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The American University in Cairo

School of Global Affairs and Public Policy

**GETTING BEYOND POLITICS AND BAD BLOOD:
THE PROTECTION OF ERITREAN REFUGEES IN ETHIOPIA**

A Thesis Submitted to the

Department of Law

**in partial fulfillment of the requirements for the degree of
Master of Arts in International Human Rights Law**

By

Sarah Catherine Webster

May 2011

The American University in Cairo
School of Global Affairs and Public Policy

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DEDICATION

To all Eritrean refugees, be they in Addis Ababa, Cairo, Sinai, California, Washington DC, Israel, Yemen, or elsewhere. To those who have come into my life and enriched it, and those who I have yet to encounter: you are among the most beautiful, kind, strong, and talented people I have known. May the waiting and the struggle finally end.

The American University in Cairo
School of Global Affairs and Public Policy
Department of Law

GETTING BEYOND POLITICS AND BAD BLOOD: THE PROTECTION OF
ERITREAN REFUGEES IN ETHIOPIA

Sarah Catherine Webster

Supervised by Professor Gianluca Parolin

ABSTRACT

An estimated 1,000-2,000 Eritreans cross illegally into Ethiopia each month. The vast majority of these refugees are escaping mandatory military service. Others are members of persecuted religious minorities, journalists, and political dissidents. All are subject to the threat of arbitrary detention if they remain in Eritrea. Although Ethiopia is host to some 138,000 refugees, the protection issues faced by Eritrean refugees are unique and separate from those experienced by its other refugee populations. Threatened by both Eritrean state officials working within Ethiopia, as well as Ethiopian officials keen to maximize their political value, Eritrean refugees are forced to look to the Ethiopian state for protection from these threats. Due to the inherently political nature of refugee protection and the ongoing hostilities between Eritrean and Ethiopia, it is the author's position that the current refugee protection regime in Ethiopia is unsuitable and unable to meet the protection needs of the Eritrean refugee population. These needs, the extent to which they are being addressed by the Ethiopian government, UNHCR, and resettlement countries, and the challenges to effective protection of Eritrean refugees in Ethiopia will be the focus of the following thesis.

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ACRONYMS

ARRA	Administration for Refugee and Return Affairs
DICAC	Ethiopian Orthodox Church Development and Inter-Church Aid Commission
EDA	Eritrean Democratic Alliance
ELF	Eritrean Liberation Front
EPLF	Eritrean People's Liberation Front
EPRDF	Ethiopian People's Revolutionary Democratic Front
ICCPR	International Covenant on Civil and Political Rights
NISS	[Ethiopian] National Intelligence and Security Service
PFDJ	People's Front for Democracy and Justice
TPLF	Tigrayan People's Liberation Front
UNHCR	United Nations High Commissioner for Refugee

I. INTRODUCTION

In the past, Eritreans were our brothers and friends. Eritrea was our asylum area where we went in times of hardships, and vice versa. We were also tied to Eritrea through bonds of marriage. Today, however, they have invaded our land and we have now come to know that the Eritreans are really our mortal foes and enemies. (Tigrayan¹ peasant, February 1999)²

Eritreans and Ethiopians: are they “brothers and sisters” or mortal enemies? Are their countries at war or at peace? Both hard facts and personal accounts are riddled with contradictions and strong emotions. As the years pass since the Ethio-Eritrean war,³ the time when people could cross freely from Ethiopia to Eritrea, and Eritreans were able to pick up a phone and call loved ones in Ethiopia becomes a more and more distant memory. For the newest conscripts to Eritrea’s military, their knowledge of Ethiopia and its people is limited to the current government’s hateful anti-Ethiopia propaganda and second-hand accounts of the two violent wars fought with Eritrea’s southern neighbor.

It is with this information that Eritreans flee to Ethiopia, seeking refuge in the “enemy state”. What they encounter for themselves in Ethiopia, in their quest for protection, is a relationship which is far more dynamic than that which they grew up with, yet still heavily influenced by the painful and inflexible condemnations of Ethiopia which continue to predominate in modern-day Eritrea. Eritreans testify that they are alternately welcomed and scorned by Ethiopians, fiercely protected but sometimes ignored when they need help most, empathized with and patronized simultaneously, included and yet excluded. And so it seems that in the host country-refugee dynamic, Ethiopians and Eritreans are the truest of brothers, with all the in-fighting, rivalry, and

¹ The term “Tigrayan” refers to the Tigrinya-speaking population which inhabits Ethiopia’s northernmost Tigray province. Tigrayan Ethiopians and Eritreans of Tigrinya ethnicity are culturally very similar and arguably ethnically identical. Although the Tigrinya language is typically associated with Eritrea, there are an estimated 4 million Tigrinya-speakers in Ethiopia, compared to Eritrea’s 2 million. See Robert Lundquist and Orville Boyd Jenkins, *The Tigrinya (Tigray-Tigrinya) People*, Jun. 30, 2010, <http://orvillejenkins.com/profiles/tigrinya.html>.

² Kjetil Tronvoll, *War & the Politics of Identity in Ethiopia: Making Enemies & Allies in the Horn of Africa* 61 (2009).

³ See C(4) of the present chapter for more information on this conflict, also known as the “Badme border dispute.”

sometimes cruel behavior towards the other, underscored by an immeasurable closeness and the awareness of a tie that cannot be fully severed.

A. PURPOSE AND SIGNIFICANCE OF THE STUDY

Each year millions of people are forced to flee their home country in search of protection. A fortunate minority of these are able to reach countries of asylum which offer the durable solution of full integration and eventual naturalization.⁴ The majority of refugees are forced to seek asylum in neighboring countries which may or may not provide temporary safety, and rarely offer any lasting sense of security or hope of citizenship.

In the case of Eritrean refugees, tight restrictions on the issue of passports and exit visas force most to flee Eritrea illegally, either west to Sudan or south to Ethiopia.⁵ For some the choice is simply about proximity to their place of residence while others take into consideration information acquired from those who escaped before them. Crossing the Sudanese border illegally is considered a serious offense, if caught, is punishable by imprisonment in Eritrea, but Sudan offers ample opportunities for onward travel--namely to Europe via Libya and Israel via Egypt--as well as easy acquisition of forged travel documents. However, the cooperation of Sudanese state authorities with Eritrean security forces has resulted in the abduction and illegal deportation of scores of Eritrean refugees in recent years,⁶ meaning that Sudan is no longer the safe haven it used to be for Eritrean dissidents.⁷

⁴ “The main goal of a refugee protection regime oriented towards durable solutions is effectively to find a way to bring refugee status to an end – whether by means of return to the country of origin, resettlement elsewhere, or naturalization in the host country.” James C. Hathaway, *The Rights of Refugees under International Law* 913 (2005).

⁵ See Part I(C) for a detailed discussion of Eritrean regulations on the issuance of passports and exit visas.

⁶ See Tesfa-alem Tekle, *Eritrean opposition condemns refugees’ deportation by Sudan*, Sudan Tribune, Sept. 24, 2008, available at <http://www.sudantribune.com/Eritrean-opposition-condemns,28730>; *Gedab News, Eritrean Refugees: Victimized by Sudan, Neglected by UNHCR*, Jan. 3, 2008, <http://www.awate.com/portal/content/view/4709/19/>.

⁷ Sudan was for many years an important staging ground for Eritrean Liberation Front (ELF) operations, dating back to the organization’s creation in the 1960s. See David Pool, *infra* note * at 47-57. However, following the reestablishment of diplomatic ties between Sudan and Eritrea in 2006, the Sudanese government banned all Eritrean opposition activity within its borders. Tesfa-alem Tekle, *Eritrean*

In contrast, Ethiopia holds the promise of zero cooperation with Eritrean authorities. The Ethiopian border is highly militarized, and those who cross it face a shoot-to-kill policy by Eritrean soldiers which is more than an empty threat.⁸ Those who reach Ethiopia, however, can rest assured that they will not be refouled⁹ to Eritrea.¹⁰ This consideration alone leads many, particularly those with any sort of profile which might cause the Eritrean government to target them above others, to opt for Ethiopia as their country of asylum.

After crossing the border, many Eritrean refugees recognize something that the international refugee regime also needs reminding of: refugee protection does not begin and end at non-refoulement. Although it is the persecution experienced in the country of origin which makes one a refugee, potential persecution in the country of asylum is equally important in terms of protection needs.

Ethiopia is host to some 138,000 refugees of various nationalities, residing in camps and urban areas (legally and illegally) throughout the country.¹¹ The protection challenges faced by Eritrean refugees, however, are unique and separate from those experienced by other refugee populations. The primary factors responsible for this additional set of protection concerns are the political situation between Ethiopia and

opposition groups call on Sudan to life imposed ban, Sudan Tribune, June 7, 2008, available at <http://www.sudantribune.com/Eritrean-opposition-groups-call-on,27455>.

⁸ “Four male teenagers were caught and killed by Eritrean soldiers after their attempt to cross the border to Ethiopia illegally. This was reported by the Eritrean People's Party (EPP) on 11 February 2009.” War Resisters' International, *Eritrea: teenagers trying to flee the country killed by Eritrean military* (Mar. 2, 2009), <http://www.wri-irg.org/node/6785>.

⁹ To “*refouled*” is to “expel or return a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership in a particular social group or political opinion.” UN General Assembly, *Convention Relating to the Status of Refugees* art. 33, Jul. 28, 1951, United Nations, Treaty Series, vol. 189, available at: <http://www.unhcr.org/refworld/docid/3be01b964.html>.

¹⁰ However, persecution by the Eritrean government does not end with the individual: “If the government identifies someone who has successfully crossed into Ethiopia or Sudan, it subjects their family members to large fines and sometimes imprisonment.” Human Rights Watch, *Libya: Don't Send Eritreans Back to Risk of Torture* (Jan. 15, 2010), available at: <http://www.unhcr.org/refworld/docid/4d33e63c2.html>.

¹¹ Lisa Schlein, *Ethiopia Gives Freedom of Movement to Eritrean Refugees*, Voice of America News, Aug. 12, 2010, <http://www.voanews.com/english/news/Ethiopia-Gives-Freedom-of-Movement-to-Eritrean-Refugees-100537179.html>. UNHCR cites a January 2010 figure of 124,344. UN High Commissioner for Refugees, 2011 Country Operations Profile – Ethiopia, <http://www.unhcr.org/cgi-bin/texis/vtx/page?page=49e483986>. ARRA's website provides a December 2009 figure of 133,485. Administration of Refugee and Returnee Affairs, *Refugee Statistics*, Dec. 31, 2009, available at: <http://www.arra.org.et/index.php/refugee-statistics>.

Eritrea and the Eritrean regime's approach to citizens who travel outside Eritrea illegally. The ramifications of these two elements on the lives of Eritrean refugees can be seen most vividly in the Ethiopian asylum context. These protection concerns, the extent to which they are being addressed by the Ethiopian government, the United Nations High Commissioner for Refugees (UNHCR), and resettlement countries, and the challenges to effective protection of Eritrean refugees in Ethiopia will be the focus of the following thesis.¹²

Through this examination, the finding of the study is clear: given the political nature of refugee protection and the ongoing hostilities between Eritrea and Ethiopia, the current refugee protection regime in place in Ethiopia is *unsuitable and unable* to meet the protection needs of the Eritrean refugee population.¹³

B. AIMS, METHODOLOGY, AND LIMITS OF RESEARCH

My research conducted in Addis Ababa over a 3-week period initially began as an assessment of the local integration of Eritrean refugees in Ethiopia—taking the urban

¹² What constitutes “refugee protection” can vary widely according to the source. In general, there are two main definitions. According to the “traditional” definition, protection includes access to safety, fair and individual registration procedures, and adherence to the principle of non-refoulement. However, in the past decade, a broader definition has been put forward under the term “effective protection.” This definition takes into account access to durable solutions, “adequate and dignified means of subsistence”, and family unity. The scope of this paper is the more limited definition which deals specifically with threats to personal safety. This is not to discount the validity of the broader definition, but an attempt to focus on the core tenets of protection which are agreed upon by states, international organizations, and refugee advocates alike.

For more on the concept of “effective protection” see Catherine Phuong, *The concept of ‘effective protection’ in the context of irregular secondary movements and protection in the regions of origin*, (Global Migration Perspectives no. 26, April 2005), available at: <http://www.gcim.org/attachements/GMP%20No%2026.pdf>; UN High Commissioner for Refugees, *Statement by Ms. Erika Feller, Director, Department of International Protection, UNHCR, at the Fifty-fifth Session of the Executive Committee of the High Commissioner's Programme*, Oct. 7, 2004, available at: <http://www.unhcr.org/refworld/docid/429d6f8e4.html>.

See also Loren B. Landau & Marguerite Duponchel, *Laws, Policies, or Social Position? Capabilities and the Determinants of Effective Protection in Four African Cities*, 24(1) J. Refugee Studies 1 (2011).

¹³ Although the specificity of the Eritrean situation in Ethiopia is one of the main premises of this argument, it is not to say that the protection gaps highlighted are exclusive to this population, nor that the author's suggestions are not applicable to other protection situations. Throughout the global South, each year there are countless small-scale or regional conflicts which have the potential to produce similar circumstances when people flee violence by crossing into neighboring countries. Therefore, although this article seeks to emphasize the uniqueness of Eritrean protection needs in Ethiopia, “unique” can and does repeat itself--sometimes over and over until a change is made.

environment of its capital city as a case study. In late 2010, changes¹⁴ in Ethiopia's policy towards the Eritrean refugee population were highly publicized and praised by international organizations, non-governmental organizations, as well as members of the Eritrean diaspora.¹⁵ These developments, coupled with several factors contributing to a suitable environment for integration, such as shared ethnicity, culture, and language, raised the question of whether Eritrean refugees were on the road to *de facto* local integration and if full integration could possibly be achieved in the future.¹⁶

I conducted confidential informal interviews with 15 Eritrean refugees over a 3-week period in January and February 2011. Participants were selected using the "snowball method."¹⁷ Keeping in mind the various indicators of local integration, I used open-ended questions to discuss the topic of local integration and encouraged participants to feel free to introduce other significant problems they experienced as refugees in Addis Ababa.

Approximately half-way through the course of these interviews, I began to notice that the problems expressed by participants pointed to a greater problem—one whose lack of resolution precluded the possibility of local integration, and had more serious implications for their personal safety. It is to this issue, the specific security problems for Eritreans refugees under the protection of the Ethiopian government, that my focus shifted. The result is the following descriptive analysis of the effectiveness of Ethiopia's

¹⁴ See *infra* note 127.

¹⁵ See for example Tesfa-Alem Tekle, *UNHCR lauds Ethiopia's efforts in respecting refugees' rights*, Sudan Tribune, Nov. 21, 2010, available at: www.sudantribune.com/UNHCR-lauds-Ethiopia-s-efforts-in-36997; UN News Centre, *UN Welcomes Ethiopian policy to allow Eritrean refugees to live outside camps*, Aug. 10, 2010, www.un.org/apps/news/story/asp?NewsID=355768Cr=ethiopia&Cr1.

¹⁶ *But cf.* Cheryl Benard, *Politics and the Refugee Experience*, 101 Pol. Sci. Q. 617, 622 (1986) (arguing that tensions and resentment could be higher between host communities and refugee communities that have some affinity to the host state, as they are perceived to pose greater competition for resources than those refugees which are completely alien).

