelled shortly thereafter.

⁴⁷“Ethiopia calls in Eritrean residents for questioning,” *Agence France Presse*, June 13, 1998.

⁴⁸“Sha'bia's army members in Ethiopia being detained, spokesperson,” *Press Digest*, Vol. V, No. 25, June 18, 1998.

⁴⁹“Letter to the editor: ECA Mobile Eritrean Embassy?” *Fiameta*, No. 7/8, June, 1998.

By the middle of 1999, the Ethiopian government no longer routinely justified the expulsions on national security grounds, but increasingly characterized the expulsions as part of a program of “family reunification”⁵⁰ or “voluntary repatriation.”⁵¹ Many of the first expellees were male heads of household; their wives and children were expelled subsequently. For some individuals, it was preferable to depart Ethiopia under these “programs” than to continue being forcibly separated from family members who had already been expelled or to continue being subject to governmental discrimination against people of Eritrean origin. The Ethiopian government’s assertion that these programs were purely voluntary is untenable in light of the government’s aggressive campaign of harassment, expulsion and discrimination against people of Eritrean origin.

Also framing the expulsion campaign was the Ethiopian government’s contention within a month of the first expulsions that the targets of the campaign were not Ethiopian citizens. As early as July 1998, the Ethiopian prime minister used the term “foreigners” to characterize those destined for expulsion.⁵²

In July 1999, the strategy of expulsions crystallized: the government issued a press release declaring that those who had registered to vote in the 1993 referendum on Eritrean independence had thereby acquired Eritrean citizenship and that the Ethiopian Government was therefore justified in rescinding their citizenship rights. “The government of Ethiopia has a legal right to expel Eritreans deemed to be a risk to national security because they are citizens of a foreign country,” concluded the July 9, 1999 statement, which argued:

The individuals that have been expelled by the Ethiopian government over the course of the past year are citizens of Eritrea. None of them are citizens of Ethiopia. They are Eritrean citizens because they registered to vote in Eritrea's 1993 referendum on independence. The Eritrean Referendum Proclamation of May 1992 clearly limits participation in the referendum to naturalized citizens of the State of Eritrea. In order to register, one had to provide proof of Eritrean citizenship, namely, an identification card issued by the Department of Internal Affairs, in accordance with the provisions of Eritrea's 1992 Nationality Proclamation. Individuals who are citizens of Eritrea cannot simultaneously be citizens of Ethiopia because there are no provisions for dual citizenship.

According to the Constitution of the FDRE, when an individual adopts foreign citizenship (e.g. Eritrean citizenship), s/he loses Ethiopian citizenship as a result. Both the Eritrean and Ethiopian governments recognized that voting in the 1993 referendum signified one's Eritrean citizenship long before the current conflict began. This understanding of Eritrean citizenship, which Ethiopia and Eritrea agreed on for purposes of the Ethio-Eritrean extradition treaty, is indistinguishable from the understanding of Eritrean citizenship that applies to Ethiopia's expulsion policy.⁵³

Finally, on August 14, 1999, the Ethiopian government ordered people of Eritrean origin aged eighteen and older, who had voted in the 1993 referendum on Eritrea's independence, as well as those who had formally acquired Eritrean citizenship, to register for alien residence permits with the Security, Immigration, and Refugee

⁵⁰ In one of the first such instances, an Ethiopian government statement described the expulsion of 3,000 people— mostly dependents of people expelled earlier—on July 5 and 6, 1999 as a program of “family reunification.” See Office of the Government Spokesperson, “370 Join Family in Eritrea,” and “Family Reunion for Eritrean Expellees,” Addis Ababa, press statements issued on September 5 and 22, 1998 respectively. See also “Horn of Africa: IRIN News Brief,” July 20, 1999.

⁵¹ For example, the Ethiopian government said that 1,500 people who were bussed to the border in late October 1999 were participants in a “voluntary repatriation” program.

⁵² On July 9, 1998 Prime Minister Meles Zenawi told Radio Ethiopia that those expelled were “foreigners,” and added “. . . any foreign national, whether Eritrean or Japanese etc. . . . lives in Ethiopia because of the good will of the Ethiopian government. If we say ‘Go, because we don’t like the color of your eyes,’ they have to leave.” “Eritrea cites Ethiopian prime minister’s view on expulsions,” Asmara, July 10, 1998, *Voices of the Broad Masses of Eritrea*, reported in FBI-AIR-98-192, July 11, 1998.

⁵³ “Eritrea’s baseless accusations,” FDRE’s Office of Government Spokesperson, July 9, 1999.

Affairs Authority within two weeks or face unspecified legal action.⁵⁴ Prior to this time, the Ethiopian government had not applied the alien registration rule to Eritreans in Ethiopia. The order seems to have been motivated in part by the desire to justify after the fact the deportation of people of Eritrean origin by formally categorizing them as aliens, as well as to drive those of Eritrean origin who remained in Ethiopia to leave.⁵⁵

Daily life became more precarious for people of Eritrean origin in Ethiopia after the alien registration order went into effect. First, the registration gave the Ethiopian government an easily accessible record of the identities, addresses, and property of this population. Second, the alien identity card had to be renewed every six months, so that people of Eritrean origin remained uncertain of their ability to permanently reside in Ethiopia. Third, discrimination by local authorities and private individuals against people of Eritrean origin became more pervasive. Denied employment and business licenses, many were left without any means of support. Because of an intense climate of hostility towards people of Eritrean origin in Ethiopia, it was also dangerous even for their friends and neighbors to be seen to be assisting expellees or their families.

Expulsion Campaign Procedures in Urban Areas

Arrest

The expulsion process for individuals from urban areas conformed to an established pattern. The vast majority were initially arrested at their homes; the rest were usually seized at their workplace. In most instances, local policemen accompanied by local government (*kebele*) officials conducted arrests of those to be expelled.⁵⁶ The officials generally arrived at the expellee's home in the middle of the night or in the early hours of the morning and asked for one or more family member by name, indicating that such person or persons must accompany them immediately to the local police station "for questioning." No other reasons were usually given for the summons. Generally, the police did not produce arrest warrants as required by law. Few, if any, expellees resisted the police demands.⁵⁷

Interrogation by "Processing Committee" at Police Station

Once in the custody of the police and local officials, expellees were generally brought to the local police station where they were questioned by a "processing committee" of policemen, security agents, and political officials from the ruling party. The processing committee normally asked each detainee to state his or her name, address, occupation, and whether the individual had supported the ruling party in Eritrea or was a member of an Eritrean community organization. Expellees were also questioned about family members. The interrogation at the police station was the only formal procedural check of the identity and suspected affiliations of the expellees. During the interrogation, the expellees were not given a meaningful opportunity to refute the allegation that they were not Ethiopian citizens and that they were security risks. They were not informed of the legal basis for their detention, and were not able to avail themselves of regular judicial proceedings to challenge their treatment.⁵⁸

While the expellees were in custody at the police station, Ethiopian officials searched for and confiscated their Ethiopian identification documents, including identity cards, passports, work papers, driving licenses, and the like. Some expellees managed to retain some identification documents, either by hiding them, or because they had not had a chance to bring the documents with them when they were detained.

⁵⁴All foreigners residing in Ethiopia are required by law to obtain and carry a residence permit issued by the Security, Immigration, and Refugee Affairs Authority. See "Eritreans begin registering as aliens in Ethiopia," Associated Press, Addis Ababa, August 16, 1999. See also "Ethiopia orders Eritrean residents to register," Reuters, Addis Ababa, August 15, 1999.

⁵⁵Eritrean advocates monitoring the expulsion campaign informed Human Rights Watch that by early November 1999, about 12,000 people of Eritrean origin had registered with the Ethiopian government as alien residents, and approximately 1,500 of these were then seeking to depart Ethiopia for Eritrea. Advocates meeting, Washington, DC, November 1, 1999.

⁵⁶*Kebeles* are neighborhood committees that constitute the lowest level of local government in Ethiopia.

⁵⁷One instance of resistance to arrest was reported in the Ethiopian press in July 1999. In that case, the *Ethiopia* newspaper reported that in district 2, Kebele 3 of Addis Ababa some of those ordered to go to the police station refused to obey and one "behaved very rudely ... finally the troublemaker was hand-cuffed and taken away." "3,000 Eritreans expelled to Asmara through Bure front," *Ethiopia*, July 7, 1999, in *Ethiopian Weekly Press Digest*, vol. VI, no. 28, July 15, 1999, p.4.

⁵⁸Human Rights Watch interviews with people expelled, Asmara, May 1999.

Property

In conjunction with the expulsion campaign, the Ethiopian government revoked business licenses and ordered the freezing of assets of thousands of individuals of Eritrean origin. Those with bank accounts were informed that their accounts had been frozen and were inaccessible. The government did not provide any avenue for affected individuals to challenge or reverse these actions.

In its June 11, 1998 statement, the Ethiopian government had promised that expellees would be afforded an opportunity to appoint agents to oversee their assets. Frequently, however, expellees were not given an opportunity to appoint a personal representative.⁵⁹ Those who did so were often required to assign power of attorney in a manner that did not conform to Ethiopian law. Some expellees refused to fill out power of attorney documents because of the irregularity of the procedures.

Generally, the appointment of personal representatives, when it took place, occurred while expellees were in custody at the local police station. Members of the “processing committees” asked detainees to declare whether or not they possessed any property or assets. Those who answered in the affirmative were generally given blank sheets of paper to list and dispose of their assets and were also told to fill in power of attorney forms. In the coercive environment of the interrogation, many expellees believed that they were being made to list their assets in order to facilitate the confiscation of their property by Ethiopian authorities, and some refused to list their belongings or assign their interests. Under duress, many expellees assigned powers of attorney to a person to whom they would not ordinarily have entrusted such authority. Although Ethiopian law requires that the appointment of an agent be formalized by filing papers with a court, expellees often were made to appoint agents without the opportunity to properly notarize their power of attorney documents.

Those in the first wave of expulsions had little or no prior notice of their detention and expulsion, and thus were not able to dispose of their property before being taken into custody by Ethiopian authorities.⁶⁰ As a result, the only opportunity many had to make arrangements to protect their property was to cede power of attorney while they were in police custody as directed by the interrogation panel. The first wave of expulsions, in particular, targeted many successful businessmen in the areas of transport, construction, electronics, and food processing, many of whom incurred huge property losses as a result of seizures by the Ethiopian government or by ordinary Ethiopians taking advantage of their forced departure.⁶¹

While many of those who were expelled in subsequent phases of the expulsion campaign were able to dispose of at least some of their property prior to being detained, wide-spread knowledge about the expulsions created an

⁵⁹ For example, H.G. reported to Human Rights Watch that prior to his expulsion he was not allowed to nominate an agent or assign power-of-attorney to a family member. He estimated the losses from his small business at approximately 250,000 birr (approximately U.S. \$31,250).

⁶⁰ D.M., a policeman, reported to Human Rights Watch that he was forced to leave behind approximately 70,000 birr (U.S. \$8,750) worth of small business assets, goods, and personal property. He did not nominate anyone to look after his interests because he didn't have the opportunity to do so. Human Rights Watch interviews, Asmara, May 1999.

⁶¹ B.T. estimated his losses at approximately 7 million birr (approximately U.S. \$875,000.00); G.B. estimated his property loss at approximately 2.5 million birr (approx. U.S. \$357,142.00); H.G. estimated his losses at approximately 250,000 birr (approx. U.S. \$31,250.00). The Committee of Eritrean Businessmen Displaced from Ethiopia, a group of approximately 1,500 of the expelled, estimated that by the end of October 1998 their combined losses had reached some eight hundred million dollars. Among the examples of property losses reported to Human Rights Watch, G.B. reported that government officials had seized the keys and business license to two music stores he owned and B.T. reported that the Ethiopian government auctioned his house and confiscated the trucks, cars, and office equipment of his shipping business. Human Rights Watch interview with G.B. Asmara, May 15, 1999; Human Rights Watch interview with B.T., Asmara, May 1999. For additional details, see: “Eritrean businesses [in Ethiopia]: casualties of a border conflict,” Associated Press, Asmara, October 26, 1998, in *Eritrean Profile*, October 31, 1998. See also: “Eritrea calls for protection of property of expellees,” Africa News Online, PANA, Dakar, December 2, 1999.

atmosphere of duress regarding the sale of property by individuals of Eritrean origin.⁶² As a result, many of those facing expulsion were forced to sell their businesses and other belongings for far less than market value.⁶³

During the expulsion campaign, Ethiopian authorities took steps to limit the ability of Ethiopians of Eritrean origin to dispose of their property before being expelled. For example, one expellee we interviewed was prevented from selling his car prior to his expulsion. The ministry of transport required him to renew his Ethiopian identity card at the local council office prior to formalizing the transfer of ownership, and the local council would not do so saying that it had been forbidden to renew the identity card of any “Eritrean.”⁶⁴ Another expellee reported that after his expulsion, police and local authorities tried to coerce his wife into canceling a contract to transfer the ownership of their house to a family friend; when she refused to cancel the contract, she was expelled.⁶⁵

The Ethiopian government also harassed and intimidated those suspected of assisting people of Eritrean origin who had been expelled or faced expulsion, further contributing to the financial and property loss of the expellees. As a result, many people assigned powers of attorney were too afraid for their own security to risk attempting to communicate with expellees or carry out any actions on their behalf. Finally, people who had been expelled from the country were powerless even to contact others in order to direct the disposition and management of their property in Ethiopia. Telephone and other communications lines from Eritrea, where most expellees landed, and Ethiopia were cut off and expellees had no access to the Ethiopian courts to enforce their claims there.

Detention

Almost all expellees from urban areas were interned, often under very harsh conditions, prior to being expelled. The majority of the expellees were held for days or weeks, although some were held for as long as several months.⁶⁶ Prior to their expulsion, the Ethiopian authorities moved urban expellees through a series of increasingly centralized internment sites holding ever larger groups of detainees.⁶⁷ The last detention site for most urban expellees from the capital city region was a large camp at the Shogole military barracks, on the outskirts of Addis Ababa, which generally held several hundred expellees at a time, according to former detainees.

At the police lockups, most detainees had to rely on food provided by their families, but relatives were only sporadically and unpredictably allowed access to the detainees. While some expellees were able to receive food, medication, or clothes from family members, many others were denied contact with their families and thus

⁶² G.B., a businessman, told Human Rights Watch that he was able to sell his restaurant to a friend who purchased it at market price to assist him. He gave power of attorney over two of his three houses to two other friends. However, a year later, the tenant in his third house had not paid any rent and the keys and business license to two of his music shops had been seized by the police, Human Rights Watch interview, Asmara, May 15, 1999.

⁶³ For example, A.B., a lawyer, reported to Human Rights Watch that after his expulsion, his wife and children were only able to sell the family car for a price well below its market value, Human Rights Watch interviews, Asmara, May 1999.

⁶⁴ In an interview with Human Rights Watch in Asmara on May 14, 1999. E.T., who had been expelled from Ethiopia in October 1998, stated: “I tried to sell my car. I went to the ministry of transport to transfer the ownership to an interested buyer, a routine procedure. There I was told to renew my Ethiopian identity card at the Kebele (the local council). But Kebeles by then had received instructions not to renew any papers for Eritreans. I consider the car a total loss because I couldn’t arrange its sale or transfer by the time of my forced departure.”

⁶⁵ Human Rights Watch interview with B.A., Asmara, May 1999.

⁶⁶ Hundreds of men who were arrested in Addis Ababa in early June, 1998 were reportedly held for periods of as long as several months. First transferred from local police stations to Shogole camp, the men were then moved to a former military training camp in the town of Fiche, fifty miles northwest of Addis Ababa. In mid-August 1998, after six weeks at the Fiche camp, an estimated 1,200 men were transferred to Bilate camp, an abandoned military training facility located in a highly malarial zone in southern Ethiopia. In June 1999, some of the detainees were again transferred to Dedessa military camp, in western Ethiopia. In addition to enduring harsh detention conditions, some of the detainees were reportedly punished by beatings, or otherwise were mistreated, when camp guards deemed that they were too defiant. Human Rights Watch interviews with former detainees, Asmara, May 1999.

⁶⁷ For example, on June 13, 1998, a group of forty-five individuals of Eritrean origin who had been arrested and detained in Debre Zeit were transported by truck to the Shogole military camp where approximately 800 people were being held prior to their expulsion. Human Rights Watch interviews with former detainees, Asmara, May 1999.

were not able to obtain needed goods. Furthermore, many expellees were arrested, detained, and expelled without ever being able to bid their families goodbye.⁶⁸

The police lockups and detention camps had inadequate space and facilities for the expellees, endangering their health and safety. Many detention camps provided no toilets or washing facilities.⁶⁹ The first expellees to be held at Shogole camp were housed in large hangars of sheet-metal which were full of human and animal feces that the detainees had to clean out.⁷⁰ Detainees at police lockups and detention camps were also frequently made to sleep on the floor. The Ethiopian authorities provided little access to health care for the detained expellees.⁷¹ In both lockups and camps, food was also reportedly inadequate.⁷²

Some incidents of torture were reported,⁷³ but many expellees described beatings in the detention camps and verbal abuse appears to have been widespread. Members of the first group held for expulsion at Shogole camp, in mid June 1998, said verbal abuse and beatings were common. Among the dozens interviewed by Human Rights Watch in Asmara, however, few reported that they themselves had been beaten. According to testimonies from former internees, incidents of ill-treatment and beatings had occurred in Fiche and Bilate camps for men of military age or background.⁷⁴

Expulsions

Coming after periods of days or months in harsh conditions of internment, the long bus trip to the northern border, where the majority of expellees crossed into Eritrea, was for many the hardest part of the expulsion ordeal. The expellees were transported in bus convoys. An average convoy from Addis Ababa took between three and five days to reach the border. Conditions during the trip to the border were extremely crowded and uncomfortable. Many of the most vulnerable, including breast-feeding mothers, small children, and the elderly, were on the verge of collapse by the time they crossed the border.

⁶⁸ See Individual Stories, Part V.

⁶⁹ Human Rights Watch interviews, Asmara, May 1999.

⁷⁰ One of the expelled described it as “a stable-like hall, filthy and unhygienic. We had to clean human and animal feces to make it at least fit for healthy animals.” Human Rights Watch interview, Asmara, May 10, 1999.

⁷¹ According to testimonies, for example, the health clinic at the Bilate camp chronically lacked medicines and other supplies. On October 7, 1998, Gebrekidane Zakarias, one of the detained exchange students, died of an intestinal disease. According to former internees, the camp’s food made him sick. As his condition steadily deteriorated, his colleagues petitioned the camp authorities to refer him to an outside hospital for treatment. They reported that the transfer was only made when he was near death. According to Eritrean authorities, five other civilian internees and one prisoner of war died of intestinal and other diseases within eight weeks of Kidane’s death, Human Rights Watch interview, Ministry of Foreign Affairs, Asmara, May 1999.

⁷² Detainees who were transferred to Bilate camp in August 1998 said the food situation at the camp was much worse than that at the Fiche camp. Guards simply gave them flour and told them to bake their own bread. With no cooking utensils available, internees were forced to bake bread on rusty corrugated metal sheets they found. Because of the lack of safe food, gastrointestinal diseases were rampant at the camp.

⁷³ Several were eyewitnesses to the beating and torture of a young man named Dogol, a carpenter who lived with his mother in Addis Ababa. Dogol was reportedly arrested because of his participation in the Eritrean national service, which consists of six months of military training and twelve months of community development services. According to eyewitnesses at the camp, Dogol was attacked in retaliation for his attempt to stop several camp guards from harassing a woman being detained at the camp. The camp guards beat Dogol and he was partially paralyzed, witnesses said. Dogol was finally released on June 20, 1998. His elderly mother was expelled in August 1998 without him. Neighbors cared for him until his expulsion in mid-December 1998. Human Rights Watch interviews with several former internees in Shogole and Fiche camps, Asmara, May 16, 1999.

⁷⁴ For example, students who had been interned at Fiche camp said that the guards had reacted violently on several occasions when the students complained about harsh conditions on behalf of other detainees. In one incident, on or around July 14, 1998, students were subjected to a collective beating by six guards wielding military belts and sticks in the presence of their commander. Human Rights Watch interviews with several former internees in Shogole and Fiche camps, Asmara, May 16, 1999.

The bus convoys regularly stopped en route for hours at a time in order to coordinate with buses traveling from other points. During these periods, which routinely lasted for several hours, expellees were not allowed outside the buses. The Ethiopian authorities also limited the expellees' access to toilet facilities. Expellees were generally allowed to leave the bus only late at night to sleep in the courtyards of schools and other public buildings along the route to the border. The Ethiopian authorities supplied the expellees on the bus convoy with only limited water and food. After the first wave of forced departures, word of lack of food and water having spread, expellees tried to prepare themselves for the arduous journey by bringing their own provisions.

Like the initial arrests, the departures of the buses full of internees to collection centers and to the border occurred mostly at night or in the early morning hours. This appeared to be out of concern of possible public backlash against the expulsion process.⁷⁵ The orchestration of bus movements indicated a centrally commanded and controlled operation. A convoy of five buses originating in Addis Ababa would generally be joined by twenty to twenty-five additional buses by the time it reached the border.⁷⁶ Ethiopian security personnel and policemen on each bus guarded the expellees throughout the trip. A team of three to five policemen and security agents which traveled in four-wheel drive vehicles at the head of the bus convoy maintained communication with the guards on the buses via radio.