¹⁷ Also known as "respondent-driven sampling". As described by Salganik and Heckathorn, "[t]he basic idea behind these methods is that respondents are selected not from a sampling frame but from the friendship network of existing members of the sample. The sampling process begins when the researchers select a small number of seeds who are the first people to participate in the study. These seeds then recruit others to participate in the study. This process of existing sample members recruiting future sample members continues until the desired sample size is reached." See generally Matthew J. Salganik & D.D. Heckathorn, *Sampling and Estimation in Hidden Populations Using Respondent-Driven Sampling*, 34 Soc. Methodology 193 (2004).

current refugee protection infrastructure as it pertains to Eritreans, relying heavily upon the voiced concerns of participants.¹⁸

Given the original focus of my research, I chose only to interview Eritrean refugees living or temporarily residing in Addis Ababa at the time the research was conducted. In theory, those individuals with serious protection or security concerns should be in Addis Ababa legally as “urban refugees”. However, in practice it is safe to assume that there are also individuals with valid protection concerns who were not able to obtain urban refugee status,¹⁹ and are therefore required to remain in the state-managed refugee camps. As a result, I was unable to include such individuals in the study.

Another significant variable was the number of interviews conducted with each participant. Single interviews of one to two hours each were conducted with most participants and I met with five of the participants more than once. This greatly affected the level of trust established, which proved to be particularly important given the sensitivity of the study’s subject matter. In addition, the language of the interview was an important factor. 12 of the participants were able to conduct the interviews in English, which not only made communication easier, but the interview environment also felt more secure. For the remaining three participants, friends of the participants served as interpreters. In this way, the individuals did not have to share their views and information with an unknown person. Even so, these interviews were generally less successful than those conducted in English.

Field research in the form of individual, in-person interviews was essential to the genesis of this study as well as its progression. The overall situation and protection environment of refugees in Ethiopia is a blind spot in the increasingly rich body of literature and research on refugees. One reason for this dearth of research is the lack of refugee advocacy in Ethiopia. The absence of a middleman or mouthpiece for refugees

¹⁸ Although my own research veered away from the assessment of local integration possibilities, based on my interviews I would argue that local integration is indeed possible and could be a solution for Eritrean refugees in Ethiopia. I would suggest further research and advocacy for integration if one of two conditions is satisfied: (1) the normalization of Ethio-Eritrean relations so that Eritrean refugees no longer hold a political value for the Ethiopian government, or (2) a restructuring of refugee protection in Ethiopia so as to shift full protection responsibility to either UNHCR or a neutral agency staffed primarily by non-Ethiopians. For more on this, see Part VIII of the current paper.

¹⁹ In addition to the right to reside legally in Addis Ababa, urban refugees are entitled to a few additional benefits. See Part I(E) of the present paper.

to dialogue with a neutral body prevents individual refugees from fully disclosing their problems, concerns, and the more sensitive details of their past and current situations. The individual, confidential interview environment permitted participants to express these issues with less concern as to repercussions for their safety, resettlement prospects, or social isolation. The urban setting allowed participants to choose from a range of interview settings, all far removed from the government-run camp setting. In addition to protection concerns, many participants disclosed parts of their stories that they had not shared with either the Administration for Refugee and Returnee Affairs (ARRA) or UNHCR.

Protection issues in countries of asylum are a sensitive issue. In the case of Eritrean refugees in Ethiopia, discussion of their protection is more sensitized since it is an Ethiopian state agency charged with ensuring this protection. Added to this sensitivity is the general “open-wound effect” of Ethio-Eritrean relations and the critical findings of this research, implicating the Ethiopian government in illegal and unethical protection practices. The fact that participants raised these controversial and risky issues of their own volition speaks to their significant effect on the daily lives of Eritrean refugees. As such, the interviews included in this research provide fundamental insight to a systemic problem of refugee protection in Ethiopia which has to date not been addressed in either scholarly or policy literature.

Part I provides a brief overview of the shared history of Ethiopia and Eritrea, in this case the respective host and sending countries. This history is important not only in understanding the current dynamic between Eritrean refugees and their host community and government, but also the refugees’ motives for flight and the complex and diverse ways in which they view Ethiopia’s provision of protection. This history is followed by relevant information about the current human rights environment in Eritrea and the asylum system in Ethiopia. Part II discusses contributing factors to the protection environment of Eritrean refugees within the Ethiopian context. Part III addresses the political nature of refugee protection and its conflict with the humanitarian aim of protection. Part IV identifies the protection successes of the Ethiopian asylum system in the case of Eritrean refugees, while Part V explores the specific protection concerns of

Eritrean refugees. Part VI describes the methods of self-protection that Eritrean refugees engage in, in recognition of the substantial protection gaps they face in Ethiopia. Part VII analyzes the current protection structure in Ethiopia and offers suggestions for improvements. Part VIII consists of the conclusion, followed by several useful appendices and the initial questionnaire used to guide interviews.

C. HISTORICAL BACKGROUND

The shared history of Eritrea and Ethiopia is essential in understanding the current state of relations between the two governments and their respective citizens, which are not necessarily congruent. Despite the hateful rhetoric of the countries' two leaders, they have not always been at odds and even have an--albeit brief--history of peaceful cooperation and support.

1. The Italian years: 1890-1941

Whereas Ethiopia prides itself on being the only African nation never to have been colonized, one of the defining aspects of modern Eritrea is its period of Italian colonization, spanning from 1890 to 1941.²⁰ It was the Italian colonizers who named the territory Eritrea, and its inhabitants Eritreans.²¹ Then Ethiopian ruler, Emperor Menelik II, had little interest in making claims to Eritrea at the time, and even endorsed Italian control of Eritrea in a peace agreement following an Ethiopian defeat of the Italians at Adwa in 1896.²²

The years of Italian colonization were characterized by racial segregation and abuse, the building of mass infrastructure, and the recruitment of Eritreans for Italian wars being fought in Libya and Somalia.²³ It was during this period that seeds were planted for the formation of the Eritrean national identity.²⁴ As a result of Italian policies

²⁰ Tom Killion, *Historical Dictionary of Eritrea* 12-14 (1998). Ethiopia was under Italian occupation briefly from 1935 to 1941.

²¹ Richard M. Juang, *Africa and the Americas: culture, politics, and history* 424 (2008).

²² Killion, *supra* note 20 at 12-13.

²³ Killion, *supra* note 20 at 13. See also Michela Wrong, *I Didn't Do it for You* (2005).

²⁴ Roy Pateman, *Eritrea: Even the Stones are Burning* 8 (1990).

which have been likened to apartheid, the first Eritrean nationalist party was formed in 1941. *Mahaber Feqri Hager*'s principal aim was the achievement of self-determination for the Eritrean people.²⁵

The British occupation of Asmara in 1941 spelt the end of Italian control.²⁶ Many Eritreans believed that the end of Italian rule would usher in the beginning of self-rule, a belief supported by British distribution of brochures confirming their intention to support self-government.²⁷ However, after the defeat of the Italians, little except the nationality of its colonizers actually changed in the day-to-day management of Eritrea.

2. Federation with Ethiopia

The United Nations (UN) assumed the role of determining the future of the former Italian colony.²⁸ An investigatory commission traveled to Eritrea, attempting to ascertain the preference of the Eritrean population. The finding of the commission concluded that the population was divided between three positions: a) support for union with Ethiopia, b) the formation of an enlarged Eritrea which would include the Ethiopian Tigray province, and c) independence for Eritrea---not including Tigray.²⁹ In the end the UN decided upon a “compromise solution”, the federation of Ethiopia and Eritrea with full powers of autonomy for both nations.

However, the Ethiopian government soon began to take actions which revealed its true intentions for Eritrean autonomy. These included the elimination of the Eritrean flag, the replacement of the national languages of Tigrinya and Arabic with Amharic, the official change of the title of the Eritrean government to the Eritrean “administration”, as

²⁵ Killion, *supra* note 20.

²⁶ Pateman, *supra* note 24 at 59.

²⁷ Pateman, *supra* note 24 at 59 (citing Getahn Dilebo, *Historical Origins and Development of the Eritrean Problem 1889-1962*, in 7(3) *A Current Bibliography on African Affairs* 237 (1974)).

²⁸ As a result of World War II, Italy's territories in Africa were ceded to the so-called “Four Powers”: France, the United States, the Soviet Union, and Great Britain. Pursuant to the 1947 Treaty of Peace, the Four Powers were responsible for disposing of these territories—including Eritrea—“in light of the wishes and welfare of the inhabitants of the territories, in the interests of peace and security, and account was to be taken of views of other governments which for various reasons had interests in these areas.” When the Four Powers Commission arrived at four different solutions for the issue of Eritrea, the task of determining Eritrea's future status was referred to the United Nations General Assembly. A. Arthur Schiller, *Eritrea: Constitution and Federation with Ethiopia*, 2(3) *Am. J. Comp. L.* 375, 375 (1953).

²⁹ Ruth Iyob, *The Eritrean Struggle for Independence: Domination, resistance and nationalism 1941-1993* 62-3 (1995).

well as the manipulation of the federation agreement in order to control the Eritrean economy.³⁰ All pretenses at federation ended in 1962 when Emperor Haile Selassie dismissed the Eritrean parliament and declared Eritrea the “fourteenth province” of Ethiopia.³¹ When news emerged of Ethiopia’s annexation of Eritrea and violation of the federation agreement, the response from the international community was a resounding silence.³² This lack of reaction caused a deep and lasting impression in the Eritrean psyche, which is reflected today in the mantra of the ruling People’s Front for Democracy and Justice (PFDJ): self-reliance.

3. “*The Struggle*”³³

Ethiopia’s annexation of Eritrea ignited Africa’s longest war, a 30-year struggle for Eritrean independence in which an estimated 150,000 Eritreans were killed.³⁴ At the time, Ethiopia was under the rule of the military *Derg* regime, led by the notorious Mengistu Haile Mariam—known throughout both Ethiopia and Eritrea for his brutal rule. It was finally the cooperation of the Eritrean People’s Liberation Front (EPLF)—led by one of its fighters, Isaias Afwerki—and its Tigrayan³⁵ neighbors (out of which would eventually emerge Ethiopia’s ruling Tigrayan People’s Liberation Front (TPLF)) which enabled the overthrow of the *Derg* regime and the declaration of Eritrean independence in 1991.³⁶

In 1991 the victorious EPLF formed a transitional government, headed by Isaias Afwerki. In 1993, a referendum was held to determine the fate of the Eritrean state—the result was strongly in favor of independence and Afwerki became the first Eritrean

³⁰Iyob, *supra* note 29 at 89. For a more detailed description of measures taken, see Pateman, *supra* note 24 at 16-17.

³¹Killion, *supra* note 20 at 17; *US Department of State, Background Note: Eritrea*, Mar. 9, 2011, available at: <http://www.state.gov/r/pa/ei/bgn/2854.htm>.

³²Some view the lack of reaction as support for Ethiopia’s annexation of Eritrea. See Iyob, *supra* note 29 at 5.

³³The Eritrean war for independence is often commonly referred to as “the Struggle”. This term is often attributed to Roy Pateman (*supra* note 24), but was also the title of the 1988 *The Long Struggle of Eritrea for independence and constructive peace*. Lionel Cliffe & Basil Davidson, *The Long Struggle of Eritrea for independence and constructive peace* (1988).

³⁴Robert Caputo, *Eritrea*, National Geographic 85 (Feb. 1996).

³⁵See *supra* note 1.

³⁶For a discussion of EPLF-TPLF cooperation, see David Pool, *From Guerrillas to Government: The Eritrean People’s Liberation Front* 147-50, 155-7 (2001).

president.³⁷ In her 2005 book, *I Didn't Do it for You*, author Michela Wrong describes the following period as a heady time of nation-building, idealism and pride in the Eritrean achievement of independence.³⁸ The new Eritrean government headed by the PFDJ³⁹ didn't have much time to revel in their newly-won independence, faced as it was by a number of important tasks and few resources with which to tackle them.

For the first two years, between *de facto* independence and the conclusion of the referendum process, Eritrea functioned as a state without many of the formal attributes of statehood, symbolic of which was the continued use of the birr, the Ethiopian currency. The economy had been devastated by the prolonged war, there were hundreds of thousands of refugees and displaced persons, tens of thousands of orphans and disabled. There was an extremely limited statistical base on which to formulate an economic programme of reconstruction.⁴⁰

Among the tasks at hand was the drafting of a national constitution. Eritrea's first constitution was finally completed and ratified in 1997, but inexplicably was not implemented at the time (and to date *has not* been implemented), a fact that many in hindsight indicate as the first sign of the authoritarian rule to come.⁴¹

4. *An end to cooperation: The 1998 Badme border dispute*

Eritrea's brief period of peace ended in 1998 when an unexpected conflict with Ethiopia erupted over the border town of Badme.⁴² This spelled the end to the harmonious and mutually beneficial relations that Afwerki and Ethiopian Prime Minister

³⁷ 98.5% of registered voters participated in the referendum, with a final result of 99.8% in favor of independence from Ethiopia. David Pool, *From Guerrillas to Government: The Eritrean People's Liberation Front* 162 (2001).

³⁸ Wrong, *supra* note 23 at 10-19.

³⁹ The EPLF renamed itself the People's Front for Democracy and Justice (PFDJ) at the third EPLF congress in 1994.

⁴⁰ Pool, *supra* note 36 at 161.

⁴¹ Kjetil Tronvoll, *The Lasting Struggle for Freedom in Eritrea: Human Rights and Political Development 1991-2009* 11, Oslo Center for Peace and Human Rights (2009), available at: http://www.oslocenter.no/index.php?option=com_content&task=view&id=215&Itemid=53.

⁴² For a discussion of the possible "root causes" of the Eritrean-Ethiopian war, see John Prendergast, *U.S. Leadership in Resolving African Conflict: the Case of Ethiopia-Eritrea*, U.S. Institute of Peace (Sept. 7, 2001), available at: <http://www.usip.org/files/resources/sr74.pdf>. (It is worth noting the decidedly optimistic tone of the author, as well as the date of publication which is shortly before the September 2001 abolition of free press in Eritrea and serious crackdown on dissent within the government.)

Meles Zenawi enjoyed since the overthrow of the Derg regime. The Badme border conflict grew into a war that surprised both parties and the international community in its ferocity, particularly in light of Badme's minimal significance beyond symbolic value.⁴³ A ceasefire was brokered in 2000 and a UN Border Commission produced a verdict outlining a preliminary delimitation of the border, requiring some minor adjustments before implementation by the two parties.⁴⁴ The Commission's ruling was accepted by Eritrea but rejected by Ethiopia.⁴⁵ Ethiopia later recanted this rejection in 2004 and accepted the majority of the border commission's findings. But by then Eritrea had lost all interest in engaging with Ethiopia, who had become National Enemy No. 1.⁴⁶

This sentiment was not held only by both governments but by many Eritrean and Ethiopian citizens who were left harboring bad feelings towards their neighbors across the border. As a result of the complete militarization of the Eritrean population in response to the outbreak of the border war, most Eritrean families experienced at least one death at the hand of Ethiopian troops.⁴⁷ In addition, the Ethiopian government conducted mass deportations of persons of Eritrean origin living in Ethiopia to Eritrea.⁴⁸ Many were inter-married with Ethiopians and had never been to Eritrea before, or were children of mixed Eritrean-Ethiopian couples, and thus Ethiopian citizens by birth.⁴⁹ The sudden manner in which the deportations were performed also meant that deported individuals did not have time to dispose of their assets, and effectively lost their life

⁴³ Guled Ismail, *American Poicy[sic] in the Horn of Africa: Fairness not Fatwas*, Sept. 16, 2007, Kili5 Online, available at: http://www.kilil5.com/news/12388_american-poicy-in-the-horn-of-af.

⁴⁴ For the Eritrea-Ethiopia Boundary Commission's full decision, see Permanent Court of Arbitration, Eritrea-Ethiopia Boundary Commission, available at: http://www.pca-cpa.org/showpage.asp?pag_id=1150.

⁴⁵ See International Crisis Group, *Eritrea: The Siege State* (Sept. 21, 2010), available at: <http://www.crisisgroup.org/en/regions/africa/horn-of-africa/ethiopia-eritrea/163-eritrea-the-siege-state.aspx>.