During the first few months of the expulsion campaign, the convoys transported the expellees to border crossings with Eritrea at Assab, Zalemessa, Mereb, or Humera.⁷⁷ By late 1998, Ethiopian authorities were transporting most expellees to the Assab border crossing, the most difficult and isolated of the four routes. Bus convoys traveled from Addis Ababa to the northern border crossings, including Assab, for days through the Danakil desert to reach the border. The expellees then were made to cross the border on foot before reaching the first Eritrean post on the other side of the border.

Not all expellees were bused to Ethiopia's common border with Eritrea. Hundreds fled or were expelled through Ethiopia's southern border with Djibouti. Early on in the expulsion campaign, Ethiopian authorities also expelled many people of Eritrean origin through the southern border with Kenya and many more fled to that country.⁷⁸ A handful of individuals, including Eritrean exchange students, humanitarian workers, and on at least one occasion, an elderly disabled person, were expelled by plane via Bole international airport in Addis Ababa, usually after protracted international mediation and the cooperation of the International Red Cross.⁷⁹

⁷⁵ In one case reported to Human Rights Watch, public protests interrupted the Ethiopian government's effort to load five buses with detained individuals of Eritrean origin. According to U.C., one of the detained individuals who was later expelled, the Ethiopian government was preparing to transport the detainees from the town of Desse in broad daylight: "Men, women, young and old, blocked the buses to prevent them from leaving. 'What did they do? Why are you taking them?' they asked the police escort. 'They will not leave,' the crowd was shouting. Police dispersed the gathering by force. During the commotion, a young woman was struggling to accompany those being expelled, refusing to let her elderly mother, who was already in the bus, to leave alone. Police beat her, pushed her into a drainage canal, but she wouldn't let go. Finally she was allowed to leave with us. It was a sad scene to see our neighbors, and friends we have known all our lives crying for us." Human Rights Watch interview, Asmara, May 10, 1999.

⁷⁶ Often these buses carried people of Eritrean origin from towns in the northern Wollo and Gondar regions.

⁷⁷ One of the first mass expulsions took place on Sunday, June 14, 1998, when a convoy of buses carried the approximately 800 people of Eritrean origin being detained at the Shogole camp to the Humera border crossing.

⁷⁸ Some individuals of Eritrean origin who fled to Kenya hoped that they would be able to return to Ethiopia once the initial crisis had subsided. Human Rights Watch interviews with Eritrean residents in Nairobi, May 1999. Other individuals of Eritrean origin sought asylum, usually in Kenya or Djibouti. However, because the receiving countries and the UNHCR regional authorities who processed their applications frequently refused to extend asylum protection to individuals of Eritrean origin fleeing Ethiopia, many such individuals were forced to return to Ethiopia and face forcible expulsion by the government or remain in the receiving country without legal status. Human Rights Watch interviews in Nairobi, May 1999.

⁷⁹ A former detained student told Human Rights Watch that on August 24, 1998 the ICRC arranged his departure and that of two other exchange students. Their studies in Ethiopia had been interrupted by their detention by Ethiopian police after the start of the war. The ICRC intervened, the student said, after the Ethiopian police handed over the students to the Eritrean embassy. On February 14, 1999, Ethiopian authorities transferred another thirty-eight Eritrean exchange students, who had been arrested and interned in the Bilate camp after the start of the war, to the custody of the ICRC for their removal from Ethiopia. On the same day, the students were transported under heavy guard to Addis Ababa airport, from where an ICRC-

In general, the expulsions were timed to coincide with periods of relative quiet in the military conflict between Eritrea and Ethiopia, which was characterized by short periods of intense fighting alternating with longer periods of relative calm. Because of logistical limits on the number of buses, other equipment, and personnel available, the Ethiopian government could deport a maximum of 2,000 people at a given time. In most periods of quiet in the war, the Ethiopian authorities expelled several batches of between 1,600 and 2,000 people, in consecutive waves of expulsions. To date, the Ethiopian government has not permitted expellees from Ethiopia to return.

Individual Stories

M.G.'s Story

Human Rights Watch interviewed several deportees from Debre Zeit, Ethiopia, a resort fifty kilometers south of Addis Ababa. According to the expellees, individuals of Eritrean origin in the town felt the impact of the Ethiopian Government's hardening stance against people of Eritrean origin even before the expulsion campaign was announced. Shortly after the war broke out, in early June 1998, the Debre Zeit town council summoned leaders of the local branch of the Eritrean Community Organization (COM)⁸⁰ to a meeting. At the meeting the town council asked the COM leaders to issue a statement from their organization expressing support of Ethiopia's position in the war. The COM leaders demurred, saying that they were happy to issue a statement calling on both countries to pursue a peaceful solution to their differences. It was clear that the COM leaders proposal did not satisfy the governmental authorities involved. According to the deportees, this was why leaders of COM were among the first to be targeted by the Ethiopian government. M.G.'s story is typical of many who were caught in the first wave of the expulsion campaign.

In June 1998, M.G., a married mother of three, was thirty-eight. She lived with her husband and five children in the town of Debre Zeit. Her husband worked at the Ethiopian air force base in the town. She worked for a private company as a full-time accountant, and also volunteered as a part-time auditor for the local COM chapter.

M.G. was born in Addis Ababa in 1960 to parents of Eritrean origin. She had lived all her life in Ethiopia, and just three years in what was then the Ethiopian province of Eritrea. During those three years—from age seventeen to twenty—she had lived with relatives in Asmara, the capital of the province. After meeting and marrying her husband there, she had settled with him in Debre Zeit, where they lived together for eighteen years. M.G.'s husband was not of Eritrean origin. Having registered to vote in the referendum on Eritrea's independence in 1993, M.G. carried an identification card issued by the provisional Eritrean authorities as well as her Ethiopian nationality documents.

chartered plane took them, via Djibouti, to Asmara, according to one member of the group. A small number of others being expelled traveled with them, including "an old woman in a wheel chair." Human Rights Watch interviews with former interned students (E.G. and A.T.), Asmara, May 13, 1999. *See also* statement issued by the office of the government's spokesperson, "Ethiopia releases Eritreans on humanitarian grounds," February 15, 1999.

⁸⁰ Expellees who belonged to the Eritrean Community in Ethiopia (COM) told Human Rights Watch that COM was primarily a voluntary, self-help organization for people of Eritrean origin in Ethiopia. Like similar organizations founded by the Amhara, the Tigreans, the Somalis, the Oromos, and other ethnic and cultural groups in Ethiopia, they describe the COM as a forum for celebrating Eritrean culture and heritage and encouraging the expression of a common ethnic identity. Another key mission of the organization described by expellees was providing assistance to the poorest members of the Eritrean community in Ethiopia. The organization also helped to raise awareness about, and mobilize support for, development efforts in Eritrea. Prior to the outbreak of the war between Ethiopia and Eritrea, the Ethiopian government had granted legal recognition to COM. Several of its former leaders have noted that the Ethiopian also provided assistance to the organization, and they asserted that COM could not have undertaken any of its activities without the prior approval of the Ethiopian government. In response to the Ethiopian government's allegations that it was justified in expelling COM members because the organization mobilized war support for Eritrea among Ethiopians of Eritrean origin, former COM leaders argue that the organization could not have possibly mobilized the support of the community for Eritrea's war effort since the war took everyone—including the elite in both countries—by surprise. Human Rights Watch interviews, Asmara, May 1999.

At four in the morning during the second week of June 1998, M.G. was roused from her bed by seven armed policemen knocking at the door. M.G. came to the door in her nightgown, frightened.

According to M.G., the police “asked me whether I was Eritrean, and if I had volunteered for the local COM chapter. I said yes.”⁸¹

The police presented M.G. with a police summons ordering her to appear at the local police station for questioning. Without allowing time to gather belongings, or even to get dressed, the police took M.G. still in her nightgown to the police station for interrogation. Some five policemen and security agents questioned her immediately after arrival. Dozens of other people were brought in even as she was being interrogated.

At the police station, policemen and security agents questioned M.G. about her relationship with COM. According to her account, the interrogating officials did not appear to expect to learn anything from their questioning of M.G., and seemed mostly interested in harassing her on account of her national origin and her participation in COM. She was also asked to provide the names of her children and husband.

After questioning her, security officials told M.G. that she was to be soon expelled to “her country.” M.G. protested: “I told them that I was an Ethiopian, married to an Ethiopian, and mother of Ethiopian children, but nobody would listen to me.”⁸² The police then seized her national identity papers from her, including her Ethiopian identity card and passport and her work license.

M.G. was detained at the police station for two days; her family was not permitted to see her during this time. After two days, she was transferred to Addis Ababa, jammed in the back of a municipal loader truck with dozens of other detainees. She and her companions were in the first group deported to Eritrea. Judicial authorities were not involved in any stage of M.G.’s arrest, interrogation, and expulsion.

K.M.’s story

In June 1998, K.M., a middle-aged professional, lived in Addis Abba with members of his family. K.M. worked for an organization within the United Nations. He was also active as a senior officer in COM, had participated in the referendum, and possessed the Eritrean identification card issued to those who registered as voters. He had never renounced his Ethiopian citizenship. In early June 1998, the head of personnel for his employer received a letter from the Ethiopian Ministry of Foreign Affairs declaring K.M. *persona non grata* on security grounds. K.M. was arrested by the police from his home in the early hours in mid June 1998, and was expelled soon thereafter.

Shortly after K.M.’s expulsion his family was also expelled. The Ministry of Foreign Affairs issued his son an emergency travel document, entitled “Emergency document of identity issued to a non-Ethiopian national who cannot obtain or, owing to emergency circumstances, has no time to obtain a national passport or renew an expired one.” On the document, K.M.’s son’s nationality was given as “Eritrean.” At his departure from Ethiopia, an airport immigration officer at the airport stamped the back of the travel document so that it reads “Expel” in English, and Expelled, Never to Return,” in Amharic.⁸³

Expulsion Procedures in Rural Areas

Individuals of Eritrean origin who lived in rural areas of Ethiopia, mostly in the north, were also subject to deportation. Frequently, whole villages whose inhabitants were of Eritrean origin were ordered to evacuate their villages by local government authorities and told to “return to their country.” Typically, the rural deportees had to travel on foot from their villages in Ethiopia into Eritrea. They were generally not allowed to take personal possessions with them. Among the personal possessions rural deportees were forced to forfeit were thousands of

⁸¹Human Rights Watch interview, Asmara, May 10, 1999.

⁸²Ibid.

⁸³Human Rights Watch interview, Nairobi, Kenya, May 1999.

heads of livestock.⁸⁴ By July 2000, more than 3,500 rural residents of Ethiopia had been deported, for no apparent reason other than their national origin. Some expellees from rural areas were detained prior to being deported.

Human Rights Watch interviewed twenty-four rural deportees shortly after their arrival in a temporary resettlement camp in Molki, south-west Eritrea, on May 11, 1999. The interview subjects, all farmers and heads of household, had been expelled from the Tigray region in northern Ethiopia along with a total of sixty-six dependents. Eight of the twenty-four had been born in Ethiopia outside Eritrea. The rest were born in Eritrea when it was a province of Ethiopia and had migrated to the province of Tigray before 1990. All of the children who had been expelled had been born and lived all their lives in Tigray. Ten of the interview subjects held Eritrean identification cards dating from their participation in the 1993 referendum on Eritrean statehood.

The interview subjects said that they came from a small village in Tigray. Following weeks of harassment by local cadres of the ruling party, some fifty people decided to leave the village with their cattle, and to migrate to Eritrea. Soldiers stopped them on the way to the border, took possession of their cattle, and detained them for about a month, they said. By the time their number grew to 200 at the place of detention, including many women and children, the guards gathered them at the place of detention and directed them to leave for the Eritrean border on foot on the same day. They said that they were forced to leave all their possessions, including their cattle, behind. Policemen allowed them to take three kilos of flour per person for the journey. Several other interviewees said that local authorities had ordered them to evacuate their villages and return to their “country.”

Reception of Expellees

By and large, while the government of Eritrea gave deportees from Ethiopia a warm reception, the governments of other neighboring countries, including Djibouti, Kenya, Malawi, and Sudan, did not.

Eritrea

The Eritrean government mobilized quickly to assist the deportees. The government-run Eritrean Relief and Rehabilitation Commission (ERREC) was put in charge of assisting the deportees and facilitating their resettlement in Eritrea. A month after the arrival of the first deportees, the ERREC had set up reception centers for them near the main border crossings with Ethiopia. In addition to offering the deportees emergency aid and counseling, the ERREC registered them as refugees.

Expellees were asked to fill out a detailed registration form⁸⁵ and were issued the same type of registration card that Eritrean refugees returning from exile received.⁸⁶ Once registered, the deportees were entitled to the

⁸⁴ For example, the Eritrean government reported on July 3, 2000 that 603 people of Eritrean parentage expelled from Tigray had arrived in Molki and said they had been dispossessed of their property and 5,000 head of livestock. “Ethiopia-Eritrea: Mutual accusations of expulsions continue,” IRIN Horn of Africa Update, July 3, 2000.

⁸⁵ About mid 1999, a year after the arrival of the first wave of expulsions, the Eritrean government replaced the use of its general refugee registration form with a form specifically geared to the expellees from Ethiopia. The form asked for a wide range of information including basic biographic data, details of the individual’s expulsion, the individual’s profession and work history, the individual’s personal ties to Eritrea, the individual’s family members still in Ethiopia, a description and valuation of the individual’s assets left in Ethiopia, and a photograph of the expellee and any of his or her accompanying dependents. The ERREC assisted the expellees in filling out the form, and both the expellee and the ERREC assistant were required to sign and date the completed form.

⁸⁶ For the first year of the war, the ERREC issued the expellees an identification card known as a “green card” or “Repatriated Refugees Card.” The card identified the expellee’s name, age, gender, level of education, native language, occupation, and dependents, as well as the date and location of the individual’s arrival. The card did not identify the citizenship of the holder. ERREC’s clerks were instructed to note, under the heading “remarks,” that the individual or individuals named on the card had been “forcibly expelled from Ethiopia.” The cards were written in both Tigrigna and Arabic, the two languages of Eritrea. In mid-1999, the ERREC began issuing expellees from Ethiopia a new identification card, labeled “Identification Card For Eritreans Expelled from Ethiopia,” and also known as the “blue card.” The information on the card largely corresponded to that on the green card, although the blue card used English in addition to Tigrigna and Arabic. Human Rights Watch interview with the assistant commissioner for research and human resources, ERREC, Asmara, May 10, 1999.

standard government assistance for returning refugees: including short-term housing, food, and settlement aid; medical coverage; and job placement assistance.⁸⁷

The first waves of expellees from Ethiopia, largely made up of urban professionals and business people, resettled in Eritrea relatively quickly and easily. Jobs and government services were much harder to come by for those expelled from Ethiopia in later stages of the expulsion campaign because of the strain on Eritrea's economy of both the war and the influx of newcomers.

Rural deportees, many of whom are poor and uneducated and have little employment experience beyond farming, have generally fared less well once in Eritrea. Their stay in the temporary resettlement camp was meant to be brief: refugees were required to relocate to areas of Eritrea they had ties, however distant.

Kenya

In the early stage of the conflict, expellees from Ethiopia met with a less than hospitable welcome in Kenya. For example, in September 1998, Kenyan authorities refused to grant asylum to approximately 120 people of Eritrean origin who, fleeing persecution in Ethiopia, had entered Kenya through the border town of Moyale in August. The Kenyan government justified its refusal to grant asylum to the expellees on the grounds that Kenya has no common borders with Eritrea although the asylum seekers were fleeing Ethiopia, a neighboring country, and not recently independent Eritrea. Eventually, the Eritrean embassy in Kenya and the International Organization of Migration financed and organized an airlift to Eritrea for the asylum seekers from Ethiopia who wished to take part.⁸⁸ After initial hesitations, the UNHCR office in Nairobi also recognized as genuine the fear expressed by some expellees of being sent to Eritrea, and declared these expellees to be entitled to refugee protection in Kenya.⁸⁹ Some of the asylum seekers did not want to travel to Eritrea because they had no links there. Others feared that they or their children would be recruited by the Eritrean military to fight against Ethiopia. Many simply hoped that the nightmare would end sooner rather than later and that they would be able to return to their normal lives as Ethiopians.

Malawi

Another country with a poor record regarding reception of expellees from Ethiopia was Malawi. In August 1999, the Ethiopian government agreed to allow twenty-five individuals of Eritrean origin who had been held in Dedessa internment camp to depart to a third country.⁹⁰ On August 14, 1999 the group flew from Addis Ababa and arrived at the airport in Malawi's capital, Lilongwe, where they asked for asylum.

The Malawian authorities denied the expellees entry into the country, claiming that they were carrying fake visas. Despite the expellees' claims that they had properly obtained their visas at the Malawian embassy in Addis Ababa at the cost of \$1,000 per visa, the expellees were detained for a week.⁹¹ On August 21, Malawian police forced the group at gunpoint to board a flight bound for the Ethiopian capital. During the scuffle that ensued, one

⁸⁷The Eritrean government provided expellees with a one time housing stipend of 1,500 Nakfa (about USD \$200), several weeks of food assistance, and an assortment of household items. Expellees from rural areas were also given farming tools. Where possible, the ERREC also offered expellees assistance in securing housing and employment, and arranging for the education of their children. The Eritrean government exempted registered expellees from payment of custom duties on imported goods and tools. Finally, the expellees identification cards were also meant to facilitate applying employment, housing, land lease from the government, and bank loans. Card bearers were to receive preferential treatment in access to these services and facilities.

⁸⁸"Kenya: Eritreans expelled from Ethiopia arrive in Moyale," Kenyan News Agency, September 15, 1998.

⁸⁹Human Rights Watch interviews with UNHCR senior protection officer in Kenya, Nairobi, May 1999.

⁹⁰Statement by UNHCR spokesperson, "UNHCR protests expulsion of Eritreans," Geneva, August 27, 1999.

⁹¹The Malawian government rejected appeals from both the Eritrean government and UNHCR to be allowed to intervene, telling UNHCR that it was treating the incident "strictly as an immigration issue" on account the expellees alleged-use of fake visas. See "Malawi: UNHCR protests to Malawi over expulsions," IRIN - Southern Africa, Johannesburg, August 27, 1999. However, the Malawian Secretary for Foreign Affairs and International Relations Ziddy Medi reportedly commented that had his government been seen to have assisted the expellees in traveling to Eritrea, it could have sparked a diplomatic row with Ethiopia. "Expelled Eritrean soldiers," Blantyre (Malawi), PANA, August 23, 1999.

of the expellees was killed and seven others were wounded.⁹² All the expellees, including the wounded, were nevertheless forced into the airplane that brought them back to Ethiopia.⁹³

Expulsions from Ethiopia After the December 2000 Peace Agreement

Expulsions from Ethiopia continued after its devastating May 2000 incursion in Eritrea, but gradually decreased over time. During 2000, 911 Eritrean nationals were returned to Eritrea under the auspices of the ICRC delegation in Eritrea.⁹⁴ The U.N. secretary-general and the U.N. peacekeeping mission in Ethiopia and Eritrea strongly protested the forced expulsion in June 2001 of 704 longtime residents of Eritrean origin from Tigray region to Eritrea. Both expressed concerns about the circumstances in which the expulsions took place, and reminded the Ethiopian government that such actions should be carried out only in accordance with international humanitarian law.⁹⁵ The Ethiopian government claimed in its response that the group consisted of persons who had forfeited their Ethiopian citizenship, and had left voluntarily. However, the government promised that this would not happen again.⁹⁶

Ethiopia deported another 312 people of Eritrean origin in November 2001. The group consisted of residents of Addis Ababa who sought “voluntary” deportation to join relatives deported in earlier groups.⁹⁷ A group of one hundred people of Eritrean origin were later deported on March 16, 2002, ninety-two of them from the region of Tigray, and eight from Addis Ababa and the surrounding area.⁹⁸ Members of the groups deported told human rights investigators of the U.N. peacekeeping mission that they were fleeing discrimination in access to employment and services or seeking to join relatives who had been deported before them.⁹⁹

V. EXPULSIONS BY ERITREA

Shortly after the war broke out, Eritrea proclaimed that Ethiopians were welcome to stay and keep their jobs in the country, while offering the option of voluntary repatriation for those willing to depart. The Ethiopian government has, however, repeatedly charged that Eritrea violated the rights of Ethiopians residing in Eritrea. In particular, Ethiopia has charged Eritrea with arbitrarily expelling thousands of Ethiopian citizens and torturing others. Human Rights Watch documented a number of incidents in which Ethiopian residents were beaten by private individuals, and some incidents in which police apparently took part in mob attacks. Following the Ethiopian army’s major May 2000 offensive, which drove deep inside Eritrea, Eritrea summarily expelled thousands of Ethiopians.

The Official Policy Statement

Following the outbreak of war, the Eritrean government repeatedly gave assurances that Ethiopian residents in Eritrea would not be negatively affected or scapegoated. Nonetheless, by the end of the war, a significant number

⁹³ The UNHCR formally registered a strong protest with the government of Malawi over the killing of the asylum seeker and the expulsion of twenty-four others to Ethiopia. In a Note Verbale to the Malawian government, UNHCR emphasized the government’s obligation under the Refugee Convention to review asylum requests on their merits regardless of how an asylum seeker enters a country as well as to take into consideration the hostilities between Ethiopia and Eritrea when undertaking its asylum review. “UNHCR protests expulsion of Eritreans,” and “Malawi: UNHCR protests to Malawi over expulsions,” IRIN. UNHCR’s protest in this case, which came fourteen months after the start of the Ethiopian expulsion campaign against people of Eritrean origin, was one of the first times the agency spoke out publicly on an issue related to the Ethiopian expulsion campaign.