⁴⁶ Dan Connell, *Redeeming the failed promise of democracy in Eritrea*, 46(4) *Race & Class* 75, 68–89 (2005). Since its independence, Eritrea has also fought wars with neighboring Djibouti and Yemen.

⁴⁷ In 2001, on the occasion of Martyrs' Day, President Afwerki announced a death toll of 19,000 Eritreans for the 1998-2000 border conflict. <http://news.bbc.co.uk/2/hi/africa/1398446.stm>.

⁴⁸ Ethiopians living in Eritrea at the time also were allegedly compelled to leave by the treatment of the Eritrean government and population during the war. See *Interights v. Ethiopia*, Comm. 233/99, 16th ACHPR AAR Annex VII (2002-2003).

⁴⁹ See Human Rights Watch, *The Horn of Africa War: Mass Expulsions and the Nationality Issue*, Jan. 30, 2003, A1503, available at: <http://www.unhcr.org/refworld/docid/3f4f59523.html>.

savings.⁵⁰ Deportees who possessed passports found them stamped by Ethiopian officials, “expelled, never to return”.⁵¹

5. *The PFDJ’s formula for control: fear, militarization, and isolation*

Those deported to Eritrea in 1998 never knew the “Eritrea that could have been”, the so-called “hope of Africa”.⁵² The shaky peace of the 2000 Algiers Peace Agreement brought a firmer grip by Afwerki and the PFDJ. In 2001, a group of high-level ministers spoke out against Afwerki and his handling of the recent war.⁵³ Most of these dissident ministers (who came to be known as the G-15) were imprisoned the following year and remain so to this day.⁵⁴

Eritrean citizens were surprised to find that they were not demobilized following the ceasefire. Instead, the PFDJ chose to continue the institution of National Service, which soon showed itself to be a sort of indefinite indentured servitude.⁵⁵ Many Eritrean citizens, both men and women, serve for year after year without any chance of demobilization.⁵⁶ Those who are demobilized, can be recalled to National Service at any

⁵⁰ Immigration and Refugee Board of Canada, *Ethiopia: Arrests of Eritrean residents (citizens of Ethiopia) in Addis Ababa in 1998 and confiscation of their assets and properties in May 1998* (Mar. 1, 1999), ETH31442.E, available at: <http://www.unhcr.org/refworld/docid/3ae6ab4570.html>.

⁵¹ Press Release, *High Commissioner for Human Rights, High Commissioner for Human Rights Expresses Deep Concern at Continuing Expulsion of Eritrean Nationals from Ethiopia*, U.N. Doc. HR/98/44 (Jul. 1, 1998).

⁵² Peter Worthington, *Menace of Foreign Aid: Effective relief needed for poverty-stricken countries*, Toronto Sun, Dec. 28, 1998, available at: http://www.qsl.net/eritrea/eritrea_2.html.

⁵³ See Dan Connell, *Conversations with Eritrean Political Prisoners* (2006).

⁵⁴ Human Rights Watch, *Eritrea* (2005), available at: <http://www.hrw.org/en/world-report-2005/eritrea>.

⁵⁵ National Service officially consists of 6 months training and 12 months active military service.

According to law, the upper age limit for conscription is 40. However various sources report that in practice men up to the age of 50 are subject to conscription. Conscientious objection is not recognized. *Proclamation on National Service No. 82/1995* [Eritrea], Article 8, Article 13(2), Oct. 23, 1995, available at: <http://www.unhcr.org/refworld/docid/3dd8d3af4.html>. There have also been reports of widespread underage conscription: “[I]n 2007, the Eritrean Government forcefully enlisted 3510 underage conscripts, made up of 1911 male underage conscripts and 1599 female underage conscripts.” Daniel R. Mekonnen & Mirjam van Reisen, *Acknowledging International Social Responsibility: the need for a revised EU strategy on development cooperation in Eritrea*, Dec. 6, 2010, available at: http://www.arkokabay.com/news/index.php?option=com_content&view=article&id=289:acknowledging-international-social-responsibility-&catid=46:documents&Itemid=101#_ftn14.

⁵⁶ According to Treiber, “Since 2004 only a small group of educated women, reaching the age of twenty-seven, and men between thirty-five and forty, have been officially demobilized. To my knowledge, however, the men have not yet been allowed to leave their office assignments and earn a regular salary instead of their monthly *warsay* pay of 500 nakfa, or their prewar salary in the case of demobilization, which is usually around 1,000 nakfa.” Magnus Treiber, *Trapped in Adolescence: The Postwar Urban*

time. While in National Service, conscripts are subject to frequent punishment amounting to torture, food and water deprivation, and non-payment of wages.⁵⁷ The proffered justification for this is the lack of real resolution in relations with Ethiopia and the continued threat of aggression and invasion at any time.

Relations between Ethiopia and Eritrea have seen little to no improvement over the past decade. If anything, it has become clear that despite the advantages both would reap from normalized relations, neither shows any interest in working towards such relations.⁵⁸ In 2008 Eritrea effectively forced out UN peacekeeping forces stationed at the border in what had been declared Eritrean territory by the border commission.⁵⁹ Since then, troops have remained amassed on both sides of the border, making renewed conflict a constant risk.⁶⁰ Ethiopia has also accused Eritrea of supporting domestic terrorism within Ethiopia, as well as terrorism in Somalia. Most recently, Prime Minister Zenawi accused the Eritrean government of responsibility for a bomb scare at the January 2011 meeting of the African Union in Addis Ababa.⁶¹ Continued hostility seems a foregone conclusion, with the two countries currently lacking any venue or initiative for dialogue and the international community content to stay out of what they perceive as sibling rivalry bearing little global significance.

Generation 97, in *Biopolitics, Militarism and Development: Eritrea in the Twenty-First Century*, D. O’Kane & T.R. Hepner (eds.)(2009).

⁵⁷ Human Rights Watch, *World Report 2011 - Eritrea*, Jan. 24, 2011, available at: <http://www.unhcr.org/refworld/docid/4d3e801bc.html>.

⁵⁸ Both countries have suffered economically from the severing of diplomatic ties and closed border, although Eritrea arguably more so, resulting in near isolation. Two examples of the economic costs of the poor bilateral relations are Ethiopia’s inability to access Assab port and Eritrea’s loss of access to inexpensive electricity from Ethiopia. Elizabeth Mutunga, *Repositioning COMESA as a Peaceful and Secure Region for Deeper Integration 2*, Common Market for Eastern and Southern Africa (2010), available at:

http://about.comesa.int/attachments/86_06.%20Peace%20and%20Security%2030%2007%202010.pdf.

⁵⁹ International Crisis Group, *Beyond the Fragile Peace Between Ethiopia and Eritrea: Averting New War* i, June 17, 2008, available at: <http://www.crisisgroup.org/~/media/Files/africa/horn-of-africa/ethiopia-eritrea/Beyond%20the%20Fragile%20Peace%20between%20Ethiopia%20and%20Eritrea%20Averting%20New%20War.ashx>.

⁶⁰ US Department of State, *Eritrea – Country Specific Information*,

http://travel.state.gov/travel/cis_pa_tw/cis/cis_1111.html#. The U.S. State Department reported that in January and February 2010, “skirmishes” between troops resulted in several deaths. In April and May 2010, bomb explosions on the Ethiopian side of the border killed 5 and injured 33 people. See US Department of State, *Travel Warning: Eritrea* (Feb. 27, 2011),

http://travel.state.gov/travel/cis_pa_tw/tw/tw_5359.html.

⁶¹ Tesfa Alem-Tekle, *Ethiopian PM: Eritrea behind plot to attack AU summit*, Sudan Tribune, Feb. 3, 2011, available at: <http://www.sudantribune.com/Ethiopian-PM-Eritrea-behind-plot,37872>.

D. THE HUMAN RIGHTS ENVIRONMENT IN ERITREA

In contrast to its modest population of approximately five million, since the 2001 government crackdown Eritrea has consistently placed amongst the top refugee-producing countries. The 2001 arrest of the G-15 ministers was only the beginning of the PFDJ's new zero-tolerance method of rule. At the same time, all private media were shut down and many journalists who had been critical in the past were arrested.⁶² It is the Eritrean government's obsessive control over all aspects of individual life and the brutal punishment faced by those who do not comply that inspired the unfortunate nickname "the North Korea of Africa".⁶³

It soon became apparent that the eighteen months of mandatory National Service, as per a 1995 decree, was in fact indefinite.⁶⁴ Females in the military face the added risk of sexual exploitation and rape, which is prevalent in the National Service.⁶⁵ Military evaders are subject to imprisonment and deserters face life sentences or execution.⁶⁶ In addition, the Eritrean government recognizes only four religions: the Eritrean Catholic Church, the Eritrean Orthodox Church, the Evangelical Church of Eritrea, and Sunni Islam.⁶⁷ Adherents to non-recognized denominations are widely persecuted—imprisoned

⁶² Human Rights Watch, *supra* note 57. In addition, for the past three years Eritrea has won the last spot in Reporters without Borders's press freedom index, 175th out of 175 countries, Reporters Without Borders, *Journalists still hunted down nine years after September 2001 purges*, Sept. 17, 2010, available at: <http://www.unhcr.org/refworld/docid/4c984645c.html>.

⁶³ For a discussion of the similarities, see Dr. Haben, *Eritrea aka North Korea of Africa*, Apr. 18, 2009, Asmarino Independent, <http://asmarino.com/en/articles/137-eritrea-aka-north-korea-of-africa>.

⁶⁴ *Proclamation on National Service*, *supra* note 55 at Art.8.

⁶⁵ See Cecilia M. Bailliet, *Examining Sexual Violence in the Military Within the Context of Eritrean Asylum Claims Presented in Norway*, 19(3) Int'l J. of Refugee Law 471 (2007).

⁶⁶ See Ireland: Refugee Documentation Centre, *Eritrea: Treatment of military deserters and their families*, Jan. 19, 2010, Q11505, available at: <http://www.unhcr.org/refworld/docid/4b61663c2.html>.

⁶⁷ "The regime's preoccupation with non-traditional Christians, even though they are not politically significant, and increasingly many believers in other organized religions, appears to be rooted in a broader concern over institutions and movements that are potentially controlled—or led by individuals who are not controlled—by the state." Human Rights Watch, *Service for Life: State Repression and Indefinite Conscriptioin in Eritrea* 25, Apr. 16, 2009, available at: <http://www.unhcr.org/refworld/docid/49e6dcc60.html>.

without charge and singled out for even harsher punishment while in National Service, particularly Pentecostal Christians and Jehovah's Witnesses.⁶⁸

For those who manage to evade the threat of indefinite National Service⁶⁹ and religious persecution, and are careful to suppress any opinions that could be construed as criticism of the regime, physical freedom within the confines of Eritrea is little consolation. What remains is a life ridden with government-imposed hunger and extreme economic hardship. The government maintains that there is no hunger in Eritrea, going so far as to distinguish itself as the only African nation that did not request U.S. foreign aid in 2011.⁷⁰ This stance, too, is part of the PFDJ's quest for self-reliance. However, the consequence is that Eritrea is among four countries whose level of hunger was rated "extremely alarming" by a 2010 Global Hunger Index.⁷¹ This politically-imposed hunger is yet another reason that many Eritreans choose to flee their country.

As a result of the systematic denial of human rights, an estimated 1,000-2,000 Eritreans illegally cross their southern border into Ethiopia each month.⁷² The vast majority of these refugees are National Service evaders or deserters, however others are members of persecuted religious minorities, journalists, and political dissidents.⁷³ With all the irony that their shared history entails, they seek the protection of the Ethiopian government from the persecution of the Eritrean government.

⁶⁸ See US Commission on International Religious Freedom, USCIRF Annual Report 2010 - Countries of Particular Concern: Eritrea, Apr. 29, 2010, available at:

<http://www.unhcr.org/refworld/docid/4be284091a.html> and Human Rights Watch, *supra* note 67.

⁶⁹ The law provides for exemption ("for a limited period") from National Service for the following groups: those declared medical unfit by a Ministry of Defence committee, and students who are actively enrolled. Additionally, "[a]ll Fighters and Armed Peasants who have proved to have spent all their time in the liberation struggle" are permanently exempted. *Proclamation on National Service*, *supra* note 55 at Art. 12, 14.

⁷⁰ Tesfa News, *Eritrea enters 2011 without US Financial Aid* (Jan. 28, 2011), <http://tesfanews.net/archives/1363>. Also see Edmund Sanders, *Struggling Eritrea self-reliance before aid*, Oct. 2, 2007, L.A. Times, available at: <http://articles.latimes.com/2007/oct/02/world/fg-eritrea2>.

⁷¹ International Food Policy Research Institute, *2010 Global Hunger Index*, available at: <http://www.ifpri.org/publication/2010-global-hunger-index>.

⁷² Ethiopian-News, *Ethiopia opens new camp for Eritrean refugees*, Apr. 15, 2010, available at: <http://www.ethiopian-news.com/ethiopia-opens-new-camp-for-eritrean-refugees/>.

⁷³ See generally Human Rights Watch, *supra* note 67 and Tronvoll, *supra* at note 41.

E. ASYLUM IN ETHIOPIA

Ethiopia has ratified both the 1951 Convention relating to the Status of Refugees and the Organization of African Unity's 1969 Convention Governing the Specific Aspects of Refugee Problems in Africa.⁷⁴ As such, Ethiopia has committed and is obligated to protect both those persecuted individually and persons compelled to flee their country due to generalized violence,⁷⁵ without discrimination as to race, religion, nationality, political opinion,⁷⁶ or membership in a particular social group.⁷⁷

1. *Durable Solutions for Eritrean refugees in Ethiopia*

Like other refugees in Ethiopia, Eritrean refugees are confined to government-controlled camps.⁷⁸ There are five Eritrean camps: three are located in the northern Tigray region and two in the Afar region.⁷⁹ The closest of these is a mere 25 kilometers

⁷⁴ Hereafter the 1951 Convention and the OAU Convention. UN General Assembly, *Convention Relating to the Status of Refugees*, July 28, 1951, United Nations, Treaty Series, vol. 189, p. 137, available at: <http://www.unhcr.org/refworld/docid/3be01b964.html>; Organization of African Unity, *Convention Governing the Specific Aspects of Refugee Problems in Africa ("OAU Convention")*, Sept. 10, 1969, 1001 U.N.T.S. 45, available at: <http://www.unhcr.org/refworld/docid/3ae6b36018.html>.

⁷⁵ More specifically, persons who "owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of particular social group, or political opinion he is outside his country of nationality and is unable, or owing to such fear, is unwilling, to avail himself of the protection of that country"; and persons who "owing to foreign aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his country of origin or nationality, he is compelled to leave his habitual residence in order to seek refuge." Ethiopian National Refugee Proclamation, Art. 4 (2004) (Ethiopia), available at: <http://www.arra.org.et/index.php/ethiopian-refugee-proclamation>.

⁷⁶ Due to the highly-politicized nature of Eritrean National Service, draft deserters and evaders are generally recognized on the basis of political opinion. The very act of deserting from or avoiding the National Service imputes to the individual political opposition to the PFDJ government. See UN High Commissioner for Refugees, *UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Eritrea* 15, Apr. 20, 2011, HCR/EG/ERT/11/01, available at: <http://www.unhcr.org/refworld/docid/4d4fe0ec2.html>.

⁷⁷ The contents of the 1951 and OAU Conventions have been incorporated into Ethiopian law as the Ethiopian National Refugee Proclamation. The non-discrimination clause can be found in Article 3. *Id.* at Art. 3.

⁷⁸ This derogation from the rights enshrined in the 1951 Convention is stated in Article 21(2). *Id.* at Art. 21(2).