⁹⁴ “ICRC concerned over Ethiopia’s forced deportation of Eritreans,” Agence France Presse, July 13, 2001.

⁹⁵ U.N. Security Council, “Report of the Secretary-General on Ethiopia and Eritrea,” S/2001/843, September 5, 2001.

⁹⁶ Ibid.

⁹⁷ U.N. Security Council, “Progress Report of the Secretary-General on Ethiopia and Eritrea,” S/2001/1194, December 13, 2001.

⁹⁸ ICRC, “Ethiopia-Eritrea: Close to 250 People Repatriated,” ICRC News 02/12, at <[Http://www.icrc.org](http://www.icrc.org)>, (retrieved March 21, 2002).

⁹⁹ See U.N. Security Council, “Report of the Secretary-General on Ethiopia and Eritrea,” S/2001/843, September 5, 2001, and subsequent quarterly reports in December 2001 and March 2002.

of Ethiopian residents had left Eritrea. After the May 2000 offensive, the Eritrean government forcibly repatriated thousands of Ethiopian citizens.

The Eritrean government announced its intent not to retaliate against Ethiopian citizens in a June 26, 1998 resolution of the National Assembly:

The National Assembly has asserted that in contrast to the inhumane policy of the Ethiopian government, the Eritrean government has not, and will not, take any hostile action against Ethiopians residing in the country. Their right to live and work in peace is guaranteed. If this right is infringed under any circumstances or by any institution, they have the full right of redress. This policy that can see a horizon beyond the conflicts of today will not change even if the current crisis deteriorates to any degree.¹⁰⁰

Status of Ethiopians in Eritrea

The legal status of Ethiopian residents in Eritrea who had not sought Eritrean nationality at the time of the war's outbreak does not appear to be in dispute. The Eritrean government as a rule considered them as aliens. It did not automatically issue the Eritrean national identity card or passport to these Ethiopians nor did it recruit them for employment reserved for nationals. Ethiopians were also not called up for military service in Eritrea. For the purposes of residency and departure procedures, the Eritrean government continued to deal with Ethiopian nationals under the normal institutions and procedures governing aliens residing in the country, i.e. they were required to acquire residency permits and obtain exit visas to leave the country.

As aliens, Ethiopians living in Eritrea were protected by a range of human rights instruments, and during the war they were also protected by the Fourth Geneva Convention. Although the Eritrean government acceded to the Geneva Conventions only in July 2000, it was previously bound to observe them as a successor state to Ethiopia by Ethiopia's standing as a party to the Geneva Conventions.

The Eritrean government did not set up special administrative or judicial institutions like the deportation committees in Ethiopia. During the initial phase of the war, diplomats, representatives of international organizations and agencies, and several independent observers concurred in interviews with Human Rights Watch in Asmara that there was no government-sponsored retaliation against Ethiopian residents in Eritrea.¹⁰¹ However, the situation gradually changed as the conflict unfolded, with Eritrean authorities forcibly interning and expelling increasing numbers of Ethiopian residents.

Early Exodus and Expulsions (June 1998-February 1999)

During a meeting with Human Rights Watch in New York on February 18, 1999, Fesseha Yimer, Ethiopia's ambassador and permanent representative to the United Nations at Geneva, charged that the absence of an official policy and special judicial or administrative measures aimed at forcibly deporting Ethiopians from Eritrea was deceptive. He claimed that the Eritrean government made life in Eritrea impossible for Ethiopians by condoning their dismissals from public sector jobs as well as their eviction from rental residences.¹⁰²

An estimated 100,000 Ethiopian citizens lived in Eritrea prior to the 1998 war, primarily migrant laborers from the neighboring Tigray region and longtime residents working in three main centers of economic activity in Eritrea: the capital Asmara and the two port cities of Massawa and Assab. In Assab, the port city through which the bulk of Ethiopian imports traveled before the war, Ethiopian citizens made up approximately 60 percent of the city's population of 35,000 in 1998. With the outbreak of war in May 1998, Ethiopia boycotted both Assab and Massawa, and diverted its maritime traffic to the port of Djibouti to the south. But even prior to the war, the flow

¹⁰⁰Statement of the 11th Session of the National Assembly of Eritrea, Asmara, June 26, 1998.

¹⁰¹Human Rights Watch interviews, Asmara, May 1999.

¹⁰²Meeting at Human Rights Watch with Ambassador Yimer and Counselor Berhanemeskel Nega, Permanent Mission of Ethiopia to the U.N., February 18, 1999.

of goods through Assab had been reduced due to souring relations between the two former allies over political and economic policy differences.¹⁰³

Ethiopians wishing to return to their country initially faced bureaucratic and financial hurdles that made departure next to impossible for those with the least resources, including day laborers, domestic workers, and many who worked in restaurants and small businesses. For instance, the escalation of hostilities turned Assab into a ghost town in the second half of 1998. As the docks fell idle, all business slowed down to a crawl or simply stopped. Thousands lost their jobs as a result.¹⁰⁴

In the weeks that followed the outbreak of war, departures of Ethiopians from Assab and Asmara took place in a tense and chaotic environment. Many Ethiopians reportedly left on their own even before the escalation of hostilities in early June 1998. Attaché Wondimu Degefa, at the embassy of Ethiopia in Asmara, characterized the early departures as motivated by “fear of dismissal by the government, and economic hardship.”¹⁰⁵ On June 3, Eritrean authorities started denying departing Ethiopians the required exit visas. The stranded travelers vainly appealed to different governmental departments for a reversal of the decision, and also turned to their embassy for assistance.

The Ethiopian bombardment of Asmara airport, on June 5, greatly increased anxiety within the Ethiopian community. For weeks after that, scores of Ethiopians began camping on the Ethiopian embassy’s grounds and surrounding streets, apparently fearful of the hostility that the aerial raid had triggered. Many pleaded with the embassy officials to issue them with travel documents they did not have or with replacements for lost documents. “I want to go home. I’m afraid,” an unnamed desperate young Ethiopian told a reporter on June 11, 1998, through the locked fence of the embassy.¹⁰⁶ Another, a construction worker, told the reporter that he was hungry and sleeping in the streets because he had been dismissed from his work and evicted from his home at the beginning of the conflict.¹⁰⁷

Some Ethiopians who slept in the vicinity of their embassy might have believed that the proximity would grant them added security. Instead, according to town residents, policemen routinely arrested and briefly detained many of the campers for sleeping in the streets, which is illegal under Eritrean law. According to the Chargé d’Affaires, the embassy fed and cared for those who camped within its compound, and intensified its contacts with the Eritrean government to diffuse the situation and allow the departure of these people.

Businessmen and other established members of the Ethiopian community in Eritrea formed or activated self-help associations to assist their distressed countrymen. The Axum Association, for example, provided shelter and food for some 480 women, many of them pregnant or accompanied by children. The Hawzea Association housed about eighty men until their departure.¹⁰⁸

¹⁰³The Ethiopian weekly newspaper *Beza* reported that the TPLF radio, which is based in Tigray region, had predicted the imminent departure in mass of a “good part” of Ethiopian workers residing in Eritrea. *Beza* noted, “the radio gave no hint as to why Ethiopian laborers will have to be repatriated that soon. But observers believe that the decision may have been prompted by the Asmara government’s Eritreanization policy and economic structural measures.” As an example of economic decisions with adverse effects on the Ethiopian workforce in Eritrea, the newspaper cited the closure of the aging Assab refinery that immediately led to the layoff of some 1,300 workers, most of them Ethiopians. “Ethiopians to leave Eritrea,” *Beza*, September 16, 1997, as reported in *Press Digest*, Vol. IV, No. 39, p.5.

¹⁰⁴A press report filed from Assab covered a demonstration on July 18, 1998 by more than three hundred Ethiopian residents pressing for assistance to return to Ethiopia. “We want food, we want work.... We are very angry, now we want to go to our country,” one demonstrator told a Reuters’ correspondent. Another explained, “there has been no work for three months. We have no money for food.” “Unemployed Ethiopians demonstrate at Eritrean port,” Reuters, Assab, July 18, 1998.

¹⁰⁵Human Rights Watch interview, Asmara, May 1999.

¹⁰⁶“Ethiopians trying to flee Eritrea,” Associated Press, Asmara, June 11, 1998.

¹⁰⁷ *Ibid.*

¹⁰⁸Human Rights Watch interview with the Ethiopian Chargé d’Affaires, Asmara, May 10, 1999. Human Rights Watch obtained corroborating information from independent sources and during a visit to the compound that had been used by Axum Association to house the women at the height of the crisis.

On July 8, 1998 Eritrean authorities waived the exit visa requirement, allowing the organized departure of thousands of Ethiopia citizens under the auspices of the ICRC in the early phase of the war. Nonetheless, Eritrean authorities initially appeared intent on delaying or preventing the departure of Ethiopian citizens through other bureaucratic hurdles.¹⁰⁹

The first group of Ethiopians departed Asmara for the border under ICRC observation on August 10, 1998. The ICRC became involved in order to address the humanitarian consequences of the conflict under its mandate as defined in the Geneva Conventions. The agency sought to guarantee the security and the dignity of populations being transferred across international borders by insisting that both governments notify the ICRC four days in advance of any deportations or voluntary returns. Both governments accepted the notification arrangement and initially cooperated with the ICRC in facilitating its implementation. However, both governments also resorted at times to expulsions without prior notification.¹¹⁰

During the war's early phase, departures occurred at midnight from an assembly point near the main campus of the University of Asmara. From early August through December 1998, between 18,000 and 19,000 Ethiopians left to Ethiopia under safe passage operations, about 75 percent of them from Assab, and the remainder from Asmara.¹¹¹ The returnees entered Ethiopia through the border posts at Humera, Zala Anbessa, Mereb, and Rama, where the Ethiopian government made logistical and other preparations to ease their arrival. It is believed that an equal number of Ethiopian residents had left mainly from Assab and Asmara prior to the organization of safe passage operations, some of them on their own, others under duress or deported by Eritrea.¹¹²

The Ethiopian government charged in June 1998 that Eritrea had deported three thousand of its citizens since the beginning of the conflict about a month earlier. According to the Ethiopian ministry of foreign affairs, on June 9, 1998 in Asmara and its environs, "Eritrean security forces evicted over 3,000 Ethiopian civilians and interned about 600 others, confiscating their property... and inflicting inhuman suffering. Many of them were deported through a hostile border in an inhuman manner."¹¹³ In July 1999, Ethiopia maintained that some 41,000 Ethiopians had by then been deported from Eritrea.

According to press reports and individual testimonies compiled by the Ethiopian government, Ethiopian residents who had been deported from Assab, apparently prior to the first visits of the U.N. observers to the port city in mid July 1998, complained upon their arrival in Ethiopia of beatings and the confiscation of their property. "When things went well in Eritrea they treated us well, but when things went badly, they treated us like dogs. Now we don't know who we are, whether Eritreans or Ethiopians," complained a mother of four and former long time Assab resident to a reporter.¹¹⁴ She said Eritrean authorities had confiscated her house, small grocery, and

¹⁰⁹Human Rights Watch interviewed Ethiopian residents in Asmara who said that although they had fulfilled all the legal departure requirements, they had not received the final authorization from the department of immigration permitting them to register for departure. According to their account, Ethiopians citizens wishing to leave Eritrea were required to obtain an identity card or travel pass from their embassy. They were also required to collect statements from public utility agencies and banks certifying that they had no outstanding debts to the concerned institution. Holders of business licenses were required to obtain the clearance of the Ministry of Trade. After obtaining these certificates, would-be travelers had to go to the Ministry of Finance to pay all outstanding income and business tax due to the Eritrean state. The bureaucratic maze included eighteen steps, at each of which there were processing fees to pay, in addition to any outstanding dues. The Department of Immigration issued the final form authorizing the individual to depart, but only after the verifying payment receipts and clearances from these institutions. Provided that they had covered all their financial obligations, respondents said it took them in average about two weeks to complete the procedures and get all the clearances. For many, the Ministry of Finance's hurdle proved the most difficult to cross because the ministry calculated the income tax on the monthly salary or estimated income of the individual for the entire period of his or her stay in Eritrea.

¹¹⁰ Human Rights Watch interviews with officials of Eritrean Relief and Rehabilitation Commission and press reports, May 1999.

¹¹¹ Human Rights Watch interviews with aid workers, Asmara, May 1999.

¹¹²Ibid.

¹¹³Ministry of Foreign Affairs, Records Section, "Short synopsis of the loss of life, population displacement, and destruction of property caused by the unprovoked Eritrean aggression against Ethiopia since May 1998," Addis Ababa, June 1998.

¹¹⁴"Ethiopians expelled from Eritrea complain of abuse," Reuters, Addis Ababa, June 27, 1998.

business videos. Others in the group complained about beatings prior to their deportation. The group also blamed Ethiopian authorities for being slow in coming to their assistance.¹¹⁵

Internment (February 1999-December 2000)

Prior to Eritrea's battlefield losses of in the third round of fighting, in May and June 2000, there were relatively few reports of Ethiopian residents in Eritrea being interned by Eritrean authorities. Most reports of internment were published by the Ethiopian government. In June 1998, for example, the Ethiopian government reported that about 600 Ethiopians were interned in Eritrea.¹¹⁶ After Ethiopia recaptured the disputed area of Badme in late February 1999, the Ethiopian Attaché in Asmara said he registered the names of 183 civilian internees.¹¹⁷ He further raised the case of 1,836 Ethiopians whom he said were rounded up in March 1999 in the Tessanai and Barentu towns of the western Gash Barka region, and transferred to an internment camp in Aweshait, in the western lowlands of Eritrea. He said the internees, all males of military age, were separated from their wives and underage children prior to the transfer. The same official also said that Eritrean authorities immediately deported the 2,800 women and children to Ethiopia without guarantees of safe passage.

Human Rights Watch later obtained corroboration of the internment in Aweshait from independent NGO sources. After initially denying that the internment camp ever existed, Eritrean authorities reportedly allowed a journalist to visit the facility a month after the incident was publicized by Ethiopia. The journalist reportedly found evidence that many of the men had recently been detained at the camp, but had been released shortly before his visit.

Dozens of the former internees at Aweshait later turned up in different Eritrean towns, totally destitute and dependent on handouts for their survival. A statement of the office of the Ethiopian government's spokesperson on August 5, 1999, claimed that some 400 of the internees formerly held at Aweshait were released "on to the streets of Asmara," where they remained without the means to feed themselves and were subject to routine harassment by Eritrean security agents. The remainder of the group, according to the same statement, had been moved to an unknown location.¹¹⁸

The Ethiopian government regularly issued public statements about Ethiopians it claims were interned and abused in Eritrea it learned of their cases. During a reporting period from the recapture of Badme in late February 1999 to early June 1999, government lists published the names of some 2,500, including 1,836 internees once held at Aweshait.¹¹⁹

¹¹⁵Ibid.

¹¹⁶Ministry of Foreign Affairs, "Eritrea expels 3,000, detains 530 Ethiopians," Addis Ababa, June 9, 1999. In an effort to obtain a list of the names of these internees and to follow up on other similar reports, the United Nations in Eritrea sent a high level delegation to the Ethiopian embassy in the Eritrean capital. A member of the delegation later told Human Rights Watch that the Chargé d'Affaires had asked for time to conduct further investigations and two weeks later, submitted a list of fifty-seven Ethiopians who were in detention at the time to the U.N. When Human Rights Watch interviewed the Ethiopian Chargé d'Affaires in May 1999 about this, he maintained that about 600 were held at the beginning of the conflict. The embassy could not give a detailed list of their names, he said, because it had no access to them. Human Rights Watch interviews, Asmara, May 1999.

¹¹⁷Human Rights Watch interview with Wondimu Degefa, attache, Ethiopian Embassy, Asmara, May 10, 1999.

¹¹⁸"Ethiopian prisoners moved from Aweshait," release issued by the office of the government spokesperson on August 5, 1999. See also "Eritrea prevents Ethiopians from returning home," July 27, 1999.

¹¹⁹"More Ethiopians arrested and abused in Eritrea," Office of the Government Spokesperson, June 7, 1999.

See also the following statements from the government spokesperson: "Ethiopian government eager to welcome its citizens home," June 8, 1999; "58 more Ethiopians arrested, missing in Eritrea," May 19, 1999; "Ethiopians being abused in Aweshait prison in Eritrea," May 14, 1999; "Eritrea escalates abuse against Ethiopians," April 29, 1999; "Ethiopians abducted, tortured and conscripted into Eritrean army," April 13, 1999; "Eritrea continues to imprison and torture Ethiopians," March 26, 1999; "Ethiopians in Eritrea victims of arbitrary arrest and torture," March 11, 1999; "Sample testimonies from 319 women and children who arrived in Ethiopia through Rama on Saturday 4th October, October 12, 1998; "Ethiopians sacked and held hostage," August 28, 1998; and "Ethiopians held hostage in Eritrea," August 22, 1998.

Attacks on Ethiopians

Human Rights Watch received a number of reports of beatings of Ethiopian residents, and Tigreans in particular, mainly committed by private individuals and policemen. According to independent sources in Asmara, a spate of such attacks occurred after the Ethiopian raid on Asmara's airport on June 5, 1998, and in the wake of Ethiopia's success in retaking the disputed Badme town in March 1999.¹²⁰

The Ethiopian embassy officially protested to the Eritrean Ministry of Foreign Affairs about several incidents involving the random arrest and beating of Ethiopian residents by policemen.¹²¹ Some victims complained that police destroyed their Ethiopian identity papers, and asked the embassy for replacements. According to the attaché, the embassy's records showed that most attacks occurred in Asmara in the aftermath of the raid on its airport. Twenty incidents were reported, in the Geza Habesha, Gejeret, and Maichuet residential areas alone in the Eritrean capital. In all, the embassy registered about two hundred complaints of this type in the country following the raid on Asmara airport.¹²²

Longtime residents of the port city of Massawa told Human Rights Watch that on March 9, 1999, shortly after Ethiopian forces retook Badme, a mob of several dozen civilians, mainly members of neighborhood watch groups, attacked the Amateri residential area where Tigrean day laborers live.¹²³ In the ensuing rampage, Kiros Nigusie Meles, Hagos Mehari Bizu, and a third Tigrean construction worker, were killed, and some thirty other residents sustained injuries that required their treatment at a hospital. Local authorities acted quickly to diffuse the tension, according to our sources. The attackers were rounded up and their arms, originally issued to them by the government, were withdrawn from them. Some were briefly detained by the police for their role in the attack, although prosecutions are not known to have been brought.¹²⁴

The Ethiopian attaché said that there were about three thousand permanent Ethiopian residents in Massawa who were registered at the embassy prior to the conflict, mainly businessmen, artisans, and professionals. He estimated that a few thousand more laborers also lived in the city. According to his information, many of the port and construction workers had returned to Ethiopia, and did so mostly through Asmara. Human Rights Watch received inconclusive answers to questions we put to officials of the Eritrean government as to whether any steps were taken to prosecute and punish those found responsible for the Massawa incident and attacks involving policemen. In mid-March 2002, Eritrea "amnestied" 122 former Ethiopia detainees who were held at Masawa naval base for more than two years. All were repatriated to Ethiopia shortly after their release.¹²⁵

Expulsions After June 2000

The Eritrean government's attitude towards residents of Ethiopian origin hardened considerably after the resumption of hostilities in May 2000. After interning thousands of them during and in the immediate aftermath of the fighting, the Eritrean government encouraged their repatriation to Ethiopia. A significant rise in the number of Ethiopians expelled from Eritrea occurred in the aftermath of the signing of the cease-fire agreement in mid-June 2000. The first to be forcibly expelled were among the 7,500 Ethiopians whom Eritrea rounded up as Ethiopian troops advanced deep into uncontested territory in May and June. Eritrean authorities claimed that their internment was for their protection from attacks by angry neighbors as well as from being caught in the fighting. However, while some Ethiopians said that they went to the camp voluntarily to avoid being attacked by hostile neighbors, some of those interviewed by international journalists at Shikete site, one of the internment camps, said

¹²⁰The Ethiopian governments charged the Eritrean government of encouraging violence against Ethiopians "as a matter of policy." See the statement from the Office of the Government's Spokesperson "Eritrea continues to imprison and torture Ethiopians," March 26, 1999.

¹²¹Human Rights Watch interview with Wondimu Degefa, Ethiopian Embassy, Asmara, May 10, 1999.

¹²²Ibid.

¹²³These groups were reportedly activated by the Eritrean government after the war.

¹²⁴Human Rights Watch interview with a resident of Massawa, Asmara, May 12, 1999.

¹²⁵ ICRC, "Eritrea-Ethiopia: Ethiopian Detainees Repatriated," ICRC News, No. 02/18, at <<http://www.icrc.org>> (retrieved May 5, 2002).

they were detained there by force.¹²⁶ The Ethiopian government for its part denounced the internment of its citizens as a measure of collective punishment and revenge for recent Eritrean setbacks in the war.