⁷⁹ Ethiopia has a total of 14 camps. A 2010 census of *camp-based refugees* by Ethiopia's state refugee agency, ARRA, reported 25, 134 Sudanese refugees in two camps, 75,740 Somali refugees in five camps, and 2,845 Kenyan refugees in two camps. (These numbers do not take into account the estimated 1,631 urban refugees. Included in both the urban figures as well as the Sudanese camp populations are a substantial amount of Congolese, Burundian, Ugandan, and refugees from other neighboring nations.) See Administration for Refugee and Returnee Affairs, *ARRA Update* Vol. IV, No. XVI, July/Sept. 2010, 23, available at: <http://www.arra.org.et/images/pdfs/update22.pdf>.

from the Eritrean border.⁸⁰ The residents of the oldest camp, Shimelba, have benefited from a P-2 Group Resettlement designation by the U.S. Department of State.⁸¹ As a result, approximately 6,500 Eritrean refugees will be resettled under this program by its completion.⁸²

However, as the influx continues and the remaining camps get more crowded, it is unclear what will happen to those refugees who arrived after the Shimelba deadline of August 7, 2008.⁸³ There has been no indication of another such generous resettlement program from either the U.S. or another third country, and voluntary repatriation remains out of the question due to the recognized risk to physical security upon return. Those Eritreans who have grown frustrated by a lack of other options in Ethiopia, and subsequently approached UNHCR for assisted repatriation have been firmly refused due to the regime's mass human rights violations and the distinct danger posed to returned asylum-seekers.⁸⁴ At the same time, as in most host countries in the global South, the Ethiopian government has made it clear that local integration is not on its agenda for refugee policy.⁸⁵ In fact, this was one of the primary justifications for the State

⁸⁰Cultural Orientation Department of JVA/Nairobi, *Eritrean Refugees in the Shimelba Camp, Ethiopia*, http://www.cal.org/co/overseas/Eritreans/Eritreans_in_Shimelba.pdf.

⁸¹ "P-2" refers to the U.S. Refugee Admissions Program's "Priority Two" group resettlement category. P-2 designates groups that are "of special concern to the US." Members of these groups are automatically referred for resettlement. UNHCR Washington, *US Resettlement Overview 3*, Sept. 26, 2008, available at: <http://www.unrefugees.org/atf/cf/%7BD2F991C5-A4FB-4767-921F-A9452B12D742%7D/USResettlement%20Program%20Overview.pdf>. According to the U.S. State Department's Bureau of Population, Refugees, and Migration, the group resettlement designation was based on the UNHCR's "determination that the refugees are not likely to return to Eritrea or be locally integrated in Ethiopia, and therefore are in need of third country resettlement." US Department of State – Bureau of Population, Refugees, and Migration, *P-2 Designation for Eritrean Refugees in Shimelba Camp, Ethiopia* (Feb. 3, 2009), <http://www.state.gov/g/prm/rls/115892.htm>.

⁸²Cultural Orientation Department of JVA/Nairobi, *supra* note 80.

⁸³ US Department of State, *supra* note 81. Inclusion in this group resettlement requires that individuals must have registered in Shimelba camp by 7 August 2008, or alternatively been registered in the previous Wa'ala Nhibi between May 2002 and May 2004 and then "revalidated" in Shimelba in November 2004. ("Revalidation" is a process whereby refugees reconfirm their presence in a particular camp or city to verify that there has not been any secondary movement.)

⁸⁴ Author interview, Jan. 2011. Only one study participant had approached UNHCR for assisted repatriation although several were aware of UNHCR's position on the issue. It should be stated that all participants were extremely frustrated by their lack of rights in Ethiopia, but most were holding on to the possibility of resettlement. Others not eligible for resettlement would likely resort to secondary movement before resorting to repatriation. UNHCR's position on assisted repatriation.

⁸⁵ UNHCR includes local integration among its priority areas for refugees in Ethiopia in 2011, at the same time stating that "[r]esettlement remains the only realistic durable solution available to Eritrean and Somali refugees in Ethiopia." UN High Commissioner for Refugees, *2011 UNHCR country operations profile –*

Department's Eritrean P-2 designation. According to the UNHCR, "their politically sensitive presence in Ethiopia rules out local integration as an option."⁸⁶ There has been no attempt to explain why this group resettlement has been limited to the Shimelba camp, despite its applicability to the other camps' residents.⁸⁷ Hence the future of Eritrean refugees in Ethiopia remains uncertain as numbers swell and available solutions dwindle.

2. *The UNHCR – Host State Division of Labor*

In the global South, the respective government and UNHCR level of involvement in refugee affairs varies widely from state to state. In some asylum states, such as South Africa, UNHCR plays a minimal role, serving mainly as a watchdog organization advocating for greater refugee rights.⁸⁸ However, the majority of states prefer that UNHCR play a large role in the costly and time-consuming business of refugee status determination, as well as the provision of services for these populations.

In contrast to the asylum systems of neighboring countries, the role that Ethiopia assumes is quite unique. Despite being one of Africa's poorest countries with the third largest population, Ethiopia's governmental refugee agency, the Association for Refugee and Returnee Affairs (ARRA), performs most of the functions that UNHCR does in the rest of Africa.⁸⁹ This includes registration, screening for the purpose of refugee status determination, camp administration, and protection.⁹⁰ UNHCR plays a comparatively

Ethiopia, available at: <http://www.unhcr.org/cgi-bin/texis/vtx/page?page=49e483986>. ARRA's official website makes no mention of local integration. See Administration for Refugee and Returnee Affairs, *supra* note 79.

⁸⁶ Cultural Orientation Department of JVA/Nairobi, *supra* note 80.

⁸⁷ Given the stated basis of the P-2 group referral (inability to return to Eritrea and lack of local integration options), Eritrean refugees who have arrived since August 2008 should also be considered eligible for resettlement.

⁸⁸ See generally *Refugee Status Determination and Rights in Southern and East Africa: International Workshop Report* (Dec. 2010), available at: <http://www.rsc.ox.ac.uk/events/refugee-status-determination-and-rights/RSDinAfricaWorkshopReport.pdf>. Kagan indicates India and Ecuador as two other states which assume most responsibility regarding refugees. Michael Kagan, "We Live in a Country of UNHCR": *The UN surrogate state and refugee policy in the Middle East* (Feb. 2011), available at: <http://www.unhcr.org/4d5a8cde9.html>.

⁸⁹ As a point of reference, the United Nations Development Programme's 2010 Human Development Index ranks Ethiopia 157th out of 169 countries. United Nations Development Programme (UNDP), *Human Development Report 2010*, available at: http://hdr.undp.org/en/media/HDR_2010_EN_Tables_reprint.pdf.

⁹⁰ The full range of tasks assumed by ARRA can be found at: Administration for Refugee and Returnee Affairs, *Mission of ARRA* (Feb. 21, 2010), <http://www.arra.org.et/index.php/about-us/47-mission-of-arra>.

minor role, focusing on advocacy, support of ARRA in its functions, providing material assistance through implementing partners, and facilitating resettlement for those refugees who are eligible.⁹¹ The Ethiopian government does not conduct individual refugee status determination *per se*. In the case of Eritrean refugees, ARRA conducts “screening” of individuals soon after crossing the border, at Inda Abaguna.⁹²

Refugees can request and potentially be granted “urban refugee status” by a joint UNHCR-ARRA committee on the basis of medical needs or protection concerns.⁹³ This status permits individuals to reside legally in Addis Ababa rather than in the camps. “Urban refugees” receive a monthly salary of 1000 Ethiopian birr,⁹⁴ and are provided very limited medical assistance through the Ethiopian Orthodox Church Development and Inter-Church Aid Commission (DICAC). With this salary, urban refugees are responsible for securing their own housing as well as covering other living expenses. Since local integration has not been tabled as a feasible durable solution in Ethiopia, ARRA is responsible for “managing” the refugee populations for as long as it takes either for them to be resettled to a third country, or the country of origin situation to improve enough so as to make repatriation possible.⁹⁵

Interestingly, ARRA is also charged with ensuring that “refugees living in Ethiopia abide by the law of the land.”

⁹¹ UN High Commissioner for Refugees, *UNHCR Global Appeal 2010-2011 - Ethiopia* 69, available at: <http://www.unhcr.org/4b02cb7b9.html>. Interestingly, UNHCR states that it is working for the local integration and naturalization of refugees, at the same time saying this is not possible and they must be resettled.

⁹² United States Committee for Refugees and Immigrants, *World Refugee Survey 2009 – Ethiopia* (June 2009), available at: <http://www.unhcr.org/refworld/docid/4a40d2a594.html>. In theory UNHCR should, or at least has the ability, to monitor this screening. In practice no UNHCR monitoring mechanism is present during registration/screening.

⁹³ Medical conditions that qualify should be serious and require treatment not available in the Tigray camps. Amongst the 15 participants, one individual suffering from epilepsy and another from HIV were both denied urban refugee status despite their medical conditions. It is generally recognized that given the camps’ proximity to the Eritrean border and the ease with which they can be infiltrated, residing in the camps is extremely dangerous for those who previously held medium- to high-profile positions within the Eritrean government or armed forces, or were associated with those who did.

⁹⁴ Approximately 60 U.S. Dollars or 42 Euros. For each dependent, an additional 250 birr (15 U.S. Dollars, 10.50 Euros) is granted.

⁹⁵ As mentioned earlier, one participant in this study, frustrated by their lack of resettlement prospects and inability to work in Ethiopia, voiced a desire for UNHCR-facilitated repatriation. However, UNHCR refuses to support this repatriation due to the mass violation of human rights in Eritrea, as well as the danger to returnees. Due to the dangerous nature of the border crossing, these individuals rejected the possibility of attempting such repatriation on their own. Author interview, Jan. 2011.

II. THE CONTEXT OF ERITREAN PROTECTION NEEDS

The protection challenges of Eritrean refugees fall into two categories: those characteristic of refugee situations in the global South and those specific to Eritrean refugees in Ethiopia. The majority of Eritrean refugees are subject to the confines and difficulties of camp life.⁹⁶ Urban refugees, on the other hand, face a separate set of problems. Until recently, the distinct protection challenges of urban refugees were ignored, particularly in asylum states where the “rightful” place of refugees was determined to be camps. Host states often successfully portrayed urban refugees as line-jumpers or economic migrants. But in recent years, UNHCR has become more aware of and willing to address challenges facing urban refugee populations.⁹⁷ As these “general” protection issues of urban refugees have been explored at length elsewhere,⁹⁸ this paper does not aim to address the multitude of other problems faced by Eritrean refugees both in Addis Ababa and the camps. Instead, it will focus primarily on those protection factors which are specific to the Eritrean population and relevant to the problematic nature of Ethiopian protection of Eritrean refugees.

A. The effect of Ethio-Eritrean relations and the unresolved border dispute on Eritrean refugees

In considering the protection needs of this population, one of the primary contextual factors is the state of Ethio-Eritrean diplomatic relations. The two countries can be described as being, at all times, on the brink of war. Troops remain amassed at the border and inter-state travel is illegal.⁹⁹ Even inter-state phone communication is prohibited by

⁹⁶ See generally Karen Jacobsen, *A “Safety-First” Approach to Physical Protection in Refugee Camps* (Working Paper no. 4, May 1999), available at: http://web.mit.edu/cis/www/migration/pubs/rwp/4_safety.html#star and US Committee for Refugees and Immigrants, *Refugee Warehousing*, <http://www.refugees.org/resources/refugee-warehousing/> (an anti-camp advocacy campaign).

⁹⁷ See UNHCR’s 2009 revision of its urban refugee policy: UN High Commissioner for Refugees, *UNHCR Policy on Refugee Protection and Solutions in Urban Areas*, Sept. 2009, available at: <http://www.unhcr.org/refworld/docid/4ab8e7f2.html>.

⁹⁸ See for example Elizabeth H. Campbell, *Urban Refugees in Nairobi: Problems of Protection, Mechanisms of Survival, and Possibilities for Integration*, 19(3) *J. Refugee Studies* 396-413 (Sept. 2006).

⁹⁹ In addition to this, the landscape is physically unsafe. “According to the Government Commission for Coordination with the UN Peacekeeping Mission, an estimated three million landmines and unexploded

law, making it difficult and risky for refugees to contact friends and families in Eritrea.¹⁰⁰

A 2008 International Crisis Group report described the status quo as follows:

The Ethiopia-Eritrea impasse carries serious risk of a new war and is a major source of instability in the Horn of Africa... The likely alternative to a solution to the border dispute and other bilateral issues is not continued frozen conflict but a war that would produce chaos in the region and quite possibly result in the loss of power of both contestants' leaders.¹⁰¹

Relations have failed to improve over the past three years. March 2011 saw Ethiopia suddenly adopting a more aggressive stance towards its northern neighbor: a foreign ministry spokesperson declared Ethiopia would take “all measures necessary” against Eritrea, and Prime Minister Meles Zenawi told an Eritrean opposition radio station that “his government would work in a ‘diplomatic and military capacity’ to oust the regime in Asmara.”¹⁰² In Eritrea, while the high level of conscription serves various purposes for the ruling PFDJ government—including general control of the population—this mass militarization indicates the government’s readiness to engage in and expectation of renewed war, as well as its preference for armed conflict over dialogue as a means of resolving disputes with its southern neighbor.¹⁰³

This state of perpetual cold war has an immense impact on the Eritrean refugee community in Ethiopia, precluding any sense of external stability. Firstly, there is the very real danger that a new full-scale war could erupt between Eritrea and Ethiopia. As

ordnance remained from the 30-year war of independence and the 1998–2000 conflict with Ethiopia. Opposition groups reportedly laid new mines during [2008].” US Department of State, *2008 Human Rights Report: Eritrea* (Feb. 25, 2009), available at: <http://www.state.gov/g/drl/rls/hrrpt/2008/af/119000.htm>.

¹⁰⁰ Refugees International, *Ethiopia-Eritrea: Stalemate Takes Toll on Eritreans and Ethiopians of Eritrean Origin* (May 30, 2008), available at <http://www.refugeesinternational.org/policy/field-report/ethiopia-eritrea-stalemate-takes-toll-eritreansand-ethiopians-eritrean-origin>.

¹⁰¹ International Crisis Group, *supra* note 59 at i.

¹⁰² Aaron Maasho, *Ethiopia warns of action against Eritrea*, Reuters, Mar. 19, 2011, <http://af.reuters.com/article/topNews/idAFJOE7210AJ20110319?pageNumber=1&virtualBrandChannel=0> and Peter Heinlein, *Ethiopia Advocates Overthrow of Eritrean Government*, Voice of America News, Mar. 20, 2011, <http://www.voanews.com/english/news/africa/Ethiopia-Advocates-Overthrow-of-Eritrean-Government-118333254.html>. In the same week, Zenawi also announce an increase in defense spending to “defend our country from enemy attacks.” Tesfa-Alem Tekle, *Ethiopia’s [sic] to increase defense budget amid rising tension with Eritrea*, Sudan Tribune, Mar. 20, 2011, <http://www.sudantribune.com/Ethiopia-s-to-increase-defense,38344>.

¹⁰³ Eritrea reportedly has a higher percentage of its population enlisted in the military than any other country. Cultural Orientation Department of JVA/Nairobi, *supra* note 80.

previously mentioned, the dispute over the border – which provoked the 1998 war in which some 70,000 people died—has yet to be resolved.¹⁰⁴ UN peacekeeping forces vacated the border zone *not* because there was no longer a need for them, but rather because Eritrea, frustrated by Ethiopia’s failure to accept the Boundary Commission’s finding, cut off their fuel supply, forcing them to cease operations.¹⁰⁵ In case of increased tensions or a gradual buildup to war, there no channel of dialogue currently exists, making war that much more likely.¹⁰⁶ The result is a heightened sense of insecurity among Eritrean refugees in Ethiopia. Secondly, the lack of peace with its northern neighbor means that for the Ethiopian government, Eritrean refugees within its national boundaries are not merely a humanitarian issue. They can be perceived alternately as a security threat or asset, a political weapon or liability. This, as well as the community’s feeling of insecurity, will be discussed in more detail in Part V.

B. The Eritrean government’s transnational “climate of fear”

The other major factor determinative of Eritrean protection needs is the transnational character of the Eritrean regime,¹⁰⁷ and both the real and perceived threat this poses to refugees in Ethiopia. Similar to Ethiopia’s other major refugee populations, Eritrean refugees live under the threat of a government operating just across the border.¹⁰⁸ Despite the militarization of Ethiopia and Eritrea’s shared border, it is fairly

¹⁰⁴ *Former U.S. Ambassador: Eritrea and Ethiopia Unlikely to Resume War*, Jimma Times, June 11, 2007, available at: http://www.jimmatimes.com/article/Africa_News/Africa_News/Former_US_Ambassador_Eritrea_and_Ethiopia_Unlikely_To_Resume_War/17348.

¹⁰⁵ United Nations Mission in Eritrea and Ethiopia, <http://www.un.org/en/peacekeeping/missions/past/unmee/index.html>.

¹⁰⁶ International Crisis Group, *supra* note 59 at i.

¹⁰⁷ For more on the Eritrean government’s history of using the diaspora to strengthen the central state, dating back to the Struggle, see Tricia Redeker Hepner, *Transnational governance and the centralization of state power in Eritrea and exile*, 31(3) *Ethnic and Racial Studies* 476, Aug. 3, 2007 and Tricia Redeker Hepner, *Seeking Asylum in a Transnational Social Field* in D.O’Kane and T.R. Hepner, *supra* note 56 at 115.

¹⁰⁸ Although Ethiopia shares borders with both Sudan and Somalia, it should be noted that most Somali refugees originate from Southern Somalia—not Somaliland—and therefore enjoy somewhat of a buffer between their place of origin and country of asylum. Southern Sudanese refugees enjoy a similar distance from the central Sudanese government.

porous, and hence subject to infiltration.¹⁰⁹ Additionally, the paranoid Eritrean regime is notorious for its network of agents working around the world to spy on and threaten Eritrean citizens living abroad.¹¹⁰ What Eritreophile-turned critic Dan Connell refers to as the “climate of fear” in Eritrea, leads most citizens to believe that all modes of communication are being monitored by the government and that even long-time neighbors and co-workers are potential regime informants.¹¹¹ This widespread paranoia, which is so effective in crushing all dissent within Eritrea, is shared by Eritrean refugees both in Ethiopia and other parts of the world.¹¹²

C. The political significance of “leaving”

For Eritreans the mere act of traveling out of the country illegally is highly political, interpreted as a condemnation of the Eritrean regime. Those who do so immediately become “suspicious” in the eyes of the regime. However, legal means of travel are not an option for the majority of the Eritrean population. Despite the unimplemented Eritrean constitution’s guarantee of “the right to leave and return to Eritrea and to be provided with a passport or any other travel documents”¹¹³ many Eritrean citizens are excluded from the possibility of obtaining a passport. According to the U.S. State Department, in 2009 “Citizens participating in national service were often denied internal travel permits, passports, and exit visas. Many persons who previously

¹⁰⁹ International Centre for Migration Policy Development, *East Africa Migration Route Initiative – Gaps & Needs Analysis Project, Country Reports: Ethiopia, Kenya, Libya* 23 (2008), available at: [http://www.icmpd.org/907.html?&no_cache=1&tx_icmpd_pi2\[document\]=1077](http://www.icmpd.org/907.html?&no_cache=1&tx_icmpd_pi2[document]=1077).

For this reason, individuals considered medium- or high-profile are often granted urban refugee status, as the level of security in the camps is low and such individuals could be easily targeted.

¹¹⁰ United States Department of State, *2010 Country Reports on Human Rights Practices - Eritrea*, Apr. 8, 2011, available at: <http://www.unhcr.org/refworld/docid/4da56dccc.html>.

¹¹¹ Connell, *supra* note 46 at 77. Also see Tricia Redeker Hepner, *Soldiers, Martyrs, Traitors, and Exiles: Political Conflict in Eritrea and the Diaspora* 170 (2009) and

Reporters Without Borders, *Internet Enemies 2011: Countries under surveillance – Eritrea* (Mar. 11, 2011), available at: <http://www.unhcr.org/refworld/docid/4d82268828.html>.

¹¹² In her examination of the Eritrean national identity, lawyer Peggy A. Hoyle identifies “a belief in critical public speech” as a primary component of the national identity. When a group of University of Asmara students were asked “if an important part of being a good citizen was to be ‘critical in his or her approach to public issues.’ Some 90% of the respondent students replied that it was either ‘important’ or ‘very important’ to be critical in assessing public matters.” This article, published in 1999 before the government’s crackdown on dissenters, exposes the drastic change effected by the brutality and thorough nature of the crackdown. Peggy A. Hoyle, *The Eritrean National Identity: A case study* 402, 404-5, 24 N.C. J. Int’l L. & Com.Reg.(1999).

¹¹³ Tronvoll, *supra* note 41 at 71.

were issued passports were not allowed to renew them, nor were they granted exit visas.”¹¹⁴ In addition to the difficulty of issuing a passport, the added obstacle of issuing an exit visa further complicates foreign travel for Eritrean citizens.¹¹⁵ The same report states,

Persons routinely denied exit visas included men up to the age of 54, regardless of whether they had completed national service; women under the age of 47; members of Jehovah's Witnesses; and other persons out of favor with, or seen as critical of, the government. In 2006 the government began refusing to issue exit visas to children 11 years and older. The government also refused to issue exit visas to children, some as young as five years of age, either on the grounds that they were approaching the age of eligibility for national service or because their expatriate parents had not paid the 2 percent income tax required of all citizens residing abroad. Some citizens were given exit visas only after posting bonds of approximately 150,000 nakfa (\$10,000).¹¹⁶

One older woman interviewed by Human Rights Watch for their April 2009 report titled *Service for Life*, said “only the old can travel.”¹¹⁷

Evasion or desertion from the National Service is further cause for brutal punishment by governmental forces. The institution of National Service has been an integral part of ruling party’s governance since before Eritrean independence was officially won. Thus, National Service has been politicized to the point that “actual or perceived evasion or desertion from military service is regarded by the Eritrean authorities as an expression of political opposition to the regime.”¹¹⁸ As such, UNHCR

¹¹⁴U.S. Department of State, *2009 Human Rights Report: Eritrea* (Mar. 11, 2010), <http://www.state.gov/g/drl/rls/hrrpt/2009/af/135952.htm>.

¹¹⁵ The requirement of a government-issued exit visa in order for Eritrean citizens to leave Eritrea is in direct contradiction of the rights guaranteed by the International Covenant on Civil and Political Rights. According to Article 12(1) “Everyone shall be free to leave any country, including his own.” International Covenant on Civil and Political Rights art. 12(1), Dec. 16, 1966, 999 UNTS 171 (ICCPR).

¹¹⁶ US Department of State, *supra* note 114.

¹¹⁷ Human Rights Watch, *supra* note 67 at 64.

¹¹⁸ UN High Commissioner for Refugees, UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Eritrea 16, April 2009, *available at*: <http://www.unhcr.org/refworld/docid/49de06122.html>.

considers the persecution of Eritrean draft deserters and evaders by Eritrean authorities to be for reasons of imputed political opinion.¹¹⁹

Add to these two offenses unauthorized travel to and residence in Ethiopia—easily Eritrea’s greatest foreign enemy—and one can begin to comprehend the gravity of seeking refuge in Ethiopia for Eritrean refugees. Although little literature addresses Eritrean travel to Ethiopia post-1998, given the government’s shoot-to-kill policy for those who illegally cross the border, the likelihood of clemency for Eritreans who seek refuge in Ethiopia is slim. As mentioned earlier and will be discussed in more detail below, possible repercussions for such “treasonous” acts are not dependent on return to Eritrea, but are also a real and present threat in Ethiopia thanks to Eritrea’s policy of active diaspora surveillance and harassment.¹²⁰

Keeping in mind the conditions in Eritrea that compel so many to seek refugee protection in Ethiopia as well as other countries, what follows is an examination of the quality and effectiveness of the protection provided.

¹¹⁹ UN High Commissioner for Refugees, UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Eritrea 16-7, April 2009, *available at*: <http://www.unhcr.org/refworld/docid/49de06122.html>.

¹²⁰ The Eritrean government has an official presence in Addis Ababa via its newly re-established diplomatic mission at the African Union headquarters. Peter Heinlein, Eritrea Reopens African Union Mission, VOA News, Jan. 19, 2011, *available at*: http://news.assenna.com/index.php?option=com_content&view=article&id=3419:eritrea-reopens-african-union-mission&catid=46:discussion&Itemid=100584.

III. REFUGEE PROTECTION OR POLITICAL HUMANITARIANISM?

Before looking specifically at the issue of refugee protection in Ethiopia, it is necessary to recognize the nature of the field itself and its built-in challenges. Refugee protection is a field fraught with contradictions and battling priorities: humanitarian or political? Protection or control? Duty or choice? These conflicts are the natural outcome of the superposition of international human rights law over what is still essentially a sovereign nation-state system governed by political realism rather than altruism and global cooperation. The 1951 Convention attempts to resolve some of these paradoxes, emphasizing the “social and humanitarian nature of the problem of refugees” in its preamble and non-discrimination on the basis of country of origin.¹²¹ However, from the refugee’s first arrival in the country of asylum to the day he or she is granted citizenship, deported, or departs for third-country resettlement, each element of the refugee protection process is shaped, complicated, and dictated by political motives.

Indeed, it is worth remembering that the grant of asylum serves another purpose in addition to protection of the individual from persecution. Price optimistically asserts that “asylum constitutes a means to condemn persecutory regimes, eventually leading to their reform and to solving the root cause of refugee flows by promoting the rule of law and human rights.”¹²² Law professor Margaret E. McGuinness goes one step further, stating that,

[B]y providing protection to those fleeing persecution, a receiving state engages in an implicit indictment of the refugees’ home country. That is, it recognizes that the home country has ‘failed’ to provide protection to those seeking refugee status... The ‘politicization’ of any refugee population begins the moment they are labeled by the law as refugees.¹²³

¹²¹ UN General Assembly, Convention Relating to the Status of Refugees Preamble, art. 3, July 28, 1951, United Nations, Treaty Series, vol. 189, p. 137, available at: <http://www.unhcr.org/refworld/docid/3be01b964.html>.

¹²² Matthew E. Price, *Rethinking Asylum: History, Purpose, and Limits* 70-5 (2009).

¹²³ Margaret E. McGuinness, *Legal and Normative Dimensions of the Manipulation of Refugees in Stephen John Stedman & Fred Tanner, Refugee Manipulation: war, politics, and the abuse of human suffering* 135-166, 140 (2003).

In brief, asylum and asylees have been identified as a useful venue for the public shaming of unfriendly or ideologically-opposed governments.

During the Cold War era many refugees were provided asylum by the U.S. and even resettlement as a form of political propaganda.¹²⁴ In these cases the central role of politics worked to the benefit of refugees. However, this is not always the case. Political considerations can also hinder the provision of effective and timely refugee protection. In her 1989 study on Khmer refugees on the Thai-Cambodian border, anthropologist Josephine Reynell argues that the protracted nature of the refugee camps was due to the intentional effort of the Thai government to provoke and maintain international interest in political change in Cambodia.¹²⁵ In the case of Ethiopia, the convergence of politics and refugee protection has produced both positive and negative developments. Both will be addressed below.

The political nature of refugee movement and subsequent protection, despite its centrality in what is increasingly called by receiving states the “problem of refugees”, has received surprisingly little attention by academics and policy analysts. What has been written on the issue focuses on refugee camp situations and the recruitment and politicization of camp populations by armed opposition groups.¹²⁶ The perceived utility of *individual* refugees by host state governments and the effects of this has until now been largely ignored. This paper intends to fill this gap by examining the case of Ethiopia. Though there are opposition groups—some of which are armed—active in the various camps in Ethiopia, their power and influence is relatively minor compared to that of the Ethiopian government, an entity which also happens to be interested in regime change in Eritrea.

¹²⁴ See Thais Bessa, *From Political Instrument to Protection Tool? Resettlement of Refugees and North-South Relations*, 26(1) *Refuge* 91(2009), available at : <http://pi.library.yorku.ca/ojs/index.php/refuge/article/viewFile/30610/28120>.

¹²⁵ Josephine Reynell, *Political Pawns: Refugees on the Thai-Kampuchean border* (1989).

¹²⁶ James Milner’s *Refugees, the State and the Politics of Asylum in Africa* and Human Rights Watch’s report, *Hidden in Plain View*, are two notable exceptions. The former looks at the influence of politics on asylum practices in Kenya, Guinea, and Tanzania. The latter provides a useful analysis of Uganda’s relationships with neighboring Country of Origins and the effect on Uganda’s protection of refugees of these nationalities. James Milner, *Refugees, the State and the Politics of Asylum in Africa* (2009). Human Rights Watch, *Hidden in Plain View: Refugees Living Without Protection In Nairobi And Kampala* 89-103, Nov. 21, 2002, 2815, available at: <http://www.hrw.org/en/reports/2002/11/21/hidden-plain-view>.

IV. STRENGTHS OF THE ETHIOPIAN PROTECTION REGIME¹²⁷

A. Adherence to the principle of non-refoulement

Non-refoulement, the right not to be returned to the threat of torture or inhumane treatment, has been called “the foundation stone of international protection”.¹²⁸ Yet thousands of cases occur each year, in countries ranging from the United Kingdom to Turkey to Australia. States are also constantly looking for new, indirect ways to deport refugees to destinations of questionable safety, hoping to avoid outright violation of non-refoulement based on a technicality.¹²⁹

Amidst this context, Ethiopia distinguishes itself by consistently respecting the principle of non-refoulement despite its mass refugee influxes and own heaving

¹²⁷ As stated earlier, the scope of this paper is “protection” as defined strictly to include only threats to security and physical safety. However, in relation to the broader definition of “effective protection,” a number of recent initiatives by the Ethiopian government aimed at Eritrean refugees are worth noting. In August 2010, ARRA announced that Eritrean refugees able to demonstrate their ability to support themselves were free to live outside the camps, in their location of choice within Ethiopia. This initiative was highly praised, particularly by UNHCR. Indeed, it represents the first step in reforming Ethiopia’s draconian controls on refugee movement, and a move towards those freedoms enshrined in the 1951 Convention.

At first glance, ARRA’s initiative appears to be an empty gesture when viewed in conjunction with Ethiopia’s reservation on refugees’ right to work. In a country of 80 million with an estimated unemployment rate of 50%, one might ask how an Eritrean refugee precluded from legal work could be expected to support him or herself. Eritreans in this sense have two large advantages: (a) a large, geographically widespread, and relatively wealthy diaspora, and (b) a residual community of individuals of Eritrean origin who somehow avoided deportation in the late 1990s. Out of 15 participants, only one individual had engaged in gainful employment during their time in Addis Ababa. Nearly all relied heavily on remittances from friends and family living abroad in order to survive while in Ethiopia. Only one study participant had family relations living outside the camps. This individual applied multiple times for permission to live outside the camp, but received no reply on any of these requests. This casts doubt onto the actual implementation of this new policy.

In addition to this, several educational initiatives were launched in late 2010, allowing Eritrean refugees to enroll in Ethiopian universities at their own expense or with partial financial support from UNHCR. An October 2010 press release also announced the grant of scholarships by the Ethiopian government for a limited number of Eritrean refugees who had completed their secondary education. The American Team for Displaced Eritreans, *200 Eritrean Refugees Granted Scholarships by the Ethiopian Government at Addis Ababa and Makele Universities* (Oct. 15, 2010), available at: http://freeritrea.org/files/Scholarships_Article-English.pdf.