On June 16 the Eritrean government said it was “finalizing the necessary arrangements to expedite the voluntary departure of Ethiopians who have decided of their own free will to return to Ethiopia,” and reserved the right “to repatriate Ethiopians on case by case basis.”¹²⁷ By the end of June, the ICRC had repatriated some 4,635 Ethiopian nationals, and announced that it was preparing to facilitate the return to Ethiopia of several thousand more.¹²⁸

The pace of repatriations and forcible expulsions of Ethiopians from Eritrea dramatically accelerated in July and August 2000. Media reports in mid-July 2000 exposed the detention in Eritrea and subsequent expulsion to Djibouti of ninety-two Ethiopian women who were mostly domestic workers. The women arrived in Djibouti “wearing almost no clothes,” according to one report.¹²⁹ The official Addis Ababa Radio on July 30 accused Eritrea of expelling 550 Ethiopians, mostly women and children without notifying the ICRC, a report that the ICRC later confirmed.¹³⁰ The ICRC also confirmed, in a statement issued by its office in Addis Ababa, the forcible deportation on August 2 of some 2,700 Ethiopians from an internment camp north of the capital Asmara to a location near the front line; it said the deportees had to walk eighteen hours before reaching Ethiopian positions. “These people were exposed to cold, rain, lack of food and water as well as the danger of minefields,” noted the statement.¹³¹ At least five deportees perished as a result of the harsh conditions that accompanied their expulsion.¹³² All told, the ICRC said in its annual report 2000 on Eritrea that it had organized the safe return to Ethiopia during that year of 12,000 persons of Ethiopian origin, including former internees and detainees, who had been expelled or had expressed the wish to leave Eritrea.¹³³

The exodus continued in 2001: in his December 13, 2001 progress report on the implementation of the peace agreement, the U.N. secretary-general informed the Security Council that since December 2000, a total of 21,255 persons of Ethiopian origin had been repatriated to their country.

Repatriations of people of Ethiopian origin to Ethiopia decreased dramatically in the first quarter of 2002, from a weekly average of 1,000 repatriations during the corresponding period in 2001, to a few dozens. On February 1 a group of 134 persons left for Ethiopia under the auspices of the ICRC, and the agency repatriated another group of 144 people on March 15.¹³⁴ The latest repatriated group consisted of the 122 former detainees who had been held at Massawa for more than two years before being “amnestied” days ahead of their release and repatriation.¹³⁵ A number of factors appeared to have contributed to the decrease, including the end of the conflict, and the fact that many who wanted to leave had already left. Repatriated persons claimed in interviews with U.N. human rights investigators that discrimination against Ethiopians with regard to access to employment and social services, and exposure to arbitrary arrest and ill-treatment during detention were the main factors that led them to decide to leave.

Access to Ethiopian POWs and Internees

On July 29, 2000, Eritrea acceded to the four Geneva Conventions, and the ICRC was enabled as of August 2000 to begin discharging its treaty-based mandate to visit people protected by the Third and Fourth Geneva

¹²⁶“Ethiopians feel safer in camps,” Associated Press, Shikete, Eritrea, June 6, 2000.

¹²⁷“Response to the resolution of Ethiopia’s Council of people’s Representatives,” Eritrean Foreign Ministry, June 16, 2000.

¹²⁸“ICRC repatriates Ethiopians from Eritrea,” ICRC News, No.00/22, June 20, 2000.

¹²⁹“Eritrea deports Ethiopian women to Djibouti coast,” Agence France Press, Paris, July 17, 2000.

¹³⁰“Ethiopia, Eritrea must settle on route for returning refugees-ICRC,” *Agence France Presse*, Addis Ababa, August 8, 2000.

¹³¹Ibid.

¹³²Ibid.

¹³³ ICRC, “Eritrea: Annual Report 2000,” available at: <<http://www.icrc.org>> (retrieved April 15, 2002).

¹³⁴ See “Eritrea-Ethiopia: 134 Ethiopians Repatriated from Eritrea,” ICRC News, No. 02/06, February 1, 2002 and “Eritrea-Ethiopia: Close to 250 People Repatriated,” ICRC News, No. 02/12, March 15, 2002.

¹³⁵ “Eritrea-Ethiopia: Ethiopian Detainees Repatriated,” ICRC News.

Conventions. In late August, ICRC delegates visited Ethiopian prisoners of war held in a camp at the town of Nacfa in northern Eritrea, and also visited and registered civilian internees held in three different locations.¹³⁶

At the signing of the peace agreement between Ethiopia and Eritrea on December 12, 2000, the ICRC had registered and was visiting 2,600 Eritrean and 1,000 Ethiopian prisoners of war. Both parties agreed under the terms of the agreement to release prisoners of war unconditionally and without delay, and tasked the ICRC with supervising their release and repatriation. However, after promising initial exchanges of wounded and sick POWs, the process came to a halt in March 2001 when the parties sparred over the fate of a missing Ethiopian pilot. At the end of November 2002, the ICRC reported that all “registered” POWs had been released by both countries. Altogether, the ICRC said that 1,067 Ethiopian POWs and 5,055 civilian internees and 2,067 Eritrean POWs and 1,086 civilian internees had been repatriated since the end of the war. The ICRC announced, however, that it would work with both countries to obtain the release of individual POWs alleged to be held but who had not have been registered with it.¹³⁷

VI. THE RESPONSES OF THE INTERNATIONAL COMMUNITY

The political leadership in Ethiopia and Eritrea failed to heed the international community’s pleas for restraint and appeals for peace at crucial junctures in their two-year showdown. Despite the mediators’ increasing frustration, intense truce efforts continued unabated led by the OAU, the U.N., the United States, and the E.U., as well as by several other bilateral mediators. But the world community stopped short of decisive diplomatic and economic pressures on the two parties to bring their deadly conflict to an early end.

The mediators ultimately managed to bring the war to a halt, and convinced the parties to accept international arbitration of their border dispute. This was hailed at the time as a success story for African and U.N. diplomacy and the consistent backing the lead OAU mediators in the later phase of the process had received from the United States and European Union. The peace agreement that the two parties signed on December 12, 2000 addressed the same three key issues as an OAU Framework Agreement on which it was based: delimitation and demarcation of the border; compensation for the losses, damage, and injuries resulting from the conflict; and investigation of the origins of the war. For each of these issues, the peace agreement provided for the establishment of an independent arbitration mechanism.

Because the border dispute had sparked the war, the Boundary Commission established under the peace agreement occupied center stage from the very beginning. The commission delivered its ruling on the delimitation of the border on April 13, 2002. Both governments, much to the relief of the world, declared their acceptance of the decision, with each claiming that it was in their favor. The parties’ reaction was anticipated with great anxiety, leading to the delay of the announcement, which was had been in late February, and to a visit by the U.N. Security Council to both countries that month to calm rising tensions between them. These tensions persisted after the ruling, with each of the two governments claiming that the disputed village of Badme fell on its territory according to the delineation ruling. The U.N. peace mission drew the wrath of the Ethiopian government involvement shortly after the ruling when it organized a visit for international journalists to Badme from the Eritrean side of the border. Ethiopia briefly closed its border to the mission and later demanded the replacement of the mission’s force commander.¹³⁸

Like its counterpart for the boundary dispute, the claims commission, also known as the compensation commission, operated under the umbrella of the Permanent Court of Arbitration in The Hague. But unlike the border commission, of which the U.N.’s cartography unit was member and provided technical expertise, the claims commission was set as a separate body from the U.N. system and the peace mission. This shielded the commission from the spotlight, with little information filtering to the outside world on the progress of its work by

¹³⁶ “ICRC visits Ethiopian prisoners in Eritrea,” ICRC News, No.00/32, September 1, 2000.

¹³⁷ ICRC press release, Nov. 29, 2002.

¹³⁸ “ETHIOPIA: Government Demands Removal of UNMEE forces commander,” IRIN, May 8, 2002.

the first quarter of 2002. The mechanism of inquiry on the origins of the war received even less attention, with both parties reportedly showing little interest even in pushing for its formation.

The Boundary Commission's ruling laid the foundation for lasting peace in the region. However, the limited scope of the ruling left out contentious issues that, left unresolved, could in the future stoke renewed tensions. Chief among these were the political and economic tensions that had initially set the two former allies on a collision course and the human rights and humanitarian consequences arising from the conflict, particularly the problem of mass expulsions. Nationality issues are also sure to arise anew once the border is demarcated in light of the April 13 decision and entire communities in the disputed border areas find themselves on the wrong side of the border.

In the wake and largely as a result of the war, political dissent and popular unrest rocked the ruling parties in both countries. Both parties violently cracked down on dissenters, making civil and political liberties the latest casualties of their war. In Ethiopia, simmering disputes within the ruling Ethiopian Popular Revolutionary Democratic Front (EPRDF) over the prosecution and conclusion of the war led to an open opposition to Prime Minister Meles Zenawi in March 2001. The dissenters complained that the government had concluded a premature and unfavorable peace agreement. They reportedly wanted the army to secure control over the port of Assab before agreeing to the ceasefire. The dissenters also reportedly faulted the prime minister for slowing the pace of expulsions of people of Eritrean origin. The government fired the dissenting politicians and officials, and charged leading opponents with economic corruption. Police in mid-April used excessive force against student demonstrators who were calling for greater academic freedom, killing forty, wounding hundreds, and detaining thousands of demonstrators.

In Eritrea, the ruling Popular Front for Democracy and Justice in mid 2001 jailed critics who pressed for accountability for its leaders' role in precipitating the country into what proved to be a disastrous war. The government closed down the small independent press, which had served as a forum for the government critics, and subjected university students who had demonstrated peacefully to request greater participation in decisions affecting them to harsh treatment and to jail.

After an early chorus of denunciation, the international community seemingly became oblivious to the problem of mass expulsions in the Horn of Africa war. The issue of the nationality status of those expelled from Ethiopia was addressed in the December 2002 peace agreement only indirectly. Of particular concern was the agreements' silence on whether the Claims Commission was specifically empowered to review nationality claims. As the following overview of the international community's response to the conflict indicates, the resolution of the socioeconomic impact of the conflict and the compensation of the affected populations became a stumbling block on which the peace process faltered at various stages of its evolution. UNHCR was the sole agency to address this issue, but first moved to do so only in late 1999 after thousands had already been expelled or deported.

The Joint U.S.-Rwandan Peace Plan: May 1998

The sudden outbreak of hostilities between Ethiopia and Eritrea appeared to come as a total surprise to their strategic allies in the world. The United States and Rwanda, two of the closest partners of both governments, immediately dispatched high-level delegations to mediate a settlement that would avoid further deterioration. After several rounds of shuttle diplomacy, the mediators in May 1998 recommended to the two parties the deployment of a small observer mission, to be organized by Rwanda with U.S. assistance, in the disputed area of Badme; the redeployment of Eritrean forces to positions held before May 6, 1998; and the return of the previous (Ethiopian) civilian administration, this without prejudice to the territorial claims of either party. The Rwandan-U.S. plan also called for an investigation into the events of May 6, 1998, which had triggered the escalation of the border dispute, and a binding delimitation and demarcation of the boundary between the two parties to achieve lasting peace.¹³⁹ Eritrea objected to the unilateral redeployment proposed by the U.S. and Rwandan mediators,

¹³⁹U.S. Department of State, "The Dispute between Ethiopia and Eritrea," Press Statement by James P. Rubin, Spokesman, June 3, 1998.

while Ethiopia insisted on the return to the status quo ante called for under the plan. These irreconcilable positions led to the breakdown of the U.S.-Rwandan initiative.

The Organization of African Unity (OAU)¹⁴⁰

The OAU's Framework Agreement - November 1998

A high level delegation of African heads of state and government took over from the Rwandan-U.S. facilitators.¹⁴¹ On November 8, 1998, the delegation proposed an eleven point framework agreement to Eritrea and Ethiopia for a peaceful settlement of their conflict. The OAU's framework agreement provided for the redeployment of "forces presently in Badme town and its environ" to be supervised by an OAU military observation mission supported by the U.N. It also offered general provisions to address the socioeconomic impact of the crisis on the civilian population.

Ethiopia accepted the OAU framework agreement shortly after it was tabled. Eritrea expressed a number of reservations and ultimately refused to withdraw its troops from Badme as called for under the agreement, saying that its withdrawal would be an acknowledgment of Ethiopia's sovereignty over Badme and other disputed territories. One of the main elements of the OAU document that Eritrea found contentious, according to Haile Woldensae, then Eritrea's foreign minister, was its position on the issue of human rights. The official said that the proposal must include a reference to the expulsion of citizens and specifically provide for the compensation of "illegally-expelled" Eritrean nationals.¹⁴²

The OAU's framework agreement in fact addressed the human rights and humanitarian problems arising from the conflict, and outlined a framework to resolve them. Paragraph 8-a of the proposal calls on the two parties to commit to "put an end to measures directed against the civilian population and to refrain from any action which can cause further hardship and suffering to each other's nationals." Paragraph 8-b would commit them "to addressing the negative socio-economic impact of the crisis on the civilian population, particularly those persons who had been deported." Paragraph 8-c calls for the deployment of human rights monitors by the OAU in collaboration with the U.N. "in order to contribute to the establishment of a climate of confidence between the two parties."¹⁴³

Eritrea unexpectedly declared its acceptance of the OAU's framework agreement on February 27, 1999 after Ethiopia overran its defenses and recaptured the disputed Badme plains. However, differences of interpretation of the document kept the two countries at odds. Hostilities soon escalated, leading to a renewed escalation of the fighting in May and June 1999.

Modalities for the Implementation of the OAU's Framework Agreement - July 1999

Following the shift of its rotational presidency to Algeria, the OAU used the lull in the fighting brought by the onset of the rainy season in July 1999 to intensify its mediation efforts. This led to the introduction at the OAU's July 1999 summit in Algiers of "modalities" for the implementation of the framework agreement that sought to resolve the differences of interpretation and build confidence between the two parties. The one page document carries no reference to mass expulsions and deportations. On the issue of withdrawals, the modalities require Eritrea first and then Ethiopia to redeploy to positions they held before May 6, 1998. In declaring his country's acceptance of the modalities before the summit on July 14, President Issayas Afewerki of Eritrea mentioned the need for a compensation commission for deportees. He noted in his acceptance speech: "[u]ndoing the damage done by the conflict does not only require redeployment but, more importantly, addressing the humanitarian

¹⁴⁰ In July 2002, the new African Union came into being and replaced the OAU.

¹⁴¹ The delegation was mandated by 34th summit of the Organization of African Unity (OAU), held in Ouagadougou, Burkina Faso from 8 to 10 June 1998.

¹⁴² UNDP Emergencies Unit for Ethiopia, "Situation report for Ethiopia," Addis Ababa, February 2, 1999.

¹⁴³ OAU, "OAU high level delegation proposals for a framework agreement for a peaceful settlement of the dispute between Eritrea and Ethiopia," November 8, 1998.

dimensions of the conflict. In this regard, it is imperative to fully compensate the deportees, if not for the irreparable harm done to them, at least for expropriated property.”¹⁴⁴

While both countries declared their acceptance of the modalities, each continued to question the other’s commitment to peace. The Eritrean insistence that people of Eritrean heritage expelled from Ethiopia be compensated appeared to add a precondition to acceptance since the modalities didn’t address the issue.

Ethiopian Prime Minister Meles Zenawi said “we have to see if Eritreans are going to accept it without buts and ifs.”¹⁴⁵ Commenting on the Eritrean president’s letter of acceptance, Ethiopia threatened to resume fighting if Eritrea failed to adhere to the letter of the modalities and continued to insist on “preconditions and amendments” before accepting the OAU plan.¹⁴⁶ A major element behind Ethiopia’s discontent was Eritrea’s introduction of the issue of reparations for the deportees as underlined in a statement by the Ethiopian foreign minister: “What Eritrea told the Algiers summit was that it had a different cutoff date for return to the status quo ante - not May 6, 1998, as indicated in black and white in the modalities, but specifically July 1997. [O]ther amendments requested by Eritrea include a demand for compensation for alleged 56 villages uprooted and for Eritrean urban deportees.”¹⁴⁷

Technical Arrangements for the Implementation of the OAU’s Framework Agreement and its Modalities - August 1999

The OAU presented the two countries with detailed “technical arrangements” for the implementation of the OAU’s framework agreement and its modalities in August 1999. Worked out by experts from OAU, the U.N., and the governments of Algeria and the U.S., the technical arrangements were presented as an integral and final part of the OAU settlement plan. The document mandated a peacekeeping mission, established under the authority of the U.N. Security Council, to monitor and assist with the implementation of the OAU’s peace package. Paragraph 9 required the parties inter alia to commit themselves to the prohibition of displacement and deportation of civilian populations and to facilitate human rights monitoring. It also addressed the security needs of local populations in and returning to areas where the civilian administration was restored, and empowered the peacekeeping mission to establish as necessary, and in consultation with the parties, local liaison and grievance resolution mechanisms accessible to the population.

The technical arrangements document also provided for the establishment of various other mechanisms for the implementation of the OAU settlement plan. For example, consistent with paragraph 8-b of the framework agreement, which placed the direct responsibility of resolving the humanitarian issues and the socioeconomic consequences of the conflict on the two parties, paragraph 14 of the technical arrangements further called on them to refer specific claims to an appropriate mechanism of arbitration for binding resolution in case of their failure to reach an agreement on such issues. Paragraph 14 also provided that “if the Parties are unable to agree on the appropriate mechanism of arbitration within a period of three months starting from the signing, the U.N. Secretary-General, in consultation with the OAU Secretary General, will determine the appropriate mechanism of arbitration.”¹⁴⁸

Eritrea immediately accepted the technical arrangements. Ethiopia first signaled its dissatisfaction with some of the document’s provisions, and ultimately rejected it altogether, citing its failure to ensure Ethiopia’s sovereignty as main reason.¹⁴⁹

¹⁴⁴Embassy of Eritrea, “Eritrea Accepts OAU Modalities for Implementation of the OAU Framework Agreement,” Press Release, Washington D.C., July 14, 1999.

¹⁴⁵Ibid.

¹⁴⁶“Ethiopia talks war as international mediators praise peace efforts,” Associated Press, Addis Ababa, July 22, 1999. See also “Eritrea says it accepts the new OAU peace proposals, and what about Ethiopia?” Interview with Selome Tedesse, Ethiopia’s government spokeswoman, Focus on Africa, BBC, July 15, 1999, monitored by Press Digest, Vol. VI, No.29, July 22, 1999.

¹⁴⁷“Deep differences obstacle to ending Horn of Africa bloodshed,” Agence France Presse, Nairobi, July 16, 1999.

¹⁴⁸See the OAU “Technical Arrangements.”

¹⁴⁹See: “Ethiopia still has misgivings over peace proposal,” Panafrican News Agency, Addis Ababa, October 26, 1999.

It is obvious that grievances of people forcibly expelled or deported by either party, and their complaints about ill-treatment, family separation, and loss of property would have come under the mandate of the mechanisms set forth in paragraph 14 of the Technical Arrangements. However, it is not clear whether the issue of arbitrary deprivation of nationality would have been covered by the arbitration mechanisms that paragraph 14 allowed for.

As the belligerents dug themselves into irreconcilable positions, the entire scheme set forth in the Technical Arrangements for the Implementation of the OAU Framework Agreement was largely overtaken by events. Sensing the clock ticking towards yet another round of deadly fighting, the OAU, backed by the U.S. and the E.U., convened intensive talks from April 29 to May 5 aimed at bringing the two parties to agree on a revised peace implementation plan. The talks again failed to resolve the core disagreements.

Agreement of Cessation of Hostilities - June 2000

Ethiopia's major offensive of May 2000 was clearly meant to consolidate its negotiating position. Not only did the offensive lead to Eritrea's withdrawal from all disputed border territories, but it placed Ethiopian troops in undisputed Eritrean territories well inside Eritrea. Ethiopia gained considerable leverage as a result of this military advantage and the pressures resulting from the flight of at least a million Eritrean civilians ahead of the fighting.

Following these shifts, the OAU negotiators presented in early June a "revised, consolidated" peace proposal to representatives of the two parties. In the Agreement on Cessation of Hostilities they finally signed on June 18, 2000, the two parties reaffirm their "acceptance of the OAU Framework Agreement and the Modalities for its Implementation," signaling by omission that the technical arrangements were moot. The agreement required Ethiopia to withdraw to positions it controlled before the start of the war in 1998, but only after the deployment of U.N. peacekeepers in a 25 km wide buffer zone running along the border from which Eritrean troops would be withdrawn. The U.N. peacekeeping force would operate under the auspices of the OAU to monitor the parties' compliance with the agreement and allow the neutral demarcation of the border.

United Nations

The U.N. Security Council affirmed that the OAU's framework agreement provided the "best hope" for peace on January 29, 1999 and urged Eritrea, which was the party stalling at the time, to accept the proposal. Its resolution also called on both parties in the strongest terms to undertake urgent measures to improve the humanitarian and human rights situation. Ethiopia said it was "encouraged" by the resolution.

Despite the strong appeals, hostilities resumed only days later. On February 10, the Security Council issued another resolution demanding that Ethiopia and Eritrea stop fighting and that other states immediately end all arms sales to both sides. The mere threat of an arms embargo invited strong reactions from the belligerents. This alone should have indicated to the U.N. their vulnerability to a real ban on arms sales and delivery to their rapidly expanding militaries, but the U.N. did not take that step until more than a year later. In response to the February 10 resolution, the Ethiopian parliament passed a special resolution that expressed "its deep anger at the injustice done to Ethiopia" by the Security Council, and deplored "the attempt to deny Ethiopia, a victim of aggression...the right to self defense."¹⁵⁰ The Eritrean government affirmed that, though it was committed not to start war, it reserved "the legitimate right to self defense in the face of aggression."¹⁵¹

The president of the Security Council, in a press statement on June 23, 1999, expressed dismay at the escalating conflict, especially that both countries were continuing to buy weapons while much of their populations faced famine. He reminded the two governments that it was their primary responsibility to feed their peoples and

¹⁵⁰ "Letter dated 1 March 1999 from the permanent representative of Ethiopia to the United Nations addressed to the president of the Security Council," U.N. Doc. S/1999/226, March 3, 1999.