¹²⁸ Guy S. Goodwin-Gill, *The Refugee in International Law* 207, (2nd ed., 1996). This principle is enshrined in Art. 33 of the 1951 Refugee Convention as well as the Convention against Torture. UN General Assembly, *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, art. 3(1), Dec. 10, 1984, United Nations, Treaty Series, vol. 1465, available at: <http://www.unhcr.org/refworld/docid/3ae6b3a94.html>.

¹²⁹ This includes the interdiction/interception of asylum-seekers, extraterritorial processing, « hot return » and more.

population. Ethiopia – contrary to international human rights and customary law – reserves the right to refoule refugees for whom “there are serious reasons for regarding as a danger to national security.”¹³⁰ However, according to a 2009 report, in the previous year no case of refoulement occurred in Ethiopia.¹³¹ This was confirmed by study participants, none of whom expressed a fear of deportation. When asked, the refugees interviewed said they did not feel the threat of refoulement, unlike in other countries (i.e. Sudan, Libya, Egypt) where many of them had friends or family. While discussing this issue, many individuals expressed a sense of admiration and gratefulness to for the Ethiopian government for allowing refugees to remain in Ethiopia.

B. Freedom from arbitrary detention

Despite imposing severe limitations to freedom of movement, Ethiopia scores well on the issue of detention of refugees.¹³² According to Article 31 of the 1951 Convention, state parties “shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened in the sense of article I, enter or are present in their territory without authorization, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence.”¹³³ This, along with the prohibition of refoulement, is one of the Refugee Convention’s most important and basic provisions. And yet many countries criminalize the illegal entry and/or presence of asylum-seekers and continue to detain asylum-seekers and refugees on these grounds.

In contrast to other countries, yet in line with the 1951 Convention, Ethiopia’s National Refugee Proclamation declares that, “no criminal proceedings shall be commenced or continued against a person who has applied or is about to apply pursuant

¹³⁰ Ethiopian National Refugee Proclamation, *supra* note 75 at Art. 9(3).

¹³¹ US Committee for Refugees and Immigrants, *World Refugee Survey 2009: Refugee Rights Report Card*, available at: http://www.uscrr.org/2010Website/5_Resources/5_5_Refugee_Warehousing/5_5_4_Archived_World_Refugee_Surveys/5_5_4_7_World_Refugee_Survey_2009/5_5_4_7_3_Refugee%20Rights%20Report%20Cards/ReportCard.pdf.

¹³² In the same 2009 report mentioned above, Ethiopia scored an F (the worst possible mark) on freedom of movement. *Id.*

¹³³ *Convention Relating to the Status of Refugees*, *supra* note 74 at Art. 31.

to his Proclamation on the account of his illegal entry and presence in the country.”¹³⁴ In 2009 there were no reported instances of migration-related detention with the exception of common crimes and a small number for reasons of national security.¹³⁵ In fact, in regards to the serious problem of refugee detention, Ethiopia may be the single most progressive host state. Beyond fully complying with its own legal responsibility not to detain refugees without due cause, the Ethiopian government has gone one step further, as will be described below.

C. Help for Eritrean detainees in Egypt—from the unlikely of places

The secondary migration of primarily Eritrean, Ethiopian, and Sudanese refugees and migrants across the Sinai Peninsula towards Israel has attracted substantial attention in recent years.¹³⁶ In late 2010 and early 2011, the kidnapping, detention, and torture of migrants by both Bedouin smugglers and Egyptian state authorities were highly publicized thanks to the efforts of a few key Israeli NGOs.¹³⁷ But despite growing international awareness of these atrocities, few countries have attempted to have any tangible impact on the situation, with the exception of Ethiopia.

Ethiopia has instituted what appears to be an unofficial program to facilitate the release of detained Eritreans in Egypt. Through an unofficial program yet to be formalized, Eritrean detainees able to pay the cost of airfare to Ethiopia (approximately 400 USD) are provided one-time travel documents by the Ethiopian embassy in Cairo.¹³⁸ These detainees, upon arrival to Ethiopia, are treated similarly to other Eritrean asylum-seekers: they are permitted access to the asylum system, and are expected to travel to and

¹³⁴ Ethiopian National Refugee Proclamation, *supra* note 75 at Art. 13(6).

¹³⁵ US Committee for Refugees and Immigrants, *World Refugee Survey 2009*, available at: <http://www.refugees.org/resources/refugee-warehousing/archived-world-refugee-surveys/2009-wrs-country-updates/ethiopia.html>.

¹³⁶ See Human Rights Watch, *Sinai Perils: Risks to Migrants, Refugees and Asylum Seekers in Egypt and Israel* (Nov. 12, 2008), available at: <http://www.hrw.org/en/reports/2008/11/12/sinai-perils> and Integrated Regional Information Networks (IRIN), *Egypt-Israel: Asylum-seekers run the gauntlet in Sinai desert* (Aug. 26, 2008), available at: <http://www.unhcr.org/refworld/docid/48b7acb49.html>.

¹³⁷ See Hotline for Migrant Workers, *The Dead of the Wilderness: Testimonies from Sinai Desert*, 2010 (Feb. 2011) and Physicians for Human Rights, *Israel, Hostages, Torture, and Rape in the Sinai Desert: a PHR-Israel update about recently arriving asylum seekers* (Dec. 13, 2010), available at: [http://www.phr.org.il/uploaded/PHR-](http://www.phr.org.il/uploaded/PHR-Israel_Information_Sheet_on_Refugees_Captive_in_Sinai_Dec13_2010_Final.pdf)

[Israel_Information_Sheet_on_Refugees_Captive_in_Sinai_Dec13_2010_Final.pdf](http://www.phr.org.il/uploaded/PHR-Israel_Information_Sheet_on_Refugees_Captive_in_Sinai_Dec13_2010_Final.pdf).

¹³⁸ Author interviews, January 2011.

reside in the northern camps. Hence, Ethiopian policy towards these former detainees shows the government's willingness to assume equal responsibility for both Eritrean refugees from Egypt and those who traveled to Ethiopia directly from Eritrea.

The two policies discussed above, a strict adherence to the principle of non-refoulement and the welcoming of Eritrean detainees from Egypt to Ethiopia, are undeniably positive protection measures. The government's stance is distinctly generous in the current environment of shrinking resettlement quotas and bilateral migration agreements which aim to normalize chain deportation, push-back, and migration-related detention. The actions of the Ethiopian government are even more surprising when viewed in the context of Ethiopia's recent history. In 1998 Prime Minister Zenawi's government showed little compassion as it expelled tens of thousands of its own citizens based on their full or partial Eritrean ethnicity.¹³⁹ Now, a mere 13 years later, the same government seems to be making a conscious effort to create a safe haven for Eritrean refugees. What can explain such a drastic change in the Ethiopian government's attitude toward Eritrean citizens? Is it because these Eritreans are dissidents as opposed to "potential spies"? And as such, have these refugees acquired a new political value that could possibly tip the scale to Ethiopia's advantage?

¹³⁹ See Human Rights Watch, *The Horn of Africa War: Mass Expulsions and the Nationality Issue*, Jan. 30, 2003, available at: <http://www.unhcr.org/refworld/docid/3f4f59523.html>.

V. GAPS IN PROTECTION: SPECIFIC THREATS TO THE SECURITY OF ERITREAN REFUGEES

A. *Hospitality subject to change: interpersonal relationships with Ethiopian nationals*

“Even if the borders open, 30 years of pain will take 30 years to recover, become normal again.” (Eritrean refugee living in Addis Ababa)¹⁴⁰

As noted earlier, the current state of relations between Ethiopia and Eritrea is a precarious one and the situation can only be considered a tense peace compared to the bloodiness of the 1998-2000 border war.¹⁴¹ Indeed, the threat of renewed violence was cited repeatedly by research participants as a constant concern and the key factor which defined their experience as Eritrean refugees living in Addis Ababa.¹⁴² The potential for sudden and drastic change in Ethio-Eritrean relations left nearly all participants feeling deeply insecure and vulnerable, both to government measures and the deterioration of public sentiment towards Eritreans. The memory, and for at least one participant the first-hand experience, of the 1998 deportation of Eritreans has an important role in this sense of insecurity and impossibility of permanence.¹⁴³

Many—though not all—participants reported that some Ethiopians they encountered still harbored bad feelings towards Eritreans. This made them reluctant in

¹⁴⁰ Here, this individual refers to the 30-year long war for Eritrean independence fought against Ethiopia. Author interview, Jan. 2010.

¹⁴¹ There are occasional outbreaks of violence, as in January 2010 when 10 Ethiopian soldiers were allegedly killed by Eritrean military. *Eritrea says it killed 10 Ethiopian troops*, Reuters, Jan. 3, 2010, available at: <http://af.reuters.com/article/topNews/idAFJJOE60206K20100103>.

¹⁴² An outbreak of war could result in serious consequences, including deportation, for camp-based refugees. However urban refugees would likely face greater risk due to their dispersal throughout an urban environment in which protection would be very difficult, especially in a crisis situation.

¹⁴³ The 1998 deportations of individuals of Eritrean or half-Eritrean origin from Ethiopia started in June 1998, one month after the start of the war. Because of the sudden nature of the deportations, many deportees were unable to secure or sell their properties, and thus suffered great financial losses in addition to the trauma of being separated from their homes and Ethiopian friends and family members. Amnesty International, *Ethiopia/Eritrea – Amnesty International witnesses cruelty of mass deportations* (Jan. 29, 1999), available at: <http://www.ehrea.org/massdeportations.htm>. One source estimated that approximately half of the residents of Shimelba camp were born in modern-day Ethiopia but later either migrated voluntarily or were deported to Eritrea. Cultural Orientation Department of JVA/Nairobi, *supra* note 80.

most settings to volunteer the fact that they are Eritrean refugees. As one participant stated, in any sort of bad or chaotic situation, the fact that he or she is an Eritrean could make them a target. Under the current circumstances, participants reported varying degrees of discrimination on the basis of their nationality.¹⁴⁴ Four participants reported good relations with the Ethiopian community, praising their hospitality and ability to understand what compelled Eritreans to seek refuge in Ethiopia.¹⁴⁵

Of those who complained of serious discrimination and those who expressed positive experiences with Ethiopians, there was a unanimous declaration of mistrust of Ethiopian officers at the various agencies responsible for refugees.¹⁴⁶ ARRA, as an Ethiopian state agency, is staffed entirely by Ethiopian nationals. In addition to this, the vast majority of UNHCR staff members are Ethiopians.¹⁴⁷ Suspicion and hostility toward host country nationals are common in many of the world's top refugee-hosting states.¹⁴⁸ Refugees are often unwilling to or fearful of confiding in national staff, preferring the perceived neutrality of expatriate staff.¹⁴⁹ Refugees, whether consciously or subconsciously, often associate national staff with the discrimination and abuse they suffer in their everyday lives, as well as the denial of many of their basic rights such as the right to work or attend school. It is not the intention of the author to either confirm nor deny such claims of discrimination. I aim only to effect the refugee community's

¹⁴⁴ The most commonly reported occurrence was refusal to rent housing upon learning the potential tenant was an Eritrean refugee, or drastically increasing the rent after learning this. As a result most participants had changed residences several times during their stay in Addis Ababa. Additionally, at least 2 participants changed residences because they felt unsafe and were aware that ARRA would not be able to protect them in case of an attack.

¹⁴⁵ In casual conversation, I encountered several Ethiopians who seemed very surprised that Eritreans would come to Ethiopia as refugees, and unaware that there were as many as 50,000 currently in the country.

¹⁴⁶ This includes UNHCR, ARRA, and DIKAC. I did not encounter any complaints about the two other major organizations that work with refugees in Ethiopia: International Rescue Committee and Jesuit Refugee Services.

¹⁴⁷ Author interviews, January 2011.

¹⁴⁸ The author has personally witnessed this widespread phenomenon in her work with refugee populations in Egypt and Turkey.

¹⁴⁹ Another reason for this is the widely-held perception that expatriate staff have a greater capability to offer either financial assistance or resettlement possibilities than local staff.

perception of local staff discrimination based on their Eritrean nationality has on their willingness to seek protection when necessary.¹⁵⁰

B. Eritrean opposition groups operating within Ethiopia

Despite the volatility of refugee politics in mass influx situations, host countries (as well as third countries) often see the potential in developing new political movements on their territory. Involvement in these movements is that much more appealing if they are in opposition to hostile neighboring governments guilty of both massive human rights violations and “bad behavior” in regional politics. As stated by Josephine Reynell, “support is frequently forthcoming from governments which see the refugees’ political activity as one means of furthering their own political-strategic interests in the region. As far as the host country is concerned, the political context may constitute the main frame of reference for the treatment of refugees.”¹⁵¹ The treatment of refugee movements during the period of African decolonization provides another prime example. “[T]hose African countries that had achieved independence sought to encourage the independence of the remaining colonial territories not only by accepting refugees but by giving these refugees all varieties of assistance so that they could evolve as liberation movements infiltrating back into the colonial territories.”¹⁵²

In recognition of the temptation for states to support refugee political movements aimed at regime change, and the possible ramifications for the region at large, Article 23 of the African Charter on Human and Peoples’ Rights expressly forbids even passive host state support for such movements.¹⁵³ As such, to openly support Eritrean opposition groups would amount to a breach of the African Charter. Even so, Ethiopia makes only moderate efforts to hide its close connection with Eritrean opposition groups.

¹⁵⁰ The validity of such concerns can be likened to the Refugee Convention’s recognition of the legitimacy of an individual’s “unwillingness to seek state protection” when to do so would be futile and/or might endanger oneself. 1951 Refugee Convention, *supra* note 74 at Art.1(A)(2).

¹⁵¹ Reynell, *supra* note 125 at 19.

¹⁵² Thomas Hovet, *Boundary Disputes and Tensions as a Cause of Refugees in Refugees South of the Sahara* 25 (1975), as cited in Benard, *supra* note 16 at 620.

¹⁵³ Article 23 (2) states: “For the purpose of strengthening peace, solidarity and friendly relations, States parties to the present Charter shall ensure that: (a) any individual enjoying the right of asylum under 12 of the present Charter shall not engage in subversive activities against his country of origin or any other State party to the present Charter.” Organization of African Unity, African Charter on Human and Peoples’ Rights art. 23 (2), June 27, 1981, CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982).

Ethiopia is host to many Eritrean political opposition groups, including the 13-organization coalition known as the Eritrean Democratic Alliance (EDA).¹⁵⁴ This can be attributed to a number of factors including proximity to Eritrea and a large refugee population from which to recruit members. However, undoubtedly the support these groups receive from the Ethiopian government plays a significant role in providing the ideal safe haven from which to launch their opposition.¹⁵⁵ Although both opposition representatives and Ethiopian officials are cautious in explaining the exact relationship between the two (sometimes going so far as to deny any relationship), the vague statements and level of caution used indicate a close link between the two.¹⁵⁶ Research participants confirmed this hypothesis when they shared with me their first-hand experiences. One participant reported that opposition members were appointed as refugee community leaders by ARRA.¹⁵⁷ This had the simultaneous effect of further empowering the opposition groups and preventing politically inactive refugees from playing an active role in other important decisions and issues pertaining to the Eritrean community.

Margaret E. McGuinness asserts that the “egregious politicization of refugee settlements [is]...contrary to the norms of international law.”¹⁵⁸ However, several

¹⁵⁴ This loose coalition of 13 political diverse organizations have joined forces committed to the overthrow of the PFDJ regime. However, they have experienced a number of problems and internal conflicts which have caused many to doubt their cohesion.

¹⁵⁵ Understandably, both fear a loss of legitimacy for the opposition groups. However, for many this has already occurred and the Eritrean opposition groups suffer from a severe lack of support. Despite a lack of information on the Ethiopian government’s support, it is known that it has at least provided a mouthpiece to opposition via the pro-government Walta Information website (<http://www.waltainfo.com/>), enabled opposition TV broadcasts, and radio broadcasts. The ELF (Eritrean Liberation Front), though not based in Ethiopia, also reportedly receives support from the Ethiopian government, <http://www.irinnews.org/Report.aspx?ReportID=15662>, <http://www.ethiox.com/ethioxforum/index.php?topic=158.0>.

¹⁵⁶ One spokesman, “refused to comment on Ethiopia’s support for the Eritrean opposition, but acknowledged that his group and the Ethiopian government have “mutual interests”. Argaw Ashine, *Eritrean opposition launches satellite TV against president*, Abbay Media, Feb. 29, 2008, <http://abbaymedia.com/News/?p=762>. Suspicions about Ethiopia’s true role are only augmented by statements such as a recent one about the meeting of opposition groups in Addis Ababa which was posted on the website of the Ethiopian Embassy in London. In a short statement, it is *repeatedly* stated that the meeting is a “wholly Eritrean affair” and that the Ethiopian government has no “agenda of its own”. Embassy of the Federal Democratic Republic of Ethiopia, *A National Conference for Democratic Change in Eritrea*, http://www.ethioembassy.org.uk/news_archive/conference_on_eritrea.htm.

¹⁵⁷ Author interview, Jan. 2011.

¹⁵⁸ McGuinness, *supra* note 123 at 135.

participants testified that they had been requested or pressured to join Eritrean opposition groups based in Ethiopia, either by members of these groups or state security officials. None of these individuals had agreed to join the groups, either out of fear for their personal safety or that of their family in Eritrea, disagreement with the vision of the opposition leaders, or general disillusionment with politics in general. However, all feared the consequences of this refusal. The number one concern was that a refusal to participate in opposition groups would negatively affect their resettlement process by causing unnecessary, possibly indefinite, delays. Similarly, according to the same participants, many refugees chose to join opposition groups hoping to facilitate their resettlement process. These individuals perceived ARRA as having a close relationship with those opposition leaders and security officials who asked them to join the opposition.¹⁵⁹ Therefore one's willingness or refusal to participate in opposition groups, especially if approached by the members themselves, was seen as crucial to their present and future wellbeing.

In addition to concerns about resettlement, one individual stated with some certainty that since the time of his refusal to join an opposition group, he had been under intermittent surveillance. It was not specified whether this was by opposition members or state officials, only that as a result of this surveillance—which he attributed to his failure to participate in opposition politics—the individual felt compelled to use caution in where he went, who he met with, and how often.¹⁶⁰ Thus, members of the refugee community perceived Eritrean opposition groups and ARRA as closely but covertly linked.

Before continuing, it is interesting to note that the perception of Eritrean refugees that the Ethiopian government's protection was dependent on their support of political opposition groups is hardly unprecedented; the U.S. State Department reported that while Eritrea provided uniform temporary protection to Sudanese and Somali refugees, Ethiopian refugees received government assistance only if they agreed to join Ethiopian

¹⁵⁹ As mentioned above, this relationship can be neither proven nor disproved, but the relationship between ARRA and Ethiopian state security will be briefly discussed below.

¹⁶⁰ It is worth mentioning that although this participant's concerns appear to demonstrate a certain degree of paranoia compared to the experience of others, these concerns were only mentioned after several meetings when a degree of trust had been established between researcher and participant. As it was not possible to meet with each participant several times, it is reasonable to assume that others might have voiced such concerns if the same level of trust had been established over time.

opposition groups.¹⁶¹ Those who refused suffered considerable harassment by Eritrean government officials.¹⁶²

C. Refugees: Ethiopia's fifth column—whether they like it or not¹⁶³

Refugee scholar and practitioner James Milner, in his examination of the relationship between politics and the granting of asylum in Africa, argues that state policy on the issue of refugees has little connection with the actual refugee populations. Rather, “states formulate their response to refugees mindful of the furtherance of broader political objectives, with the paramount objective being the survival of the governing regime. It is, therefore, likely that asylum policies are primarily the product of an instrumental calculation of how to ensure regime survival and mitigate internal and external pressures.”¹⁶⁴ The Ethiopian government recognizes both internal and external threats to the peace and stability of the Ethiopian state. Internally, the EPRDF government is engaged in several prolonged struggles with armed factions—namely the Oromo Liberation Front (OLF) and the Ogaden National Liberation Front (ONLF). Both the OLF and the ONLF rely on significant support—including arms supplies—from Eritrea, with the OLF based in Asmara.¹⁶⁵ The Eritrean government itself remains Ethiopia's undisputed primary external threat. In an April 2011 interview, Ethiopian Prime Minister Meles Zenawi expressed concerns about the ongoing threat of Eritrean terrorism, noting a change in Eritrean strategy from targeting military and security sites to crowded shopping areas and other civilian areas.¹⁶⁶ Hence, according to Milner's analysis, Ethiopia's asylum policy will be formulated primarily based on the strategic goal of minimizing and ideally destabilizing the threat posed by the Eritrean government.

¹⁶¹ US Department of State, *supra* note 114.

¹⁶² *Id.*

¹⁶³ The term “Fifth Column” refers to a “clandestine subversive organization working within a country to further an invading enemy's military and political aims.” Christine Ammer, *The American Heritage Dictionary of Idioms* (1997).

¹⁶⁴ Milner, *supra* note 126 at 166.

¹⁶⁵ David H. Shinn, Ethiopian Armed Groups (Nov. 2009), *available at*: <http://oprde.com/aadula/Ethiopian%20Rebel%20Groups.pdf>.

¹⁶⁶ Zenawi vividly related instructions allegedly given to Eritrean terrorist trainees to “change Addis into Baghdad”. Awate, *Prime Minister Meles Zenawi: No Longer Playing Defense*, Apr. 19, 2011, *available at*: <http://awate.com/prime-minister-meles-zenawi-no-longer-playing-defense/>.

By far the most worrisome and serious example of this policy agenda was recounted by two unrelated study participants. Their accounts demonstrate a disturbing practice in the Ethiopian protection system: the blatant coercion of Eritrean refugees to participate in political propaganda against the very regime from which they just escaped. Two of the 15 refugees interviewed had been approached by officers of Ethiopia's National Intelligence and Security Service (NISS) and asked to perform television interviews in order to expose and publicize the Eritrean government's persecution of its citizens. Both individuals were approached shortly after crossing the border—either before or at the time of registration—and thus before they had accessed the Ethiopian asylum system.

Access to a fair and prompt registration procedure is one of the core elements of refugee protection.¹⁶⁷ Registration is the necessary prerequisite for other elements of protection, such as prevention of refoulement, arbitrary arrest and detention, as it allows the status of the individual to be monitored.¹⁶⁸ As stated by UNHCR, asylum-seekers should be registered and issued identity documents as soon as possible upon entering the country of asylum.¹⁶⁹ The deliberate obstruction of the registration procedure for individuals deemed potentially useful or “sensitive” is contrary to the most basic principles of refugee protection. The preemption of this procedure by political concerns is also demonstrative of the Ethiopian government's priorities regarding Eritrean refugees—politics before protection.

As previously discussed, the presence of Eritrean agents within Ethiopia and their monitoring of the Eritrean refugee community have been recognized by the Ethiopian government, in particular ARRA.¹⁷⁰ Eritrean agents can with relative ease pose as

¹⁶⁷ See UN High Commissioner for Refugees, *Conclusion on Registration of Refugees and Asylum-seekers*, Oct. 5, 2001, No. 91 (LII) - 2001, available at: <http://www.unhcr.org/refworld/docid/3bd3e1d44.html>.

¹⁶⁸ UN High Commissioner for Refugees, *Registration*, available at: <http://www.unhcr.org/pages/49c3646cf5.html> and UN High Commissioner for Refugees, *UNHCR and International Protection: A Protection Induction Programme* 4.3, June 1, 2006, available at: <http://www.unhcr.org/refworld/docid/466e71c32.html>.

¹⁶⁹ UN High Commissioner for Refugees, UNHCR and International Protection: A Protection Induction Programme 4.3, 1 June 2006, available at: <http://www.unhcr.org/refworld/docid/466e71c32.html>.

¹⁷⁰ The operation of Country of Origin government agents monitoring, threatening, and targeting refugees in their state of asylum is common practice among paranoid, highly-oppressive regimes which produce a large number of political refugees. Human Rights Watch's 2002 report *Hidden in Plain View* describes

refugees and penetrate the various refugee camps or illegally reside in Addis Ababa.¹⁷¹ Even in more secure situations, it is generally recognized that refugees continue to be at risk in their country of refuge, particularly those with a political profile. Therefore, to encourage Eritrean refugees to conduct political interviews—even under the fairest of circumstances—is to intentionally endanger those individuals. To do so at the moment of greatest vulnerability, before refugees have information about their rights as a refugee and the Ethiopian government’s realistic ability to protect them within Ethiopia as well as the very limited chances that they will be resettled to a third country, casts major doubt onto the Ethiopian government’s welcoming of Eritrean refugees.

Of the two individuals approached by NISS officials to conduct interviews with Ethiopian media, one agreed to the interview while the other refused out of fear for the wellbeing of family members still in Eritrea. The latter individual was brought to Addis Ababa from Inda Abaguna by state security officials, housed in a hotel for six months, and effectively kept in complete isolation—all without having any access to either ARRA or UNHCR.

The other individual, although refusing to conduct such an interview with Ethiopian media due to the risk, underwent a similar procedure. As a mid-ranking official with a branch of the Eritrean armed forces, this individual was immediately identified as having a sensitive security profile. He too was transported from Inda Abaguna to Addis Ababa at the expense of state security, completely bypassing the standard asylum procedure for Eritrean refugees. This individual was also kept in a hotel for six to eight weeks, during which he was interrogated by state security in an attempt to mine useful information about that particular branch of the armed forces.

After being released, these two individuals were then permitted to access ARRA and UNHCR, and were subsequently granted “urban refugee status” for protection reasons. However, at the time of interview, both individuals continued to experience protection concerns related to their experiences with state security. The participant who conducted the interview complained of isolation and even hostility from the Eritrean

similar experiences by refugees in Nairobi and Kampala. *See* Human Rights Watch, *supra* note 126 at 39-42, 89-100.

¹⁷¹ Similar concerns were reported by government officials in Kampala. *See id.*, 89.

refugee community, many of whom believed them to be a “*Woyanne spy*”¹⁷² after having given the interview. As a result, this individual received verbal threats from other refugees and was even physically attacked outside of the UNHCR-Addis Ababa office. Although this incident was witnessed by and reported to UNHCR employees, no action was taken to provide further protection to this individual.

The individual who chose not to perform the interview but had security concerns related to his position in Eritrea—aware that this position made his treasonous act of traveling to Ethiopia that much more unforgivable in the eyes of the Eritrean government—was still extremely fearful after 18 months in Addis Ababa. Although he expressed his fear of the Eritrean government to both ARRA and UNHCR, he refrained from sharing his instances of intimidation by Ethiopian state security due to the predominance of Ethiopian staff.¹⁷³

Based on the experiences of the two individuals mentioned above, the denial of access to immediate registration in cases such as these is neither a mere oversight nor matter of expediency. Rather, it seems an intentional denial of the benefits of immediate registration—namely protection from arbitrary arrest and detention—in order to do precisely this in an attempt to maximize the potential political value of each refugee. It also seems unlikely that UNHCR is completely unaware of this practice, though it is unclear whether its failure to take action or publicly condemn Ethiopia in this respect is due to fear of jeopardizing their relationship and UNHCR’s presence in the country, or a sense of apathy and/or helplessness. Indeed, UNHCR has been criticized in the past for failing to respond to instances of clear refugee manipulation, allegedly due to the influence of UN’s dominant members, who are also guilty of manipulation.¹⁷⁴ Although both individuals were ultimately allowed access to registration and the asylum system at

¹⁷² The term *Woyanne* (also written as *Woyane*) refers to Ethiopian Prime Minister Meles Zenawi’s government and his associated party, the Tigrayan People’s Liberation Front (TPLF). It originates from the Tigrinya word for “revolt”, and was adopted by the TPLF during their ultimately successful campaign to overthrow the *Derg* regime.

¹⁷³ In a second interview, the participant reported that after more than one year, he was finally able to meet with a non-Ethiopian UNHCR protection officer (at the time of research, there was only one in the UNHCR Addis Ababa office—the Chief Protection Officer). This officer recognized the seriousness of the participant’s security concerns, and in this second interview the participant expressed optimism about his future in terms of security.

¹⁷⁴ Stephen John Stedman & Fred Tanner, *supra* note 123 at 7.

large, the practices of NISS pre-registration had lasting effects on their personal security in Ethiopia which registration could not reverse.

D. A long arm: the threat of Eritrean intelligence agents within Ethiopia

The fear of the above two participants, as well as the feeling of insecurity that Eritrean refugees in general suffer from, is not without good cause. Reports of threats or attacks on Eritrean dissidents living abroad are fairly frequent. These threats can originate either directly from Eritrean diplomats, Eritrean agents working covertly within the diaspora, or pro-PFDJ Eritrean private citizens. In Uganda, another significant first country of asylum for Eritrean refugees, a journalist who staged a protest demanding the release of detained Eritrean journalists was threatened with abduction and forcible repatriation by the Eritrean consul if he did not cease his protest.¹⁷⁵ Even in comparatively safe countries of asylum such as the United States and the United Kingdom, Eritreans have been physically attacked for voicing criticism of the regime.¹⁷⁶

Ethiopia is not immune to Eritrea's clandestine operations in order to monitor and control its citizens abroad, including refugees. According to one study participant, in 2009 an Eritrean agent, posing as a refugee himself, infiltrated the refugee community in Addis Ababa. After some members of the community became suspicious, this individual was reported to ARRA, who subsequently determined that the individual was in fact an Eritrean agent who was then deported.¹⁷⁷ This incident is illustrative of a number of elements such as the active interest of Eritrean intelligence in Eritrean refugee communities, the sense of insecurity and distrust among Eritrean refugees, and ARRA's awareness of the real danger of Eritrean intelligence operations within Ethiopia.

¹⁷⁵ Christian Solidarity Worldwide, Uganda: refugee in hiding following threat from Eritrean official, May 13, 2010, *available at*: <http://au.christiantoday.com/article/uganda-refugee-in-hiding-following-threat-from-eritrean-official/8224.htm>.

¹⁷⁶ One example occurred in May 2010, when an Eritrean refugee and journalist who had been residing in Houston, Texas since 2006, was assaulted when he attempted to cover a pro-Eritrean seminar for his independently-produced monthly newsletter. Mohamed Keita, *For Eritrean expatriate press, intimidation in exile*, Committee to Protect Journalists (June 17, 2010), <http://www.cpj.org/blog/2010/06/for-eritrean-expatriate-press-intimidation-in-exil.php>.

¹⁷⁷ Author interview, Jan. 2011.

E. Women's protection issues

Though not related specifically to the political aspect of Ethio-Eritrean relations, it is worth mentioning the additional protection concerns that apply to female Eritrean refugees in Addis Ababa. The PFDJ's policy of universal conscription applies to both men and women, as does the government's zero tolerance for dissidence and persecution of religious minorities.¹⁷⁸ Even so, women still account for only a small minority of Eritrean refugees in Ethiopia. Anthropologist Magnus Treiber suggests this may be because women have a greater chance of demobilization from the National Service, and thus are more often able to migrate via legal channels, whereas men are forced to undertake dangerous journeys and transit neighboring countries such as Ethiopia and Sudan.¹⁷⁹ Out of 15 refugees interviewed in this study, four were female.¹⁸⁰

Female participants described a number of gender-specific threats to their personal safety. Two participants lived alone, despite experiencing a constant sense of fear due to unknown men following them, threatening them, and repeatedly calling them. The other two participants lived with others, either family or friends, and did not report such fears to authorities. One participant related her experience of rape and subsequent harassment by a high-ranking state official. She was both afraid to seek protection from ARRA, and also felt that to do so would be futile and could only negatively affect her situation, possibly jeopardizing her present security and eliminating her very minimal chance of resettlement.¹⁸¹ Another participant was reluctant to report her harassment by Ethiopian men to ARRA and said other women in the Eritrean community who experienced similar threats were also unwilling to do so. This behavior was based on one

¹⁷⁸ Some sources suggest that in practice women are only conscripted until the age of 27. UN High Commissioner for Refugees, UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Eritrea 10, Apr. 20, 2011, HCR/EG/ERT/11/01, *available at*: <http://www.unhcr.org/refworld/docid/4d4fe0ec2.html>.