¹⁵¹"Statement of the Government of Eritrea on Security Council Resolution," Ministry of Foreign Affairs, Asmara, February 11, 1999.

repeated the council's calls for "an immediate and unconditional cease-fire," and for the imposition of an arms embargo on both countries.¹⁵²

Responding to a transient flare up in the fighting, the Security Council members on March 14, 2000, released a press statement that called on Eritrea and Ethiopia to cooperate "fully and urgently" with the OAU and to participate constructively in its efforts to settle the dispute between them.¹⁵³ With clear signals in early May 2000 that the countdown for another round of deadly confrontations in the Horn of Africa war was already underway, the Security Council extended its special mission to the Democratic Republic of the Congo to include Addis Ababa and Asmara. The mission, which was headed by the permanent representative of the U.S., Richard Holbrook, and included six other ambassadors, visited the two capitals on May 8 and 9 respectively. Leaders of the two government were again unmoved by U.N. exhortations to restraint. The mission reported back to the Security Council that it found the differences between the two sides, "while real, were relatively small and manageable and could be resolved by intensive negotiations over time."¹⁵⁴ Days after it left the region, fighting resumed over these differences with rare intensity.

The Security Council in a May 12 resolution strongly condemned the renewed fighting, and demanded the cessation of hostilities and resumption of talks by the two parties under OAU auspices. As the fighting continued, the council reiterated these demands in resolution 1298 of May 17, 2000, in which it also imposed an arms embargo on the two countries. The unanimous resolution, sponsored by the U.S., barred the sale and delivery of arms and other military equipment and services to the two countries for a year, or until the secretary-general was able to report a "peaceful, definitive settlement of the conflict."¹⁵⁵ The belated U.N. arms embargo on the belligerents was destined to have little effect in the short and medium terms, coming as it did after frantic arms shopping sprees during which each of the two parties spent hundreds of millions of dollars and amassed huge stocks of arms and munitions.

United Nations Mission in Ethiopia and Eritrea (UNMEE)

One of the key points in the June 2000 Cessation of Hostilities Agreement, which was brokered by the OAU, was the deployment in the demilitarized zone of a U.N. peacekeeping force in cooperation with the OAU. Given the very narrow scope of the June agreement, and the devastating humanitarian toll of the conflict, which displaced some 1.2 million people in both countries, the peacekeeping force had to be established and deployed as rapidly as possible to prevent the resumption of hostilities.

In response to formal requests from the Eritrean and Ethiopian governments to assist them in implementing the cessation of hostilities, the U.N. moved promptly. In early July the U.N. secretary-general dispatched an advance team to the Horn of Africa region to pave the way for the deployment of U.N. peacekeeping mission. Based on the recommendations of the team, the Security Council on July 31 unanimously adopted resolution 1312 (2000) establishing a United Nations Mission in Ethiopia and Eritrea (UNMEE) of up to one hundred military observers and support staff in anticipation of a larger mission. On September 15, the council authorized 4,200 troops for UNMEE and doubled the authorized number of military observers in resolution 1320 (2000).

Comprehensive Peace Agreement - December 12, 2000

On December 12, 2000, the governments of Ethiopia and Eritrea signed a comprehensive peace agreement in Algiers in which they committed themselves to the full implementation of the provisions of the Agreement on Cessation of Hostilities, and to permanently terminate military hostilities between themselves. The agreement addressed the same three key issues as the OAU's Framework Agreement on which it was based: delimitation and demarcation of the border, compensation, and investigation of the origins of the conflict. The agreement provided for the establishment of a neutral boundary commission to "delimit and demarcate the colonial treaty border";

¹⁵²“Ethiopia-Eritrea: U.N. deplores fighting while famine looms,” Horn of Africa, IRIN News Brief, June 24, 1999.

¹⁵³“Security Council urges Eritrea and Ethiopia to work with OAU towards peace,” U.N. Department of Public Information, March 14, 2000.

¹⁵⁴U.N., Security Council Press Release SC/6861, May 12, 2000.

¹⁵⁵U.N. Security Council resolutions no. 1297, May 12, and no. 1298, May 17, 2000. See U.N., Security Council Press Releases SC/6861, May 12 and SC/6863, May 17, 2000.

established a neutral claims commission mandated to decide on all claims of loss, damage, or injury from either side; and set the ground for an independent and impartial investigation into the origin of the conflict. Article 2 of the December 12 agreement also provided for confidence building measures, such as the early release of prisoners of war and all other persons detained in connection to the conflict.

In the meantime, member states had cooperated with UNMEE by offering troops and resources for the mission. By late October, UNMEE military observers took positions along both sides of the disputed border, allowing the agreement to take root. On April 18, 2001, UNMEE declared the establishment of the Temporary Security Zone (TSZ). This action marked the formal separation of the parties' forces and was a necessary precondition to the full implementation of the peace agreement of December 12, 2000.¹⁵⁶

UNMEE's Human Rights Component

In a remarkable omission, the advance team dispatched by the U.N. in July 2000 to prepare for UNMEE did not include a representative of the U.N. High Commissioner for Human Rights. Furthermore, UNMEE's mandate as set forth in resolution 1320 (2000) also omitted the monitoring of ongoing human rights conditions. The persistence of reports of wide-scale human rights abuses by both parties, even after the cessation of hostilities, appeared to have led the U.N. secretary-general to announce, on September 18, 2000, that he intended to establish a "small" component within UNMEE to follow human rights issues.¹⁵⁷

UNMEE's human rights component became operational during the second quarter of 2001. The mission's human rights officers were by then visiting the various sectors of the Temporary Security Zone and conducting investigations on the treatment of vulnerable groups of Ethiopians in Eritrea and of Eritreans in Ethiopia. The officers' assignment also included the monitoring of the return of displaced persons.¹⁵⁸ In particular, UNMEE's human rights workers interviewed persons repatriated or deported to both countries and documented their treatment. Their reporting as of June 2001 was included in the human rights section of the secretary-general's quarterly reports to the Security Council on the progress of the implementation of the peace agreement, providing the Security Council with an effective tool for pressing the two parties to afford humane treatment to each other's nationals. One factor contributing to the scaling down of deportations from both countries would thus appear to have been the combination of UNMEE's field monitoring and the periodic opportunity for the secretary-general to publicly disclose reported abuses of these vulnerable groups.

The Claims Commission

As the basis for the establishment of the Claims Commission, article 5-1 of the December 12, 2000 peace agreement recalls the commitment of the parties under the OAU's Framework Agreement to address the negative socioeconomic impact of the crisis on the civilian population, including the impact on those persons who have been deported. Article 5-1 also spells out the mandate of this mechanism to "decide through binding arbitration all claims for loss, damage or injury by one Government against the other, and by nationals (including both natural and juridical persons) of one party against the Government of the other party or entities owned or controlled by the other party that are (a) related to the conflict [between them] ... and (b) result from violations of international humanitarian law, including the 1949 Geneva Conventions, or other violations of international law."¹⁵⁹

Article 5-8 specifies that "claims shall be submitted to the Commission by each of the parties on its own behalf and on behalf of its nationals, including both natural and juridical persons. All claims submitted to the Commission must be filed no later than one year from the effective date of this agreement."¹⁶⁰ Obviously mindful of the disputed nationality status of many of the deportees, particularly those who were forcibly removed from

¹⁵⁶ UNMEE/PR/51 4.18.01

¹⁵⁷ Security Council, "Report of the Secretary-General on Ethiopia and Eritrea," U.N. Doc. S/2000/879, September 18, 2000.

¹⁵⁸ U.N., "Progress report of the Secretary-General on Ethiopia and Eritrea," U.N. Security Council, S/2001/1608, June 19, 2001.

¹⁵⁹ "Agreement between the Government of the State of Eritrea and the Government of the Federal Democratic Republic of Ethiopia," online, <http://www.reliefweb.int/w/rwb.nsf/UNID/C142020959F04DAFC12569AE005DA33C?OpenDocument>, (retrieved January 5, 2001).

¹⁶⁰ Ibid.

Ethiopia, the agreement provides in article 5-9 that “in appropriate cases, each party may file claims on behalf of persons of Eritrean or Ethiopian origin who may not be its nationals. Such claims shall be considered by the Commission on the same basis as claims submitted on behalf of that party's nationals.”¹⁶¹ Finally, article 5-17 engages the parties to accept the decision and awards of the commission as final and binding and to honor all decisions and to pay any monetary awards rendered against them promptly.¹⁶²

Immediately after signing the December agreement, Ethiopia invited any of its citizens and foreign residents who had suffered material loss or whose human rights have been violated as a result of the war to present their claims to a National Committee for Collecting Compensation Claims.¹⁶³

On January 26, 2001, Ethiopia and Eritrea met the first deadline established by the December 12 agreement by announcing their respective appointments to the neutral Boundary Commission and neutral Claims Commission.¹⁶⁴ One month later, the four arbitrators appointed by the parties to the Claims Commission selected a chairman for the commission.¹⁶⁵ The Claims Commission was to commence its work in The Hague within fifteen days of this formation. This brisk pace hit a snag when by mid May each side had rejected arbitrators nominated by the other. A May 14-15 informal meeting of the commission broke the impasse by agreeing to replace the contested nominees.¹⁶⁶ The commission later provided general information on the progress of its work for inclusion in the secretary-general's June 2001 report to the Security Council.¹⁶⁷ However, the three subsequent quarterly reports of the secretary-general did not annex updates from the Claims Commission.

The international bureau of the Permanent Court of Arbitration in The Hague, which serves as the registry for the claims commission, announced that claims were submitted to the commission by the deadline of December 12, 2001.¹⁶⁸ Under the peace agreement, the commission is to endeavor to complete its work within three years of the deadline for filing claims.

Earlier U.N. Responses to Expulsions

Prior to the establishment of UNMEE and the Claims Commission, the U.N. system's responses to the expulsions crisis were of limited scope, and focused mainly on Ethiopia's official campaign of expulsions of people of Eritrean origin. For instance, on July 1, 1998, shortly after the first expulsions from Ethiopia, High Commissioner for Human Rights Mary Robinson expressed concern at the violation of human rights of those being expelled from Ethiopia, and the confiscation of identity papers of others who were willing to leave. The statement considered these actions to be serious violations of international rights to freedom of movement and nondiscrimination. The commissioner appealed to both governments to restore dialogue with each other, and called upon the government of Ethiopia to respect its obligations under the international human rights treaties it has ratified.

The statement drew an angry reaction from the Ethiopian government. The foreign ministry blamed the commissioner for ignoring the fate of Ethiopians harassed in Eritrea, considered her statement on the plight of Eritreans as “absolutely groundless,” and said the statement was of the kind “that would undermine the credibility

¹⁶¹Ibid.

¹⁶²Ibid.

¹⁶³“World applauds signing of Ethiopia-Eritrea peace agreement,” CNN.com, December 12, 2000, at <http://europe.cnn.com/2000/WORLD/Africa/12/12/ethiopia.eritrea.peace.02/>, accessed December 15, 2000.

¹⁶⁴UNMEE/PR/30, February 2, 01, Ibid. See also “Ethiopia-Eritrea: Border commissioners appointed,” IRIN, Nairobi, January 30, 2001.

¹⁶⁵UNSC (S/2001/202) 3.7.01

¹⁶⁶“UNMEE Commission Agrees□,” *AllAfrica.com*, May 22, 2001.

¹⁶⁷U.N., “Annex II, Progress report of the Secretary-General on Ethiopia and Eritrea,” U.N. Security Council, U.N. Doc., S/2001/1608, June 19, 2001.

¹⁶⁸Permanent Court of Arbitration, “Recent and Pending Cases Index Page: Eritrea-Ethiopia Claims Commission,” at <http://pca-cpa.org/RPC/> (retrieved April 15, 2002).

of the office of the United Nations.”¹⁶⁹ In an interview with Ethiopian Television on July 9, Prime Minister Meles Zenawi said Eritreans in Ethiopia were treated in accordance with international conventions. Ethiopia’s right to deport the “fifth columnists was not something to be negotiated,” he said.¹⁷⁰ A follow-up plan by the Office of the High Commissioner for Human Rights to send long-term observation missions to both countries was stalled mainly due to the row with the Ethiopian government over the commissioner’s first statement. This stalemate appears to have stymied the high commissioner’s efforts to intervene in this crisis.

The United Nations’ system in Ethiopia was directly affected by the expulsions when authorities there deported some twenty-five locally-recruited U.N. staff of Eritrean origin in the first weeks of the campaign. In an unprecedented move, the Ethiopian Ministry of Foreign Affairs even wrote to several U.N. agencies, naming some staff members “persona non grata,” allegedly because they posed threats to the national security of Ethiopia. Concerns for the safety of the targeted staff members and their families led the Economic Commission for Africa (ECA), which has its headquarters in the Ethiopian capital, to assist in the relocation of several Eritrean nationals and Ethiopians of Eritrean origin to Nairobi.

The expulsions of U.N. staff prompted a strong reaction from the U.N. Secretariat. In a Note Verbale dated October 22 1998, the Organization reminded the Ethiopian government that these measures were in express violation of its obligations vis-à-vis the U.N. under the Charter, the ECA Headquarters agreement, and the 1966 and 1981 UNHCR and UNDP Agreements.¹⁷¹ In addition, the measures were “in clear contravention of the most fundamental human rights enshrined in the 1948 Universal Declaration of Human Rights and the 1966 International Covenant on Civil and Political Rights and other human rights instruments.”¹⁷² Ignoring the protests, Ethiopian authorities later deported several U.N. staff directly to Eritrea without prior notification to the U.N.

Response of the U.N. High Commissioner for Refugees (UNHCR): 1998-2000

UNHCR’s initial response to the expulsions was decidedly low key. Despite a clear mandate to respond to the problem of refugees as well as to the related issues of nationality and statelessness, UNHCR did not take the initiative at the beginning of the crisis. This was partly due to the lack of a UNHCR presence within Eritrea at the height of Ethiopia’s “policy to deport,” the initial unwillingness by UNHCR in Geneva to view the problem as falling within the agency’s mandate, and the lack of a clear UNHCR position on the status of those expelled from Ethiopia. However, by mid-2000, UNHCR showed signs of becoming more engaged in the problems of arbitrary deprivation of nationality, statelessness, and nationality disputes in Eritrea and Ethiopia.

UNHCR’s early role in this crisis is best understood within the context of the background to its operations in Eritrea, as well as an explanation of its mandate for refugees and matters pertaining to statelessness and nationality. Formal communications between UNHCR and the Eritrean government broke down in 1997, following the expulsion of the agency’s foreign staff members for what the Eritrean government considered “undue pressure” to revive the stalled repatriation of Eritrean refugees from Sudan.¹⁷³ UNHCR claims that the program was suspended because of unreasonable expectations of the resources it could bring to Eritrea for returnees. UNHCR continued to maintain a residual level of local personnel and activities in the country. The agency played a negligible role in the initial humanitarian response of the U.N. system to the crisis. This was partly due to the fact that Eritrean authorities at the start of the crisis confiscated UNHCR’s stockpiles in the country, namely tents, plastic sheeting, household utensils, and agricultural tools valued at \$2,848,000 to assist the expellees. Following UNHCR’s reestablishment in the country, the government agreed to acknowledge the provision of these goods as UNHCR’s contribution to the assistance of the expellees and the internally displaced.

¹⁶⁹“To the U.N. High Commissioner For Human Rights,” Press Release, Ethiopia’s Permanent Mission to the U.N., Geneva, July 2, 1998.

¹⁷⁰“Prime Minister Meles urges defense force to renew valor,” *Press Digest*, Vol. V, No. 29, p. 3, citing *Addis Zemen*, July 9, 1998.

¹⁷¹“United Nations calls Ethiopia expulsions illegal, unwarranted and inhumane,” *Secretariat News*, December 1998, p. 6.

¹⁷²*Ibid.*

¹⁷³“Eritrea: UNHCR allowed to resume operations,” *Horn of Africa, IRIN News Briefs*, January 26, 2000.

In February 1999, UNHCR staff in the then regional bureau for Central, East, and West Africa, informed Human Rights Watch that they did not consider this issue to fall within the mandate of UNHCR.¹⁷⁴ Human Rights Watch has always held the view that most, while not all, of those people forcibly expelled from Ethiopia are of concern to UNHCR under its mandate both to provide international protection to refugees and to address matters pertaining to statelessness.

UNHCR's mandate for statelessness derives from article 11 of the 1961 Convention on the Reduction of Statelessness which provides for "a body to which a person claiming the benefit of this Convention may apply for the examination of his claim and for assistance in presenting it to the appropriate authority." This function has been entrusted to UNHCR and affirmed by General Assembly resolutions 3274 (XXIV) of December 10, 1974 and 31/36 of November 30, 1976.

More recently, the Executive Committee of UNHCR issued a Conclusion in 1995 that significantly broadened UNHCR's role concerning statelessness.¹⁷⁵ Executive Committee Conclusion 78 on the Prevention and Reduction of Statelessness and the Protection of Stateless Persons "acknowledges the responsibilities already entrusted to the High Commissioner for stateless refugees and with respect to the reduction of statelessness, and encourages UNHCR to continue its activities on behalf of stateless persons, as part of its statutory function of providing international protection and of seeking preventive action." The Executive Committee further requested in its Conclusion that UNHCR "provide relevant technical and advisory services pertaining to the preparation and implementation of nationality legislation to interested States." These requirements were confirmed in General Assembly Resolution 50/152 of December 21, 1995.¹⁷⁶

UNHCR has thus been mandated to undertake a variety of different activities in the field of prevention and reduction of statelessness. These include:

- to provide technical and advisory services to interested States in the drafting and implementation of nationality legislation so as to avoid and reduce statelessness;
- to promote accession to and implementation of the two international instruments designed to promote the avoidance and reduction of statelessness and to ensure a minimum legal status for all stateless persons;
- to cooperate with relevant agencies and partners toward this end;
- to train staff and government officials as part of the promotion of the prevention and reduction of statelessness;
- to disseminate information and to cooperate with States in avoiding arbitrary deprivation of citizenship or other actions which often result in statelessness.

As the analysis in earlier sections of this report suggests, there is strong evidence that many of the people forcibly expelled from Ethiopia to Eritrea were Ethiopian citizens. The arbitrary expulsion of these persons and the termination of certain nationality privileges in Ethiopia at the point of departure (many were issued with documents stating "Not to return") resulted in the arbitrary deprivation of nationality of large numbers of people.

¹⁷⁴Meeting between Human Rights Watch and UNHCR, Geneva, February 12, 1999.

¹⁷⁵The Executive Committee (ExCom) is UNHCR's governing body. Since 1975, the committee has passed a series of Conclusions at its annual meetings. The Conclusions are intended to guide states in their treatment of refugees and asylum seekers and in their interpretation of international refugee law. While the Conclusions are not legally binding, they do constitute a body of "soft" international refugee law and ExCom member states are obliged to abide by them.

¹⁷⁶The then High Commissioner for Refugees, Mrs. Sadako Ogata, underscored this mandate in a statement at the 51st session of the Commission for Human Rights in 1995:

Stateless persons are another category in need of international protection, for whom UNHCR has a special responsibility. My Office has been designated as an intermediary between States and stateless persons under the 1961 Convention on the Reduction of Statelessness. Most recently, UNHCR has been requested by its Executive Committee to place the matter of statelessness on its agenda this year. We will explore promotional and preventive activities to which UNHCR can contribute in collaboration with concerned States. There is an obvious link between the loss or denial of national protection and the loss or denial of nationality. On the plane of rights, the prevention and reduction of statelessness is an important aspect of securing minority rights.

Meanwhile, the status of these people has not been regulated in Eritrea and most of them have not been given any kind of permanent status or citizenship in Eritrea. In other words, most of the deportees could be rendered de facto stateless, and the potential for de jure statelessness is high. In this context, UNHCR has a well-defined mandate for intervention in order to prevent and reduce statelessness and to assist those who have been rendered stateless.

Moreover, in the context of Eritrea's independence, neither Ethiopia or Eritrea took steps to establish a clear legal framework whereby the nationality status could be determined. Neither country issued clear directives regarding the nationality status of its residents and the criteria and procedures for acquiring citizenship in the successor state were not clearly articulated. The lack of definitive directives and a clear legal framework has led to much confusion in both countries regarding who is and who is not a citizen of their respective country. Under its mandate for statelessness, UNHCR also has a clear obligation to provide technical and legal advice to both Ethiopia and Eritrea regarding their nationality laws and to assist both countries in establishing legal frameworks that will help to prevent and reduce statelessness, most fundamentally by providing redress for the arbitrary deprivation of nationality.

There are precedents for UNHCR involvement in nationality questions arising from situations of state succession. With the emergence of new states and citizenship laws in the Czech and Slovak Republic, the Commonwealth of Independent States (CIS), and the former Socialist Republic of Yugoslavia, UNHCR played an active role in providing technical advice and assistance to the newly formed states on the formulation of nationality legislation with a view to preventing statelessness. In all of these cases, UNHCR provided in-depth analysis of the nationality laws in the respective states to ensure that they were in accordance with international law and would not result in the de facto, or de jure statelessness of sectors of the population. In the event that nationality laws were likely to result in statelessness, UNHCR provided assistance on how legislation could be amended to avoid such eventualities. UNHCR also helped to promote dialogue between states on issues pertaining to nationality, and to convene regional expert meetings on citizenship legislation. It also provided advice and assistance to states on practical procedures for establishing citizenship, including issues such as the acquisition of documentation to prove citizenship, and establishing projects with nongovernmental organizations to provide legal assistance to individuals facing difficulties in establishing their nationality.

Despite UNHCR's slow response in the early months of the crisis, by the end of 1999 the agency became increasingly engaged in the situation. Following the October 1999 meeting of UNHCR's Executive Committee and the July 1999 visit to Eritrea by U.N. Under-Secretary-General for Humanitarian Affairs Sergio Vieira de Mello, the Eritrean government indicated that it would like to discuss with UNHCR various issues including the agency's involvement in the repatriation of the 140,000 Eritrean refugees who were still in Sudan. Consequently, in November 1999 UNHCR sent a high level mission to Eritrea to hold discussions with the authorities regarding the reestablishment of an international UNHCR presence in the country and the modus operandi for future UNHCR activities. In the course of these discussions, the Eritrean authorities also sought assistance for the 75,000 persons who had been by then expelled from Ethiopia, as well as for those displaced as a result of the ongoing conflict between the two countries.

Following the first high level mission to Eritrea at the end of 1999, some progress was reported. It was agreed that UNHCR would reestablish an international presence in Eritrea; repatriation programs would resume; and in the context of reintegration programs UNHCR would extend assistance to expellees located in the same areas as refugees returning to Eritrea. UNHCR agreed to send a technical mission to Eritrea in December 1999 to discuss the repatriation operations for refugees then in Sudan. The agency also agreed that it would dispatch an expert mission to Eritrea to investigate the question of nationality and statelessness pertaining to the deportees sent there by Ethiopia. Based on the findings of this mission, UNHCR would be able to formulate a position on the status of the deportees and would determine its subsequent involvement. As a result, in January 2000, the senior UNHCR legal officer for statelessness traveled to Eritrea to investigate the situation. A further high level UNHCR mission was dispatched to Eritrea in January 2000, when the assistant high commissioner visited the country to meet with the Eritrean government. By March 2000, the agency was in the final stages of formulating a position on the

nationality status of the expellees, based on the expert mission of the legal adviser for statelessness.¹⁷⁷ At the 17th meeting of UNHCR's ExCom Standing Committee in February 2000, the Africa Bureau stated in its presentation on UNHCR operations in Africa that the ongoing border conflict between Ethiopia and Eritrea had "put hundreds of individuals in a de facto stateless situation," an indication that UNHCR believed that some, if not all, of the deportees were persons of concern to the organization under its mandate for statelessness.¹⁷⁸ Moreover, UNHCR confirmed that they hoped to follow up the expert mission to Eritrea with a similar mission to investigate the situation in Ethiopia and of deportations from Eritrea to Ethiopia.

UNHCR involvement with expellees in Eritrea should be based on the premise that the expellees find themselves in a "refugee-like situation" and face potential de facto, if not de jure, statelessness. UNHCR has also given technical advice to both countries regarding their nationality laws in order to provide redress for the arbitrary deprivation of nationality and the need for family reunification. This technical advice involves conducting a thorough legal analysis of existing laws and directives in both countries in order to identify gaps and areas of law which are not in accordance with international standards; providing advice on the reform and revision of existing legislation to ensure that both countries' nationality laws are in accordance with international standards and with a view to preventing statelessness; facilitating and conducting seminars and sensitization programs on issues of statelessness; and encouraging accession to and compliance with the international instruments on the prevention of statelessness. UNHCR may be able to provide deportees includes assistance in establishing nationality claims.

The incursion of the Ethiopian army into Eritrea in mid May 2000 uprooted more than a million Eritreans. Most of the displaced resettled under extremely precarious conditions in areas less affected by the fighting that lacked shelter, healthy water, food, and sanitation. Some 85,000 of them found refuge across the border in eastern Sudan. The crisis forced UNHCR for a while to put on hold its plan to resume the repatriation from Sudan of Eritrean refugees residing there since the seventies and eighties. Instead, UNHCR became heavily involved in the relief operations targeting the internally displaced and the new refugees. The agency doubled its emergency team in Eritrea and airlifted critically needed humanitarian supplies and equipment to ease the mounting distress in the camps for the internally displaced. UNHCR officials in both Sudan and Eritrea welcomed the June 2000 Algiers peace deal, and expressed the hope that peace would finally allow the return of refugees and the displaced to their homes and fields.

United States

War between Ethiopia and Eritrea, two of its closest allies in the continent, was deemed to pose serious threats to U.S. interests in the entire region and led to the most sustained high-level attention by the former Clinton Administration of any conflict on the continent. Clinton's assistant secretary for African Affairs at the State Department, Susan Rice, led a high-level mediation team to the region at the first signs of serious trouble in May 1998. The team almost brought the parties to accept the Rwandan-U.S. initiative, when Eritrea balked at the last moment, expressing strong reservations about the redeployment arrangements provided for in the plan (see above). The decision to announce the plan despite this objection, first in Addis Ababa, and later before the OAU's 34th summit held in Ouagadougou in June 1998, reportedly surprised Eritrea and contributed to its subsequent stalling in signing on to the initiative.¹⁷⁹ When the OAU took over the mediation process, the U.S. continued to engage in direct negotiations with the two parties and provided technical back up to the OAU effort.

Anthony Lake, the Clinton administration's lead mediator as of October 1998 and a former national security advisor, shuttled between the two capitals several times, coordinating his efforts closely with the OAU and the U.N. Experts assisting the three mediators worked together to finalize the most detailed and technical of the peace documents, the "technical arrangements" that Ethiopia ultimately rejected. Efforts during a late August

¹⁷⁷Human Rights Watch meeting with UNHCR, March 2, 2000, Geneva.

¹⁷⁸UNHCR, "Strategic Oral Presentation on UNHCR Operations in Africa," Standing Committee, 17th meeting, February 29 to March 2, 2000.

¹⁷⁹See Dan Connell, "Letter from Eritrea," *Nation*, March 29, 1999.

1999 visit to Addis Ababa by Lake and Susan Rice to persuade the Ethiopian leaders to accept the arrangements appeared to have failed.

In late 1999 the U.S. prepared to take over the presidency of the U.N. Security Council, with the then U.S. ambassador to the U.N. Richard Holbrook declaring January 2000 the “Month of Africa,” Representative Benjamin A. Gilman, chairman of the House International Relations Committee, raised a sobering alarm that the month might witness the slaughter of thousands of Ethiopian and Eritrean soldiers and civilians in renewed fighting. Gilman blamed the Ethiopian government for stalling the peace process, and charged that it was preparing to launch a major attack aimed at breaking the back of the ruling front in Eritrea. He called on the international community to “condemn the Ethiopian’s intransigence and urge them not to launch an attack.”¹⁸⁰ The Ethiopian prime minister, Meles Zenawi, in his statement rejecting the “technical arrangements,” had sought to preempt such pressures. He declared that “Ethiopia will not kneel down to any pressure imposed on the country to accept the technical arrangements, unless the document is prepared to guarantee its sovereignty.”¹⁸¹

The flare-up in the fighting in February 2000 after months of inactivity coincided with a two-week U.S. mediation mission to the region. Anthony Lake explained on that occasion that the U.S. had no new peace proposal, and was only backing the OAU’s initiative.¹⁸² This was again confirmed by the State Department’s spokesman who, on March 9, 2000, called on the two nations to remain “fully engaged” in the peace process, and expressed “unqualified support” for the OAU’s efforts.¹⁸³ The call for restraint was once more aired in a May 5 statement as it became obvious that hostilities were about to resume.¹⁸⁴ The U.S. on June 10 came out strongly in support of what was then a proposal for the cessation of hostilities which it said was developed with its support.¹⁸⁵

Pursuing this active involvement in the peace process, the U.S. hosted indirect talks between Ethiopian and Eritrean “technical experts” in early July 2000 during which the two sides discussed the substantive issues of border demarcation and compensation for the damages resulting from the war.

Despite its involvement from the very beginning in the efforts to end the war peacefully, the role of U.S. policy makers came under harsh scrutiny when their efforts failed to prevent the last round of fighting. Critics faulted the Clinton administration for failing to apply direct pressure on the two parties, as reflected in its reluctance to press for a U.N. arms embargo or to use its influence to slow the flow of bilateral and multilateral financial aid when both countries were spending hundreds of millions of dollars on arms purchases. Administration officials defended the mediators by pointing to the free and determined will of officials of the two governments in deciding to go to war and agreeing when to return to the negotiation table.¹⁸⁶

The U.S. on August 6, 1998 expressed deep concern about Ethiopia’s detention and expulsion of Eritreans, and urged the government of Ethiopia to respect international human rights norms and follow appropriate due process in handling its security concerns. The statement further called on Ethiopia to “allow all those who were wrongfully expelled to return and to establish a compensation commission to investigate and recommend compensation for the claims resulting from undue financial loss and hardship as a result of rapid, forced

¹⁸⁰Benjamin A. Gilman, “Ethiopia needs a push toward peace,” *Washington Post*, January 3, 2000.

¹⁸¹“Ethiopia finally rejects OAU’s “Technical Arrangements,” *Ibid*.

¹⁸²“U.S. backs OAU peace initiative for Ethiopia, Eritrea diplomats,” *Agence France Presse*, February 25, 2000.

¹⁸³U.S. Information Agency, “U.S. calls on Ethiopia and Eritrea to keep working for peace,” March 9, 2000.

¹⁸⁴U.S. Department of State, “Ethiopia/Eritrea proximity talks in Algiers,” *Press Statement*, May 5, 2000.

¹⁸⁵U.S. Department of State, “Ethiopia/Eritrea,” *Press Statement*, June 10, 2000. President Clinton expressed concern in January 1999 at the huge military buildup along the common border between Ethiopia and Eritrea. He again issued a statement expressing disappointment at the resumption of hostilities in February. On July 27, a presidential statement welcomed the announcement by the OAU that the two parties had accepted the modalities for the implementation of its framework agreement.

¹⁸⁶See for echoes of this debate: “Abroad at home: the state department,” Steven Mufson, *Washington Post*, June 8, 2000, p. A29; “A barren border war,” a *Washington Post* editorial, May 26, 2000, p. A34.

expulsions.”¹⁸⁷ Later on, during the protracted mediation efforts, the U.S. proved far less vocal in matching its active involvement in the peace process with equally forceful human rights interventions and instead carried on with its prior practice of declining to publicly criticizing either party for the rampant human rights abuses that took place in the context of the war.

The U.S. and other major donors had in fact had a capacity to use strong leverage to nudge both parties toward peace, but that leverage was used only sparingly until the very end. Despite the devastating internal and regional implications of the conflict, the donor community continued to channel significant resources to the two countries. Prior to the war, Ethiopia and Eritrea were the lynchpins in the U.S.-led plans for the military and diplomatic containment of the government of Sudan, then considered by the U.S. to be an exporter of radical Islam and a supporter of international terrorism. The two countries were expected to play a key stabilizing role in the search for peace in east and central Africa. The war between them reversed all this. It drained their resources, and effectively slowed down their economic growth rates. Humanitarian emergencies and the looming famine added to the cost of the conflict. Sudan declared its neutrality in the conflict, leading Ethiopia and Eritrea to compete in normalizing their relations with its Islamist government and reducing their support to its exiled opposition.

During the conflict, the U.S. scaled back its direct financial assistance to both countries. It suspended its balance of payment support to Ethiopia and froze the training of Ethiopian troops within the U.S.-led peacekeeping training program under the African Crisis Response Initiative. However, Ethiopia continued to benefit from the International Military Education and Training, with the only limitation being that they could not receive training in their country but had to come to the U.S.

The then outgoing Clinton administration attempted, but failed, to get the ban on arms imports lifted in the weeks that followed the signature of the peace agreement in December 2000. The U.N. allowed the ban to expire in May 2001, but warned the parties it would take action if they resumed fighting.

The Bush Administration also sparingly used its leverage to counter rampant human rights abuses in Ethiopia and Eritrea. Following the September 11, 2001, attacks on New York and Washington, the Horn of Africa gained prominence in the U.S.-led coalition against international terrorism, seemingly relegating human rights concerns to even less attention. Candidates for supplemental increases in U.S. security assistance to Africa in early 2002 included Kenya, Ethiopia, Djibouti, Nigeria and South Africa.

European Union

The E.U.’s presidency issued statements of concern when the conflict broke out in 1998, and condemned the major outbreaks of fighting in February and June 1999 and the resumption of hostilities in May 2000. Other statements released by the presidency persistently expressed full support for the OAU’s mediation effort, and repeatedly urged the parties to halt the war and to negotiate a peaceful settlement on the basis of the OAU’s proposals.

On March 9, 1999 the European Council of Ministers adopted a common position imposing an embargo on the export of arms, munitions, and military equipment to Ethiopia and Eritrea, and on September 30 extended that ban until March 31, 2000. An E.U. ministerial delegation traveled to Addis Ababa and to Asmara in February 1999, at the peak of the second phase fighting, to push for a cease-fire and a return to the OAU’s mediation process. The delegation returned empty-handed.¹⁸⁸ On December 29, 1999 the E.U. named Italian Deputy Foreign Minister Rino Serri as its envoy “to bolster the OAU effort and help the E.U. countries to come up with a better understanding and interpretation of the situation.”¹⁸⁹ The Italian envoy had visited the two capitals in June and in December 1999 as part of his government’s efforts to support the OAU’s peace package. He attended as an

¹⁸⁷ U.S. Department of State, “Ethiopia: Expulsions of Eritreans,” Press Statement by James B. Foley, Deputy Spokesman, August 6, 1998.

¹⁸⁸“E.U. delegation leaves Eritrea empty-handed-diplomats,” Reuters, February 20, 1999.

¹⁸⁹“E.U. in bid to end Horn of Africa conflict,” Agence France Presse, December 29, 1999.

observer the talks that led to the signing in the Algerian capital on June 18, 2000 of the cessation of hostilities agreement. The E.U. presidency welcomed the formal establishment of the temporary security zone on April 18, 2001, and encouraged the parties to move toward lasting peace with pledges of assistance for their reconstruction and peace building efforts.¹⁹⁰ A year later, the presidency marked the next milestone toward peace in the region, the boundary commission's ruling on April 13, 2002 delimiting the border, by urging the parties to respect that decision and to move forward toward normalizing their relations.¹⁹¹

The African, Caribbean and Pacific and E.U. Joint Assembly in a September 24, 1998 resolution condemned the outbreak of hostilities and called for an immediate end to the human rights violations perpetrated during the conflict, including arbitrary expulsions, deportations, and detentions. The Joint assembly renewed that call in April 1999 in response to the resumption of the fighting.¹⁹² Its 29th session, held in the Bahamas from October 11-14, 1999, called on Ethiopia to accept the technical arrangements and implement the OAU peace package. The assembly further called on the E.U. Council to prevail on Ethiopia to implement the OAU peace plan and to respect human rights regarding Eritreans residing in Ethiopia.¹⁹³ A parliamentary delegation led by the assembly's vice-president, John Alexander Corrie, visited the Ethiopian and Eritrean capitals in mid December to press the recommendations.

The E.U. made substantial monetary and in kind donations for the relief of civilians affected by drought and the conflict in both countries. These donations, together with aid provided bilaterally by E.U. member states, placed the E.U. as the top donor of food aid to Ethiopia, a position it has continually occupied in the past twenty-five years.¹⁹⁴ However, the conflict led to significant reductions in the E.U.'s development cooperation with the two countries. The European Commission declared on May 19, 2000, that as a result of the tightening of conditions for the disbursement of credits of the Structural Adjustment Support Programs, financed by the commission, the latter had not disbursed any budgetary support to Ethiopia since January 1999. Expressing concern at the negative impact of the conflict on the humanitarian effort to assist drought victims and those displaced by war in the two countries, the commission resolved not to provide funding for new development projects for Ethiopia and Eritrea as long as they remained engaged in war.¹⁹⁵

VII. RELEVANT LEGAL STANDARDS

This section reviews the international and national laws that provide a framework for analyzing the violations of human rights inherent in the expulsions of Ethiopians and Eritreans from their respective countries. As a threshold matter, potential limitations on specific rights are discussed, including principles of derogation and national security, as well as the overarching norm of non-discrimination in application of human rights conventions. Specific issues are then outlined, including the individual's right to nationality and protection against deprivation of nationality and expulsion; family unity; due process and arbitrary detention; and cruel and inhuman treatment and torture.

Human rights laws bind both the Ethiopian and Eritrean government, and expressly forbid the sorts of abuses that deportees on both sides have suffered. Ethiopia is a state party to the following human rights treaties: the African Charter on Human and Peoples' Rights (hereinafter "the Charter"); the International Covenant on Civil

¹⁹⁰E.U., "Declaration by the Presidency on behalf of the European Union on the occasion of the definitive establishment of the Temporary Security Zone between Ethiopia and Eritrea," Brussels, April 20, 2001, 7899/01 (Presse 154), p. 080/01.

¹⁹¹E.U., "Declaration by the Presidency on behalf of the E.U. on Ethiopia/Eritrea (Boundary Commission Decision)," April 13, 2002.

¹⁹²ACP-E.U., "Resolution on the resumption of hostilities between Ethiopia and Eritrea," ACP-E.U. 2757/99/fin, Strasbourg, April 1, 1999.

¹⁹³"Eritrea: Trade organization urges Ethiopia to accept OAU peace plan," Eritrean News Agency, cited in BBC Worldwide Monitoring, October 15, 1999.

¹⁹⁴ E.U., "Food aid for Ethiopia," Brussels, April 10, 2000.

¹⁹⁵ E.U., "Commission invokes clause suspending signing of new financing agreements with Ethiopia and Eritrea due to conflict," May 19, 2000.

and Political Rights (hereinafter “ICCPR”); the International Covenant on Economic, Social and Cultural Rights (hereinafter “ICESCR”); the Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment (hereinafter “Convention against Torture”); the International Covenant on the Elimination of All Forms of Racial Discrimination (hereinafter “CERD”); the Convention on the Elimination of All Forms of Discrimination against Women (hereinafter “CEDAW”); the Convention on the Rights of the Child (hereinafter “CRC”). The Ethiopian Constitution of 1995 also contains numerous human rights protections and incorporates into domestic law all human rights provisions contained in international agreements to which Ethiopia is a party.¹⁹⁶

According to the Office of the United Nations High Commissioner for Human Rights, Eritrea acceded to the International Covenant on Economic, Social and Cultural Rights on April 17, 2001 and to the International Convention on the Elimination of All Forms of Racial Discrimination on August 1, 2001. Eritrea as an independent nation became a party to the Convention on the Rights of the Child on August 3, 1994, the Convention on the Elimination of All Forms of Discrimination against Women as of September 5, 1995, and the International Covenant on Civil and Political Rights on January 23, 2002. It signed the four Geneva Conventions on August 14, 2000, in the wake of the peace agreement with Ethiopia. Moreover, the Eritrean government repeatedly invoked international human rights and humanitarian law in its protestations against the treatment of Eritreans and people of Eritrean descent at the hand of the Ethiopian government. The Eritrean Constitution contains provisions guaranteeing basic human rights, including the right to life and liberty, but has yet to come fully into force.¹⁹⁷

National Security and Non-Derogation

Some international human rights instruments allow states parties to derogate from their obligations to uphold certain rights in times of national emergency. However, the African Charter, to which Ethiopia, but not Eritrea, is a party, does not, even in time of war. The African Commission on Human and Peoples’ Rights has emphasized that, “The African Charter, unlike other human rights instruments, does not allow for states parties to derogate from their treaty obligations during emergency situations. Thus even a civil war . . . cannot be used as an excuse by the state violating or permitting violations of rights in the African Charter.”¹⁹⁸

Although the ICCPR, to which Eritrea is also party, does permit limited derogation from some treaty obligations under defined circumstances, such derogation is impermissible when it is inconsistent with the state party’s other obligations under international law.¹⁹⁹ As of the end of the war in December 2000, neither Ethiopia nor Eritrea had filed a notice of intent to derogate with the Secretary-General of the United Nations, as required by ICCPR art. 4(3).

The Ethiopian Constitution recognizes as non-derogable the right to equal protection of the law; the right not to be subject to torture or cruel, inhuman or degrading treatment or punishment; and the right to conditions of

¹⁹⁶ The Constitution of the Federal Democratic Republic of Ethiopia, art. 9(4), December 8, 1994 (unofficial English translation of Amharic original published in Addis Ababa, 1995, also available online at the Parliament of Ethiopia Web Site at: <http://www.ethiobar.net/English/cnstiotn/consttn.htm>).

¹⁹⁷ In its article 15, “no person shall be deprived of liberty without due process of law.” (online at <http://unpan1.un.org/intradoc/groups/public/documents/cafrad/unpan004654.pdf>).

¹⁹⁸ African Commission decision regarding Communication 74/92, “Commission Nationale des Droits de l’Homme et de Libertés/Chad,” par. 21. (online at <http://wwwserver.law.wits.ac.za/humanrts/africa/comcases/74-92.html>.)

¹⁹⁹ Article 4 of the ICCPR provides:

1. In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant make take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, *provided that such measures are not inconsistent with their other obligations under international law* and do not involved discrimination solely on the ground of race, color, sex, language, religion, or social origin.
2. No derogation from articles 6, 7, 8 (paragraphs 1 and 2), 11, 15, 16, and 18 may be made under this provision.
3. *Any State Party to the present Covenant availing itself of the right of derogation shall immediately inform the other States Parties to the present Covenant through the intermediary of the Secretary-General of the United Nations, of the provisions from which it has derogated and of the reasons by which it was actuated.*” (emphasis added).

custody which respect human dignity, including the opportunity to communicate with, and to be visited by, their family, friends, and counselors.²⁰⁰ The Eritrean Constitution outlines the right to equality under the law in article 14, the right to human dignity and freedom from torture or cruel, inhuman or degrading treatment or punishment in article 16, and the right to a fair trial under article 17.²⁰¹

Discrimination

The norm against invidious discrimination is a fundamental condition of many international human rights treaties. For example, the ICCPR requires states parties to “respect and ensure” all the rights therein to all individuals within their territory “without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”²⁰² The possibility of derogation from the rights of the ICCPR is not permitted if it involves “discrimination solely on the ground of race, colour, sex, language, religion or social origin” or if it is inconsistent with other obligations under international law.²⁰³

One such international law obligation of Ethiopia is the Convention on the Elimination of Racial Discrimination (CERD), which prohibits discrimination based on “race, colour, descent, or national or ethnic origin” in regard to fundamental rights, including the right to nationality, the right to return to one’s country, security from bodily harm, to equal treatment before all organs administering justice, and to the ownership of property.²⁰⁴ CERD also mandates that each state party “undertakes ... to engage in no act or practice of racial discrimination against persons, groups of persons or institutions and to ensure that all public authorities and public institutions, national and local, shall act in conformity with this obligation” and “[s]hall prohibit and bring to an end, by all appropriate means . . . racial discrimination by any persons, group or organization.”²⁰⁵

Although CERD does not apply to distinctions states make between citizens and non-citizens, or to “legal provisions of States Parties concerning nationality, citizenship or naturalization,” this is only “provided that such provisions do not discriminate against any particular nationality.”²⁰⁶ To the extent that discriminatory actions were directed against persons because of their imputed Ethiopian or Eritrean origin or nationality, as opposed to just the fact that they were non-nationals, the obligations of this convention were violated.

The prohibition of discrimination on the basis of national origin and the right to equal protection of the law is also reflected in provisions of the ICCPR²⁰⁷ and the African Charter,²⁰⁸ to which Ethiopia is a party, as well as the

²⁰⁰ These basic rights are set out the Ethiopian Constitution of 1994, articles 18, 21, 25, and 93. Article 25 provides: “All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall guarantee to all persons equal and effective protection without discrimination on grounds of race, nation, nationality, or other social origin, color, sex, language, religion, political or other opinion, property, birth or other status.”

²⁰¹ The complete text of the Eritrean Constitution is available online at: <http://unpan1.un.org/intradoc/groups/public/documents/cafrad/unpan004654.pdf>.

²⁰² ICCPR art. 2(1)

²⁰³ ICCPR art. 4(1)

²⁰⁴ CERD arts.1 and 5.

²⁰⁵ Ibid, art. 2(1)(a) and (d).

²⁰⁶ CERD, art. 1(2) and (3).

²⁰⁷ Article 26 of the ICCPR states:

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

²⁰⁸ Article 2 of the African Charter on Human and Peoples’ Rights. (African Charter, online at <http://www1.umn.edu/humanrts/instree/z1afehar.htm>.)states:

Every individual shall be entitled to the enjoyment of the rights and freedoms recognized and guaranteed in the present Charter without distinction of any kind such as race, ethnic group, colour, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or other status.

Article 3 of the Charter provides that: “1. Every individual shall be equal before the law. 2. Every individual shall be entitled to equal protection of the law.”

Universal Declaration of Human Rights.²⁰⁹ The African Charter protects groups, as well as individuals, from discrimination: “All peoples shall be equal; they shall enjoy the same respect and shall have the same rights. Nothing shall justify the domination of a people by another.”²¹⁰

In applying these norms, the African Commission on Human and People’s Rights, which interprets the African Charter, has interpreted article 6, which prohibits arbitrary arrest and detention through the lens of article 2, which bars discrimination. In a decision concerning detention during the Rwandan genocide, the discriminatory basis of the detentions was seen as evidence that they were arbitrary:

The arrests and detentions of the Rwandan Government based on grounds of ethnic origin alone, in light of Article 2 in particular [which prohibits discrimination on any grounds] constitute arbitrary deprivation of the liberty of an individual. These acts are clear evidence of a violation of Article 6.²¹¹

The prohibition against discrimination on the basis of national origin and the right to equal protection of the law is also enshrined in article 25 of the Ethiopian Constitution, which provides:

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall guarantee to all persons equal and effective protection without discrimination on grounds of race, nation, nationality, or other social origin, colour, sex, language, religion, political or other opinion, property, birth or other status.

Arbitrary Deprivation of Nationality

The right to a nationality is a fundamental human right from which many other civil and political rights flow; this has caused it to be described as “the basic right to have rights.”²¹² Article 15 of the Universal Declaration of Human Rights, to which all member states of the United Nations are deemed to adhere, states that “[e]veryone has the right to a nationality.” The Convention on the Rights of the Child guarantees the right of every child to acquire a nationality,²¹³ and requires states to “undertake to respect the right of the child to preserve his or her identity, including nationality.”²¹⁴ Furthermore, “[w]here a child is illegally deprived of some or all elements of his or her identity, States Parties shall provide appropriate assistance and protection, with a view to speedily reestablishing his or her identity.”²¹⁵ Ethiopian and Eritrean law is consistent with international standards concerning a child’s rights to nationality.²¹⁶

The Universal Declaration of Human Rights further declares at article 15, “No one shall be arbitrarily deprived of his nationality.” Although there is no exact counterpart in the ICCPR, this right is implicit in the rights to freely enter and leave one’s own country and the right of children to acquire nationality.²¹⁷ A state act can be deemed “arbitrary” under international human rights law if it lacks a basis in law, flouts requirements of

²⁰⁹ Article 2 of the Universal Declaration on Human Rights provides that “everyone is entitled to all the rights and freedoms set forth in [this] Declaration, without distinction of any kind, such as . . . national or social origin.” Article 7 of the Declaration also provides that “all are equal before the law and are entitled without any discrimination to equal protection of the law.”

²¹⁰ African Charter, art. 19

²¹¹ Organisation Mondiale Contre La Torture vs. Rwanda, African Commission on Human and Peoples’ Rights, Comm. No. 27/89, 46/91, 49/91, 99/93 (not dated). (online at http://wwwserver.law.wits.ac.za/humanrts/africa/comcases/27-89_47-91_49-91_99-93.htm.)

²¹² U.S. Supreme Court Chief Justice Warren. *See Trop v. Dulles*, 356, U.S. 86, 102 (1958).

²¹³ The Convention on the Rights of the Child (CRC), art. 7(1).

²¹⁴ *Ibid.*, art. 8(1).

²¹⁵ *Ibid.*, art. 8(2).

²¹⁶ The Ethiopian Constitution recognizes that “every child has the right to . . . a name and nationality,” art. 36(b). Article 3-1 of the Eritrean Constitution provides “any person born of an Eritrean father or mother is an Eritrean by birth.”

²¹⁷ ICCPR, arts.12(2) and (4) and 24(3).

due process and fair procedure, or in other ways trammels other basic human rights norms, such as the norm against invidious discrimination.²¹⁸ The deprivation of Ethiopian nationality to persons of Eritrean origin can be considered arbitrary on all three counts.

The Norm against Statelessness

The right to a nationality finds its counterpart in the norm against statelessness, which is embodied in several treaties and evolving legal principles. Any time a government withdraws nationality from an individual or group, there is a prospect that those persons will be rendered stateless. The theoretical availability of an alternate nationality upon application does not negate this prospect.²¹⁹ Similarly, the imposition of nationality without an individual's consent is generally not recognized as valid in modern international law.²²⁰

While neither Ethiopia nor Eritrea are parties to the Convention on the Reduction of Statelessness,²²¹ this treaty and other international instruments are relevant in that they illustrate evolving norms and state practice in this area. This convention provides that a state shall not deprive a person of nationality if such deprivation would render her stateless.²²² It also reaffirms, at article 9, that a state may not "deprive any person or group of persons of their nationality on racial, ethnic, religious or political grounds." The convention does allow states to denationalize persons under narrow circumstances, including where a person "has taken an oath, or made a formal declaration, of allegiance to another State, or given definite evidence of his determination to repudiate his allegiance to the Contracting State,"²²³ but as discussed above, the simple act of registering and voting in the referendum on Eritrean independence cannot be construed as any of these acts, not only because of the non-existence of the Eritrean state at the time, but also because the referendum went only to the question of whether there should be an Eritrean state, and not any individual's intended relation to that state.

The specific problem of avoiding statelessness in situations of state succession is the subject of ongoing attention in international law. The Convention on the Reduction of Statelessness, for example, requires contracting states to include provisions in treaties on transfer of territory to ensure that persons will not become stateless as a result.²²⁴ The 1997 European Convention on Nationality, which in part responded to the 1990s crises of state succession in Europe, provides progressive guidance for states facing situations state succession.²²⁵ This convention reaffirms that everyone has the right to a nationality; that statelessness shall be avoided; and that no one shall be arbitrarily deprived of his or her nationality (article 4). To this end it sets out four guiding principles that states should take into account when granting or retaining nationality in cases of state succession. These include:

- a) "the genuine and effective link of the person concerned with the State"²²⁶;

²¹⁸ See Manfred Nowak, U.N. Covenant on Civil and Political Rights, CCPR Commentary, pp. 172. In the case of the right to enter one's own country, ICCPR 12(4), the injunction that no one shall be "arbitrarily" deprived of this right is interpreted as excepting only cases of lawful exile as punishment for a crime, a practice that was rare even at the time of the drafting of the Covenant. Ibid at 218-219.

²¹⁹ See, e.g. Convention on the Reduction of Statelessness, 989 U.N.T.S. 175, entered into force Dec. 13, 1975, art. 7(1) and 7(2), which provide that renunciation of nationality, or application for naturalization in a foreign country, may not be grounds for denationalization unless the person concerned possesses, acquires, or has been accorded assurance of acquiring the nationality of that foreign country.

²²⁰ See Ruth Donner, *The Regulation of Nationality in International Law*, sec. 3.1 "Imposition of Nationality," pp.160-165 and *Restatement of the Law Third, The Foreign Relations Law of the United States*, sec. 211, comment d at p. 116 and note 2 at p. 117-118, (American Law Institute, Washington, D.C.: 1986).

²²¹ Twenty-four states are parties to this convention.

²²² Convention on the Reduction of Statelessness, art. 8, 989 U.N.T.S. 175, entered into force Dec. 13, 1975.

²²³ Ibid, art. 8(3)(b).

²²⁴ Ibid, art. 10.

²²⁵ European Convention on Nationality (1997), Chapter VI, Articles 18-20.

²²⁶ The concept of a "genuine and effective link" derives from the *Nottebohm Case*, where the International Court of Justice stated that in determining the question of the validity of an individual's nationality, the court would show "preference to the real and effective nationality, that which accords with the facts, that based on stronger factual ties between the person concerned and one of these States whose nationality is involved." The criteria for determining a "genuine and effective link" included the "habitual residence of the individual concerned," the "center of interests," "his family ties," "his participation in

- b) “the habitual residence of the person concerned at the time of states succession”;
- c) “the will of the person concerned”;
- d) “the territorial origin of the person concerned” (meaning the place of birth of the person themselves, their parents or grandparents).”²²⁷

The European Convention on Nationality also sets out the principle of non-discrimination (article 5), so that rules on nationality “shall not contain distinctions or include any practice which amount to discrimination on the grounds of sex, religion, race, colour or national or ethnic origin. The convention provides that permanent residents in the successor state should be given the right to remain and should enjoy the same treatment as nationals as regards economic and social rights.

The most recent contribution to the development of legal norms and standards pertaining to nationality, from the International Law Commission (ILC), is the Draft Articles on Nationality of Natural Persons in Relation to the Succession of States (hereafter referred to as the Draft Articles).²²⁸ In a March 1999 report to the General Assembly, the commission explained that the draft articles established a series of basic principles, “providing extensive codification of current customary international law reflecting the practice of States, doctrinal opinions and jurisprudence and furnished States with guidelines for standardizing their internal rules and ensuring greater legal certainty.”²²⁹

The commission’s starting point was the basic human right to a nationality, and states’ obligations to respect this right. The commission identified several basic principles to be observed by states involved in the state succession – sometimes termed the predecessor and successor states. These included:

- the right of every individual who had the nationality of the predecessor state on the date of the succession of states to the nationality of at least one of the states concerned; and
- the corollary obligation to ensure that persons with the nationality of the predecessor state whose habitual residence was on the respective territories of the states concerned not become stateless;
- respect for the will of the persons concerned.²³⁰

The draft articles give particular attention to requirements that states promptly enact legislation addressing issues of nationality or citizenship arising in relation with state succession. New laws and implementing procedures are to be accompanied by campaigns to ensure that citizens potentially affected by them be informed of their requirements and potential consequences.²³¹

family life,” and “the attachment shown by him for a given country and inculcated in his children, etc.” *Nottebohm Case*, I.C.J. Reports, 1955.

²²⁷ Ibid, Article 18 (2).

²²⁸ International Law Commission, Draft Articles on Nationality of Natural Persons in Relation to the Succession of States, submitted to the General Assembly in 1999; the General Assembly, in Res. 54/111 of December 9, 1999 expressed its appreciation of the draft and noted that the Commission had completed its work on the topic “Nationality in relation to the succession of States.” The commission recommended to the General Assembly the adoption of the draft articles in the form of a declaration. The draft articles are available online at http://www.un.org/law/ilc/guide/3_4.htm (retrieved February 4, 2001). See also United Nations, General Assembly, A/CN.4/497, March 8, 1999, International Law Commission, Nationality in relation to the succession of States, Memorandum by the Secretariat, para. 9 (1999). Online at <http://www.un.org/law/ilc/sessions/51/english/497.pdf> (retrieved February 20, 2002).

²²⁹ United Nations, General Assembly, A/CN.4/497, March 8, 1999, International Law Commission, *Nationality in relation to the succession of States*, Memorandum by the Secretariat, para. 9 (1999). Available online at <http://www.un.org/law/ilc/sessions/51/english/497.pdf> (retrieved February 20, 2002).

²³⁰ International Law Commission, Draft Articles on Nationality of Natural Persons in Relation to the Succession of States, arts. 1 and 11.

²³¹ Ibid, art. 6, Legislation on nationality and other connected issues. “Each State concerned should, without undue delay, enact legislation on nationality and other connected issues arising in relation to the succession of States consistent with the provisions of the present draft articles. It should take all appropriate measures to ensure that persons concerned will be apprised, within a reasonable time period, of the effect of its legislation on their nationality, of any choices they may have thereunder, as well as of the consequences that the exercise of such choices will have on their status.”

These evolving standards show a singular concern with the will of the individual, and particularly with the need for informed and conscious choice of an alternate nationality before the state moves to strip a resident of its nationality. To that end, they also focus on procedures by which persons are to make these choices or appeal loss of nationality. The International Law Commission's Draft Articles, for example, provide:

Applications relating to the acquisition, retention or renunciation of nationality or to the exercise of the right of option in relation to the succession of States shall be processed without undue delay. Relevant decisions shall be issued in writing and shall be open to effective administrative or judicial review.²³²

The Draft Principles also emphasize that the determination of nationality cannot be arbitrary. Article 15, on non-discrimination, declares simply that "States concerned shall not deny persons concerned the right to retain or acquire a nationality or the right of option upon the succession of States by discriminating on any ground." Article 16 adds that "Persons concerned shall not be arbitrarily deprived of the nationality of the predecessor State, or arbitrarily denied the right to acquire the nationality of the successor State or any right of option, to which they are entitled in relation to the succession of States." As a further safeguard, of particular relevance to situations of mass expulsions, the principles establish that anyone required to transfer one's residence out of the territory of a state following the voluntary renunciation of that state's nationality be given a reasonable time to do so. These standards reflect similar guarantees in the European Convention on Nationality, chapter IV, whereby states are required to process applications relating to acquisition or loss of nationality within a reasonable time, that such decisions contain reasons in writing, and that there is a right to administrative or judicial review of such decisions.²³³

Mass Expulsion

Mass expulsion of those the state acknowledges as nationals is aberrant and unlawful; when it takes place, it is often labeled "ethnic cleansing," or a situation of mass persecution. Although the norm against expulsion of nationals is not explicit in the ICCPR, it follows indirectly from the right to enter one's country, as well as the rights to choice of residence and freedom of movement within one's own country.²³⁴ The Ethiopian constitution, article 32, also mandates that "[a]ny Ethiopian national has the right to return to his country." The strength of the norm against mass expulsion is evidenced by the fact that under international humanitarian law, it is a war crime or crime against humanity for an occupying power to deport civilians from a territory it occupies, except for their own protection or imperative military reasons.²³⁵

Mass expulsion of non-nationals is also prohibited by international and Ethiopian law. Article 12(5) of the African Charter states explicitly that "the mass expulsion of non-nationals shall be prohibited. Mass expulsion shall be that which is aimed at national, racial, ethnic or religious groups." Non-nationals are also protected from being expelled except "in pursuance of a decision reached in accordance with law" under article 13 of the ICCPR.²³⁶ The U.N. Human Rights Committee, which is charged with authoritative interpretation of the ICCPR and review of reports of states parties thereunder, has stated that arbitrary expulsion would violate this requirement, again with the understanding that mass or discriminatory expulsions are inherently unlawful, or arbitrary:

²³² Ibid, art. 17.

²³³ European Convention on Nationality, arts. 10, 11 and 12.

²³⁴ See Nowak, *supra*, pp. 218-219, ICCPR art.12, and African Charter, art. 12.

²³⁵ Article 49, Convention (IV) relative to the Protection of Civilian Persons in Time of War, Geneva, August 12, 1949.

²³⁶ Article 13 of the ICCPR provides that: "An alien lawfully in the territory of a State Party to the present Covenant may be expelled therefrom only in pursuance of a decision reached in accordance with law and shall, except where compelling reasons of national security otherwise require, be allowed to submit the reasons against his expulsion and to have his case reviewed by, and be represented for the purpose before, the competent authority or a person or persons especially designated by the competent authority."

Significantly, the U.N. Human Rights Committee has determined that "Article 13 would not be satisfied with laws or decisions providing for collective or mass expulsions." United Nations, Report of the Human Rights Committee, U.N. Doc. GAOR/4/40, Annex VI, par. 9-10 (1986).

[Article 13] entitles each alien to a decision in his own case and, hence, article 13 would not be satisfied with laws or decisions providing for collective or mass expulsions. This understanding, in the opinion of the Committee, is confirmed by further provisions concerning the right to submit reasons against expulsion and to have the decision reviewed by and to be represented before the competent authority or someone designated by it. An alien must be given full facilities for pursuing his remedy against expulsion so that this right will in all the circumstances of his case be an effective one...Discrimination may not be made between categories of aliens in the application of article 13.²³⁷

Under Ethiopian law, the Ethiopian Penal Code of 1957 protects both non-nationals and nationals from being subject to mass expulsion in either time of war or peace.²³⁸

The Separation of Families

International law recognizes that “[t]he family is the natural and fundamental group unit of society and is entitled to protection by society and the State.”²³⁹ The African Commission on Human and Peoples’ Rights has recognized that a state violates its obligations to protect families when state expulsion of certain family members causes spouses or parents to be separated from their children.²⁴⁰ In situations of state succession, the International Law Commission’s Draft Principles (article 12), establishes the obligation to adopt all reasonable measures to enable a family to remain together or to be reunited.

The Convention on the Rights of the Child also requires states to “ensure that a child shall not be separated from his or her parents against his will,”²⁴¹ and mandates that “[w]here such separation results from any action initiated by a State Party, such as the detention, imprisonment, exile, deportation, or death . . . of one or both parents or of the child,” the state must provide information about the whereabouts of the absent member²⁴² and must treat applications to leave or enter the country for purposes of family reunification “in a positive, humane and expeditious manner.”²⁴³

The Ethiopian Constitution states that the family is the natural and fundamental unit of society and is entitled to protection by society and the State²⁴⁴ and that “every child has the right . . . to know and be cared for by his or her parents or legal guardians.”²⁴⁵ Similarly, the Eritrean Constitution’s article 3.1 recognizes the family as “the

²³⁷ U.N. Human Rights Committee, General Comment 15/27 of 22 July 1986 (Position of Aliens), para. 10.

²³⁸ Article 281 of the Penal Code states: “Whosoever, with intent to destroy, in whole or in part, a national, ethnic, racial, religious or political group, organizes, orders or engages in, be it in time of war or in time of peace... (c) the compulsory movement or dispersion of peoples or children... is punishable with rigorous imprisonment from five years to life, or in cases of exceptional gravity, with death.” Article 282 of the Penal Code states: “Whosoever, in time of war, armed conflict of occupation, organizes, orders or engages in, against civilian population and in violation of the rules of public international law and of international humanitarian conventions: (c) the compulsory movement or dispersion of the population, its systematic deportation, transfer or detention...or (e) denationalization...” Penal Code of 1957, Article 281 and 282 reproduced online at <http://www.preventgenocide.org/law/domestic/ethiopia.htm>.

See also “Ethiopia: The Curtailment of Rights,” *A Human Rights Watch Short Report*, vol. 9, no. 8, December 1997.

²³⁹ Universal Declaration of Human Rights, art. 16(3) and ICCPR, art. 23(1). See also, African Charter, art. 18 (“The family shall be the natural unit and basis of society. It shall be protected by the state which shall take care of its physical and moral health.”); Fourth Geneva Convention, art. 24 (“the Parties to the conflict shall take the necessary measures to ensure that children under fifteen, who are orphaned or are separated from their families as a result of the war, are not left to their own resources, and that their maintenance, the exercise of their religion, and their education are facilitated in all circumstances.”)

²⁴⁰ Union Inter Africaine des Droits de l’Homme, Commission Decision regarding Communication 159/96, para. 16 (finding that “by deporting the victims, thus separating some of them from their families, the Defendant State has violated and violates the letter of” Article 18 of the African Charter.).

²⁴¹ CRC, art. 9(1).

²⁴² Ibid, art. 9(4).

²⁴³ Ibid, art. 10(1).

²⁴⁴ Ethiopian Constitution, art. 34(3).

²⁴⁵ Ibid, art. 36.

natural and fundamental unit of society,” and that it is “entitled to protection and special care of the State and society.”

Due Process and Arbitrary Detention

International law and the domestic law of Ethiopia and Eritrea protect individuals from arbitrary arrest and detention, and other violations of due process of law. The ICCPR, for example, mandates that:

1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.
2. Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.
3. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. . . .²⁴⁶

Similar due process protections are contained in the African Charter and Universal Declaration.²⁴⁷ The African Commission on Human and Peoples’ Rights has further expressly recognized that detention solely on the basis of ethnic origin constitutes a violation of these protections.²⁴⁸

The Ethiopian Constitution contains similar due process protections. Article 17 of the Ethiopian Constitution provides that “no person may be subject to arbitrary arrest and no person may be detained without trial or conviction.” Under article 19, “all persons arrested have the right to be informed promptly . . . the particulars of the charges and the reasons for their arrest”²⁴⁹ and arrested persons have the right to “appear before a court of law and to be given a full explanation of the reasons for their arrest within forty-eight hours of their arrest.”²⁵⁰ The Constitution also bars punishment of an act that was legal at the time it was committed.²⁵¹

Article 17 of the Eritrean Constitution stipulates in Sub-Article 17(1) “no person may be arrested or detained save pursuant to due process of law.” The Eritrean constitution also provides extensive protection for due process of law during arrest or detention, including the right to be brought before the court within forty-eight hours of arrest, the right to habeas corpus, the right to a fair and public trial, the presumption of innocence, and the right to appeal upon conviction.

Torture, Cruel, Inhuman or Degrading Treatment or Punishment

Under international law, states must treat detainees humanely: torture and other cruel, inhuman or degrading treatment or punishment are forbidden. The prohibition of torture is a *jus cogens* norm of customary international law, binding on all nations. The Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment defines torture as any act on the part of a public official or by another with the instigation, acquiescence or consent of an official, “by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as . . . punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind.”²⁵² States must “undertake to prevent in any territory under its

²⁴⁶ ICCPR, art. 9.

²⁴⁷ See, the African Charter, arts.6-7; the Universal Declaration, arts. 9-11.

²⁴⁸ Commission Decision regarding Communication 21/89, *Organisation Mondiale Contre la Torture*, par. 28 (“The arrests and detentions of the Rwandan Government based on grounds of ethnic origin alone, in light of Article 2 in particular [which prohibits discrimination on any grounds] constitute arbitrary deprivation of the liberty of an individual. These acts are clear evidence of a violation of Article 6.”)

²⁴⁹ Ethiopian Constitution, art.19(1).

²⁵⁰ Ibid, art. 19(3).

²⁵¹ Ibid, art. 22.

²⁵² Convention against Torture, art. 1.

jurisdiction other acts of cruel, inhuman or degrading treatment or punishment.”²⁵³ The norm against torture and cruel, inhuman or degrading treatment is also found in the ICCPR,²⁵⁴ the African Charter,²⁵⁵ and the Universal Declaration,²⁵⁶ as well as in the Ethiopian and Eritrean constitutions.²⁵⁷

Apart from the prohibition of torture, there exists a positive obligation towards humane treatment of prisoners, as in article 10 of the ICCPR, requiring that “all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.” The African Commission on Human and Peoples’ Rights has found that conditions of detention characterized by “overcrowding and acts of beating and torture . . . [and] extremely poor quality food and denial of access to medical care” violate the African Charter.²⁵⁸

Conclusions

Human Rights Violations in Ethiopia’s Deportation Campaign

In carrying out its campaign to expel people of Eritrean origin with claims to Ethiopian citizenship, the Ethiopian Government violated both international and Ethiopian law. The fact that Ethiopia carried out its campaign while it was at war with Eritrea did not alter the illegal character of its actions. Similarly, Ethiopia’s actions in carrying out the expulsion campaign violated rights that are non-derogable under the Ethiopian Constitution, including the rights not to be discriminated against, not to be subject to torture or cruel, inhuman or degrading treatment or punishment, the right to a nationality, and violations of international standards prohibiting mass population transfers or deportations.

Due Process of Law

In contravention of international and Ethiopian law, the Ethiopian government failed to provide due process of the law to the deportees at any stage. Ethiopian authorities conducted the arrests, detention, and expulsions in a manner that violated Ethiopia’s commitments under international law and its own constitution. Ethiopian authorities did not produce judicial warrants at the time of arrest. For the majority of the expellees, no reasons were given for their arrests other than that the concerned person was “Eritrean,” had voted in the referendum regarding Eritrea’s independence, or was a member of an Eritrean community organization. Not only did the Ethiopian government select individuals for detention and expulsion based solely on their supposed Eritrean origin, but it denied the targeted individuals the opportunity to challenge their classification and resulting treatment.

The victims of the expulsion campaign had no meaningful opportunity to protect their interests through legal channels—or any form of an administrative review. The Ethiopian courts have not been a viable avenue²⁵⁹ for

²⁵³ Ibid, art. 16.

²⁵⁴ Article 7 of the ICCPR mandates that “[n]o one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.” This provision may not be derogated during public emergency, art. 4(2).

²⁵⁵ Article 5 of African Charter states that “[e]very individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status. All forms of exploitation and degradation of man particularly. . . cruel, inhuman or degrading punishment and treatment shall be prohibited.”

²⁵⁶ Article 5 of the Universal Declaration provides that “[n]o one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”

²⁵⁷ The Ethiopian Constitution’s article 18 expressly protects the right of all individuals “to protection against cruel, inhuman and degrading treatment or punishment.” Article 93 forbids derogation of this right during a state of emergency. The Eritrean Constitution’s article 16 states that “the dignity of all persons shall be inviolable,” and that “no person shall be subject to torture or to cruel, inhuman or degrading treatment or punishment.”

²⁵⁸ Commission Decision regarding Communication 68/92, *Chirwa v. Malawi*, para. 8.

²⁵⁹ The majority of expellees were taken into custody and expelled by Ethiopian authorities without ever coming into contact with the judicial system or having an opportunity to seek legal representation. Bringing a judicial challenge was not feasible for those who had been expelled because of lack of channels of communication with Eritrea as well as because of deep rooted problems in the Ethiopian judiciary, including the failure of other branches of government to respect its independence, the failure of police to routinely obey court orders, and the harassment and detention of some judges by political and executive officials.

deportees or their representatives to challenge their arrest, detention, and forcible expulsion; to defend their claims to Ethiopian nationality; to refute the allegation of being a threat to national security; or to seek compensation for deprivations of their property.²⁶⁰

Torture, Cruel, Inhuman and Degrading Treatment or Punishment

Some of Ethiopia's deportees were tortured or ill-treated in police lock-ups and detention camps prior to expulsion.²⁶¹ The majority of reported incidents involved severe beatings by Ethiopian police and military. Ethiopia's government was also responsible for other cruel, inhuman, and degrading treatment of the deportees by police, military, and by members of the local and national government and cadres of the ruling party.²⁶²

Separation of Families

Ethiopia's expulsion campaign has also led to widespread and continuing violations of international and domestic laws which protect the unity of the family.²⁶³ The expulsions carried out by the Ethiopian government forcibly separated many families. Frequently, men of Eritrean origin were expelled without their wives and children, leading to months or years of family separation. Families in which some members were deemed to be of Eritrean origin while others were considered Ethiopian were particularly hard hit. The government's expulsion of the "Eritrean" family members was declared to be permanent and the war made it impossible for the "Ethiopian" family members to travel to Eritrea to join their expelled kin.²⁶⁴

Property Rights

Despite its promises to the contrary, the Ethiopian government did not protect the property rights of the deportees. Indeed, the Ethiopian government's effort to have deportees designate powers of attorney while they were in custody demonstrated a profound indifference to the rule of law.

Ethiopia's expropriation of property belonging to the deportees without providing adequate notice, an opportunity to challenge the expropriation, or compensation also violated Ethiopia's obligations to provide due process and equal protection of the law to all.²⁶⁵ Deportees are not known to have received compensation for their property losses as required by law.

²⁶⁰For instance, according to Article 11(2) (b) of Proclamation No. 25/1996, it is within the sole jurisdiction of the Federal High Court to hear cases relating to citizenship. An institution dismissing an Eritrean should in principle have had the burden of proving that the individual was indeed Eritrean. However, it would appear that no employer or government institution had done that, although neither enjoys the power of determining nationality. *See*, Yonas Fesseha "What if Eritrean identity is denied?" *Reporter*, July 1998.

²⁶¹ *See* e.g., Torture Convention at art. 1, 2, 4, 12-14; ICCPR at art. 4(2), 7; African Charter at art 5; Universal Declaration at art. 5.

²⁶² *See* e.g., Torture Convention at art. 16; ICCPR at art. 4(2), 7; African Charter at art 5; Universal Declaration at art. 5; Ethiopian Constitution at art. 18, 93.

²⁶³ *See* e.g., ICCPR at art. 23(1); African Charter at art. 18; Union Inter Africaine des Droits de l'Homme, African Commission Decision regarding Communication 159/96, para. 16; Fourth Geneva Convention, art. 24; CRC, arts. 9(1) and (4) and 10(1); Ethiopian Constitution, arts. 34(3) and 36.

²⁶⁴ After the war began in 1998, telephone, mail, and other modes of communication and travel between Ethiopia and Eritrea were cut. This meant that expellees from Ethiopia who are in Eritrea have been unable to communicate directly with family in Ethiopia since then. For most expellees, their only means of communication with those still in Ethiopia has been indirectly via relatives, if any, in third countries.

²⁶⁵ Article 40(1) of the Ethiopian Constitution provides: "Every Ethiopian citizen has the right to ownership of private property. This right shall include the right to acquire, to use and to dispose of such property by means of sale or bequest or by other means of transfer subject to limitations prescribed by law in the public interest and in a manner compatible with the rights of other citizens."

While article 40(8) of the Constitution does empower the government to expropriate, in the public interest, private property, it requires that in such cases "the government shall pay compensation in advance commensurate to the value of the expropriated property."

Deportations and Ethiopian Nationality

Ethiopian citizens of Eritrean origin who were habitual residents of Ethiopia before and during the war with Eritrea, and who did not formally take up Eritrean citizenship *after* that state's independence, remained Ethiopian citizens after war broke out. The participation of some of these individuals in the referendum on Eritrea's independence required evidence of eligibility for Eritrean nationality in a future state—but was not then construed by Ethiopian authorities (or by participants) as a renunciation of Ethiopian nationality. It was not defined in these terms in Ethiopian law or regulations, and Ethiopian authorities did not announce procedures requiring citizens to re-certify or renounce their Ethiopian nationality. Nor could registration to vote in the referendum in itself constitute acquisition of Eritrean citizenship—as an independent Eritrea did not then exist. The failure to address the nationality issue was acknowledged in the 1996 agreement between Eritrea and Ethiopia: this recognized a need to provide an option for Ethiopian citizens of Eritrean origin to formally take up Eritrean nationality if that was their choice. The Ethiopian government's expulsion of close to 75,000 people of Eritrean origin as a consequence constituted a violation of international and Ethiopian law prohibitions against mass expulsions of nationals.

Under customary international law, deportations or mass forcible transfers are a crime against humanity when these individuals were Ethiopia's mass expulsion of thousands of its citizens appears to have fit these criteria. The latter presumption is supported by the systematic efforts to confiscate all Ethiopian documents by which deportees could subsequently contest claims they were not nationals. This was further substantiated by statements by top officials prior to the deportations referring to Eritrean Ethiopians collectively as potentially disloyal "citizens."²⁶⁶ Furthermore, in contravention of its obligations under the African Charter and the ICCPR, Ethiopia subjected the deportees to arbitrary exile and denied them their right to return to their country.²⁶⁷ Ethiopia's actions are also contrary to the Ethiopian Constitution which declares that "[a]ny Ethiopian national has the right to return to his country."²⁶⁸

Notwithstanding Ethiopia's contention that the deportees were not Ethiopian citizens, their expulsion as members of a group defined expressly by national origin was in itself clearly illegal. As a state party to the African Charter, Ethiopia is bound by article 12(5), which declares that "the mass expulsion of non-nationals shall be prohibited. Mass expulsion shall be that which is aimed at national, racial, ethnic or religious groups." Ethiopia is also prohibited from carrying-out mass expulsions under the ICCPR²⁶⁹ and under its own penal law.²⁷⁰

²⁶⁶For articulation of the customary international law prohibition against expelling nationals see, Nuremberg Charter, at Art. 6, Fourth Geneva Convention, at Art. 49; Control Council Law No.10, at Art II; Statute of the International Criminal Tribunal for the Former Yugoslavia, at Art. 5; Statute of the International Criminal Tribunal for Rwanda, at Art.3; Rome Statute for the International Criminal Court, at Art. 7.1(d)); American Convention, at Art. 22(5); European Convention, Protocol IV, at Art. 3.

²⁶⁷Article 12(2) of the African Charter provides that "[e]very individual shall have the right . . . to return to his country;and Article 12(4) of the ICCPR provides that "[n]o one shall be arbitrarily deprived of the right to enter his own country."

²⁶⁸Ethiopian Constitution, at Art. 32.

²⁶⁹Article 13 of the ICCPR provides that:

An alien lawfully in the territory of a State Party to the present Covenant may be expelled therefrom only in pursuance of a decision reached in accordance with law and shall, except where compelling reasons of national security otherwise require, be allowed to submit the reasons against his expulsion and to have his case reviewed by, and be represented for the purpose before, the competent authority or a person or persons especially designated by the competent authority."

Significantly, the U.N. Human Rights Committee has determined that "Article 13 would not be satisfied with laws or decisions providing for collective or mass expulsions." United Nations, Report of the Human Rights Committee, U.N. Doc. GAOR/4/40, Annex VI, par. 9-10 (1986).

²⁷⁰The Ethiopian Penal Code of 1957 bars "expulsion or forcible transfer of a population." Articles 281-288, 291 and 292 prohibit crimes against humanity. See Human Rights Watch/Africa, "Curtailed Rights."

Human Rights Violations in Eritrea

Ethiopians expelled from Eritrea told of harsh detention conditions and degrading treatment at the hands of Eritrean guards. Some returned Ethiopians reported being tortured or raped, and others expressed fears for relatives who remained behind in the internment sites, mostly young men of military age.²⁷¹

The reported arbitrary detention, beatings, and deportations violated Eritrea's constitutional guarantees and other national laws protecting basic human rights. Eritrea is a state party to the African Charter on Human and Peoples' Rights, which it ratified in June 1999, and to the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of the Child. As a successor state to Ethiopia, it was also bound to observe the ICCPR and other international instruments to which Ethiopia was party, as well as the Geneva Conventions, even before the government of independent Eritrea acceded to the conventions in July 2000. The Eritrean government repeatedly invoked international human rights and humanitarian law in its protestations against the treatment of Eritreans and people of Eritrean descent at the hand of the Ethiopian government.

Discrimination

The Eritrean Constitution provides for equality under the law in article 14, stating that "all persons are equal under the law," and that "no person may be discriminated against on account of race, ethnic origin, language, color, gender, religion, disability, age, political view, or social or social or economic status or any other improper factors." The treatment afforded residents of Ethiopian origin in Eritrea, particularly after the May 2000 military debacle, was discriminatory, landing thousands in internment camps on the basis of their national origin, and forcing many who escaped forcible expulsion to seek repatriation in the face of discrimination in access to employment, housing, and social services.

Due Process Guarantees

The Eritrean Constitution contains provisions guaranteeing basic human rights, including the right to life and liberty in its article 15 that provides "no person shall be deprived of liberty without due process of law." Article 17 of the constitution stipulates in sub-article 17(1) that "no person may be arrested or detained save pursuant to due process of law." It also provides extensive guarantees of due process of law during arrest or detention, including the right to be brought before the court within forty-eight hours of arrest and the right to habeas corpus. In practice, there was no access to judicial review of the legality of arrests and internment as enemy aliens in the course of the war, nor consideration by a court of appeals against deportation. The Eritrean Constitution guarantees the right to human dignity. Article 16 states that "the dignity of all persons shall be inviolable," and that "no person shall be subject to torture or to cruel, inhuman or degrading treatment or punishment."

Property Rights

Article 23 of the Eritrean Constitution provides for citizens' right to property, stating that "any citizen shall have the right any-where in Eritrea, to acquire and dispose of property individually or in association with others and to bequeath to his heirs or legatees." Guarantees are less clear in cases of non-citizens, although due process guarantees should apply to all. Some Ethiopians evicted from Assab in the immediate aftermath of the war complained about the confiscation of their property, namely stored merchandise. Maids and restaurant workers who said they were dismissed from their work in Asmara following the Ethiopian air raid on its airport in June 1998 also complained that their employers refused to pay back the savings that the workers had entrusted with them for safekeeping. These and similar claims must be investigated.

²⁷¹ Nita Bhalla, "Ethiopian refugees' atrocity tales," BBC Focus on Africa, July 7, 2000.

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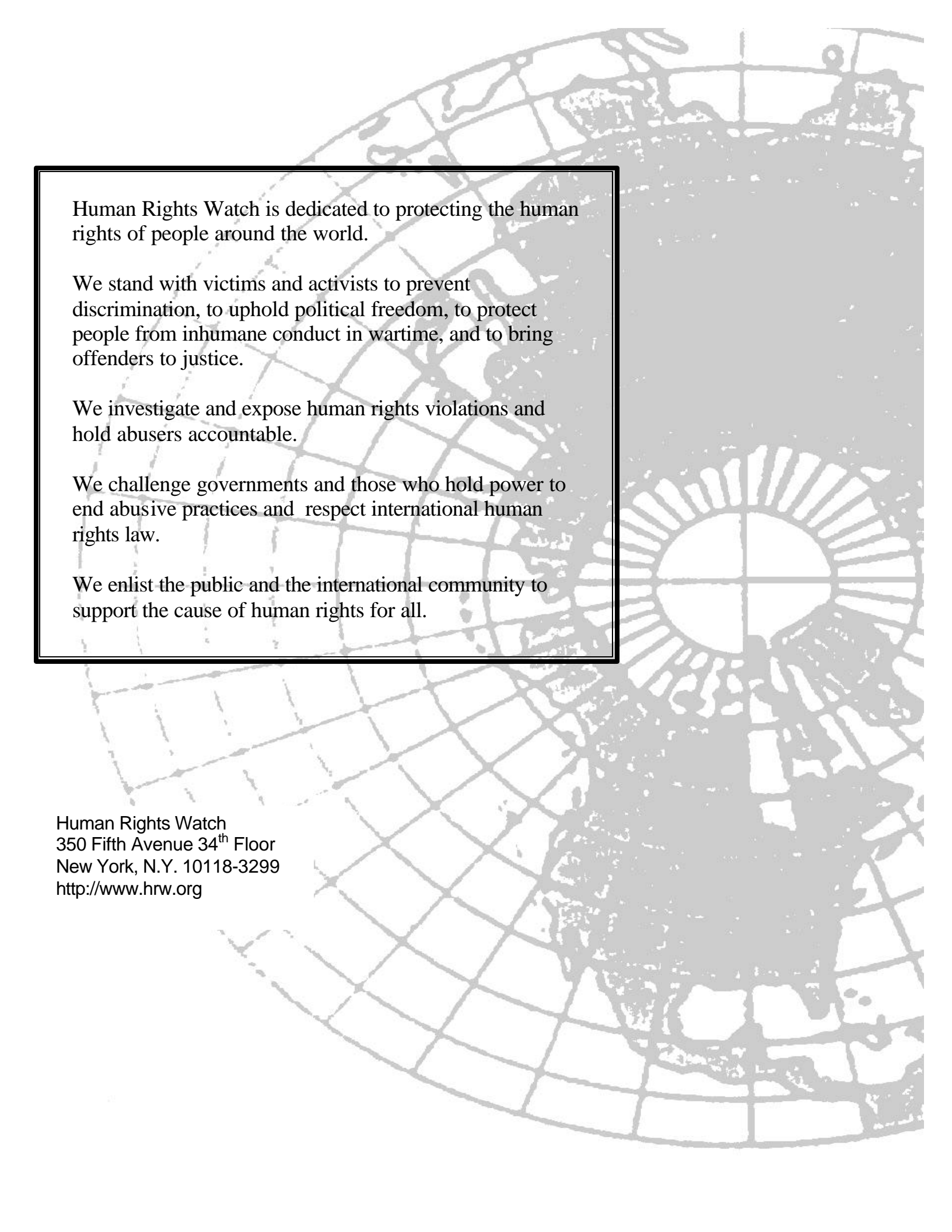
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