¹⁷⁹ Magnus Treiber, *Leaving Asmara – Individual migration projects of Eritrea's 2nd generation of refugees in Proceedings of the 16th International Conference of Ethiopian Studies* (Svein Ege et al. eds., 2009), *available at*: <http://portal.svt.ntnu.no/sites/ices16/Proceedings/Volume%202/Magnus%20Treiber-%20Leaving%20Asmara.pdf>.

¹⁸⁰ This should not be taken as proof that a greater proportion of the refugee population is, in fact, female. In an attempt to explore equally the experiences of both male and female Eritrean refugees, I made a conscious effort to try to interview as many female refugees as possible. Even so, the participant pool was still heavily weighted in favor of males.

¹⁸¹ Author interview, Jan. 2011. Many individuals expressed a conviction that ARRA held immense power to expedite, delay, or terminate the resettlement processes of individuals.

woman's experience when, upon reporting her rape by an Ethiopian national to ARRA, was warned not to tell anyone else she had been raped by an Ethiopian man. This interviewee reported that as a result, not only did Eritrean refugee women feel certain that ARRA would take no action in response to such incidents, but also feared that their resettlement processes could be stalled because of accusations made against Ethiopians. In addition, both men and women reported the occurrence of rape by Ethiopian soldiers of Eritrean women who had just crossed the border and not yet reached the registration point at Inda Abaguna.¹⁸²

Although other refugee nationalities in Ethiopia likely face some of the same protection concerns discussed above, particularly those affecting women and tense and distrustful relationships with the Ethiopian community, the case of Eritrean refugees is unique in that both the Ethiopian government and the Eritrean government actively target the Eritrean refugee community as part of the larger political struggle between the two states.

Refugees are by nature symptomatic of their government's failure to protect their wellbeing. This failure can be either due to the government's direct persecution of the individual, or its more passive inability or unwillingness to protect its citizens. However, only in exceptional cases does this persecution follow refugees beyond international borders. Not only is this the case here, but Eritrean refugees are also recast as political actors in Ethiopia's campaign for regime change in Eritrea, regardless of their desire to do so or the risk incurred to their personal safety or that of their family members.

¹⁸² Author interviews, Jan., Feb. 2011

VI. THE SELF-PROTECTION MECHANISMS OF ERITREAN REFUGEES IN ADDIS ABABA

Two general conclusions can be drawn from the information discussed thus far. Firstly, in addition to the protection concerns that affect all refugees in Ethiopia, Eritrean refugees face a separate set of protection challenges related to the current state of Ethio-Eritrean relations. Secondly, effective responses and solutions for these challenges are currently inaccessible to Eritrean refugees. Even for the few participants who expressed some faith in ARRA's sincere desire and commitment to protect them, there is a widespread recognition of ARRA's realistic ability to protect refugees in the urban environment of Addis Ababa. As a result, all participants relied on various self-protection methods in order to minimize personal risk. These methods are primarily aimed at making themselves "invisible", often by disassociating themselves to some degree from the Eritrean refugee community.¹⁸³

The most common method utilized is to act as though one is Tigrayan Ethiopian rather than Eritrean.¹⁸⁴ Participants confirmed that most Ethiopians in fact assumed they were Tigrayan without asking. They therefore felt comfortable speaking Tigrinya in public places, despite being surrounded by Amharic-speakers.¹⁸⁵ Although according to one participant, Ethiopians could still detect Eritreans easily from their mannerisms and general behavior, most other participants said the cultures were too similar to cause any suspicion among Ethiopians that they might be from Eritrea.¹⁸⁶ Participants found this practice particularly important in avoiding discrimination from current and potential

¹⁸³ See Tara Polzer, *Invisible Integration: How bureaucratic, academic and social categories obscure integrated refugees*, 21(4) J. Refugee Studies 476-497 (2008). (explores the link between the invisibility of refugees and *de facto* integration.)

¹⁸⁴ See *supra* note 1.

¹⁸⁵ The popular assumption that Tigrinya-speakers in Addis Ababa are Tigrayan Ethiopians can be attributed to the 1998 deportations of the Eritrean population. Those Eritreans who avoided deportation are reputedly extremely cautious about concealing their Eritrean ethnicity and are therefore unlikely to be speaking Tigrinya in public.

¹⁸⁶ Another advantage for Eritreans wishing to conceal their nationality is the fact that, for many Ethiopians do not even consider the possibility that there might be Eritreans living amongst them in Addis Ababa. In casual conversations with Ethiopian residents of Addis Ababa, I encountered one or two persons aware of the Eritrean refugee camps in northern Tigray provinces. However, the few others to whom I told I was in Addis Ababa to conduct research on Eritrean refugees seemed genuinely shocked that this population was present in their city.

landlords, but also in preventing themselves from becoming a target for any sort of abuse or crime.

Eritrean refugees in Addis Ababa further “dilute” their Eritrean-ness by living dispersed throughout the city rather than in a defined and obvious community. The 15 individuals interviewed lived in nine different areas of the city.¹⁸⁷ Most other studies on urban refugees show the importance placed on living in a community setting, which provides various security, social, financial, and other benefits in what are often somewhat hostile or xenophobic surroundings.¹⁸⁸ However, in this case, proximity to other Eritreans was considered detrimental to security and likely to attract unwanted attention.¹⁸⁹ Although this was not the only reason for the widespread dispersal of Eritrean refugees in Addis Ababa, the fact that only a few participants—and only when specifically asked—recognized the importance of a communal relations, is noteworthy.¹⁹⁰ Those living in Addis Ababa for security reasons tended to make conscious efforts to avoid other Eritrean refugees in order to protect themselves from possible Eritrean agents and the other risks facing the Eritrean refugee population.¹⁹¹

As can be seen from the behavior and adapted lifestyle of the participants, Eritrean refugees are painfully aware of the lack of reliable protection in Ethiopia and the importance of the quintessentially Eritrean self-reliance in their quest to stay safe. However, in doing so, they also further reduce ARRA’s ability to protect them. Urban refugees are notoriously difficult for agencies to protect: the more successfully they camouflage themselves the less likely protection agencies and other refugee NGOs will

¹⁸⁷ Two individuals were only temporarily staying in Addis Ababa with friends; they were unable to secure urban refugee status and would ultimately be compelled to return to the camps.

¹⁸⁸ See for example Campbell, *supra* note 98 and *Why Somali Refugee Live in Eastleigh Despite Their Growing Prosperity*, Associated Content from Yahoo, Sept. 20, 2007, http://www.associatedcontent.com/article/371785/why_somali_refugees_live_in_eastleigh_pg2.html?cat=10.

¹⁸⁹ The difference here is while typically refugee populations are easily identifiable either by their appearance or spoken language, Eritreans can pass themselves off as Ethiopians without much effort. Due to the ethnic and cultural similarities, Eritreans in Addis Ababa are not particularly conspicuous.

¹⁹⁰ Many participants said that finding inexpensive housing with landlords willing to rent to more than one family of Eritreans was near impossible. Therefore they were obliged to live separately, surrounded by Ethiopians. Even so, some refugees did form mini communities within small compounds.

¹⁹¹ Four of the 15 participants were living in Addis Ababa for protection reasons.

be able to identify them and address protection gaps.¹⁹² Therefore, the ability of Eritrean refugees to effectively make themselves invisible, works both in favor of and as a detriment to their personal safety.

¹⁹² For a discussion of the difficulties of identifying refugees in an urban environment, see Dale Buscher, *Case Identification: Challenges Posed by Urban Refugees*, Annual Tripartite Consultations on Resettlement (Jun. 2003), available at: <http://www.unhcr.org/3ee6dcc34.pdf>.

VII. WHY IS THE STATUS QUO NOT WORKING?

I would like to state clearly that it is neither my intention nor desire to condemn the Ethiopian government's handling of the large refugee populations it is host to. Ethiopia has been praised repeatedly by the international community for its treatment of refugees, and this praise is well-deserved. As mentioned above, Ethiopia's strict adherence to the principle of non-refoulement makes it one of the safest havens within reach for Eritrean refugees—far safer than alternatives Sudan, Egypt, Libya, and even Sweden in this respect.¹⁹³ The Ethiopian government's initiative in the release of Eritrean detainees in Egypt goes above and beyond its legal obligations under international law and is a truly exemplary act of “burden-sharing”.¹⁹⁴ Rather it is the position of the author that—given the unresolved Ethio-Eritrean conflict¹⁹⁵ and supported by the aforementioned fears voiced by Eritrean refugees during this study—the current refugee protection system is *structurally incapable* of providing effective physical protection due to the conflict between political and humanitarian motives.

ARRA, the Ethiopian governmental agency charged with the assistance and protection of all refugee populations in Ethiopia, falls under the supervision of state security agency NISS.¹⁹⁶ It goes without saying that the primary concern of any state security institution is the national security of said state. When threats to national security emerge, emergency powers are often evoked by heads of state in order to bypass human rights regulations. State security is the medium through which these “powers” (human rights violations by any other name) are typically carried out. Thus state security agencies are typically built to ignore human rights law and humanitarian concerns when the order is given from above. Although this division of labor has produced alarming practices in many countries where the existence of an actual national security threat is

¹⁹³In 2010, Egypt returned at least 64 Eritreans to Eritrea; Sweden returned eight Eritreans. Amnesty International, *Eritrea – Amnesty International Report 2010*, available at <http://www.amnesty.org/en/region/eritrea/report-2010>.

¹⁹⁴For an examination of the principle of burden-sharing, specifically as it relates to Africa, see Milner, *supra* note 126 at 39-60.

¹⁹⁵This term is sometimes used to refer to the Badme border conflict and ensuing war from 1998-2000. In this article the term refers to the state of general hostility and lack of diplomatic relations that began with the 1998 Badme border conflict and continue to this day.

¹⁹⁶International Centre for Migration Policy Development, *supra* note 109 at 14-5.

often questionable, appearing to be a convenient excuse for consolidation of power, it is a logical byproduct of political realism and is not inherently problematic in itself. The problem presents itself when a state security agency—or its direct subsidiary—is charged with a humanitarian mission. This creates a conflict of interest in which national security will always prevail, and humanitarian concerns will be quietly swept under the rug.

Ethiopia, though sometimes feigning indifference towards Eritrea, has stated clearly that Eritrea intends to overthrow the Ethiopian government.¹⁹⁷ Thus NISS is necessarily concerned with both offensive and defensive measures against this perceived security threat. Based on the experiences of this study's participants, it is apparent that NISS views the refugee population as a useful element of its offense. The coercive methods used by NISS (both directly and via proxies such as ARRA and Eritrean opposition leaders) to grow Eritrean opposition groups and produce anti-PFDJ propaganda suggest an unofficial security strategy with Eritrean refugees acting as NISS's "Fifth Column". I will attempt neither to confirm nor deny the real effectiveness of such a strategy for the purpose of national security. However as discussed above, in terms of NISS's humanitarian responsibilities via ARRA as well as international human rights law, such a strategy is detrimental both to the security of individual refugees as well as the greater legitimacy of international refugee protection.¹⁹⁸ As such, it is clear that NISS and its subsidiary ARRA cannot effectively protect the Ethiopian state from the perpetual threat of a hostile Eritrea, while at the same time protecting and respecting the security needs and rights of Eritrean refugees in Ethiopia.

Building upon the argument asserted above, that given the state of Eritrean-Ethiopian relations ARRA is an unsuitable as the primary protection provider for Eritrean refugees, the question arises: then who? One of the main premises of this paper is that there are various, very real protection concerns of Eritrean refugees which still need to be

¹⁹⁷ Ethiopia's Ministry of Foreign Affairs, *A Week in the Horn: Preventing "a failed state": the Responsibility of Eritrea's Leadership*, Sept. 24, 2010, http://www.mfa.gov.et/Press_Section/Week_Horn_Africa_September_24_2010.htm#4.

¹⁹⁸ The disjointed and conflictual nature of ARRA's relationship to NISS is clear from some of ARRA's past positions. According to one interviewee, ARRA at one point stated clearly that refugees were absolutely forbidden from participating in any political activities. However, after the apparent intervention of NISS, ARRA remained silent on the politicization of the Eritrean refugee community, even seeming to support it.

addressed. These include—but are not exclusive to--coercion to participate in political opposition groups, the threat of Eritrean intelligence agents operating within Ethiopia, physical violence perpetrated by Ethiopian officials, and intimidation and manipulation by Ethiopian security officials of individuals deemed political useful. ARRA has failed to provide even the most basic elements of protection, such as timely registration for all newly-arrived asylum-seekers. Therefore a capable substitute is needed.

VIII. WHAT ROLE FOR UNHCR?

Since its humble beginnings with a mission of aiding World War II refugees and an annual budget of 300,000 USD with which to achieve it, UNHCR and the associated international refugee regime have ballooned, expanding to keep up with the growing number of refugees worldwide.¹⁹⁹ In addition to serving an increasing population, UNHCR has gone beyond its original mandate to include the facilitation of resettlement and voluntary repatriation, the provision of aid to internally displaced persons as well as assisting in humanitarian emergencies. However, the primary charge and necessary focus of the refugee regime remains refugee *protection*.²⁰⁰ Granted, the ultimate aim of these tasks is the improvement of refugee protection. The problem is when these UNHCR activities detract from or prevent *current* protection.

It has been argued by various academics and professionals that UNHCR's usurpation of the key duties and responsibilities of the sovereign state has created and sustained major refugee protection gaps and other anomalies such as the "surrogate state".²⁰¹ The dominant position among refugee advocates today is support for greater active state participation in refugee issues, and a rollback of UNHCR involvement, ideally allowing the agency to assume merely a "watchdog" role. According to then-director of UNHCR's International Protection Department Erika Feller, states are

[e]xpected to help establish the preconditions for a viable and effective refugee protection regime, namely, political support for the institution of asylum, universal respect for the rule of law, and a stable and secure global environment.

¹⁹⁹ Guy S. Goodwin-Gill, *The Politics of Refugee Protection*, 27(1) *Refugee Surv. Q.* 8, 19 (2008). As a point of contrast, UNHCR's 2011 budget was 3,320,830,000 USD. UN High Commissioner for Refugees, *Global Appeal 2011 Update: Introduction* (December 2010), available at: <http://www.unhcr.org/pages/49c3646c4b8.html>.

²⁰⁰ Since 1978 UNHCR ExCom has each year reiterated the importance of international protection as the primary task of the High Commissioner in its ExCom Conclusions. Starting in 1984, these Conclusions begin to note and increasingly emphasize the growing complexity of refugee problems and the challenge this presents to the provision of protection. UN High Commissioner for Refugees, *A Thematic Compilation of Executive Committee Conclusions* 265 (4th ed. Aug. 2009), available at: <http://www.unhcr.org/3d4ab3ff2.html>.

²⁰¹ See A. Slaughter & J. Crisp, *A surrogate state? The role of UNHCR in protracted refugee situations* 123-40 in *Protracted Refugee Situations* (G. Loescher, J. Milner, E. Newman, & G. Troeller eds., 2008). It has also been argued by Slaughter and Crisp that UNHCR's state-like role is assumed in an attempt to fill protection gaps.

[The] UNHCR's role is to prompt, facilitate, and oversee the State responsibility, but can never substitute for it.²⁰²

This position is in recognition of the inseparability of sovereign powers and certain elements of refugee protection.²⁰³ Attempts to maintain such a separation can result in UNHCR-host government relationships plagued by suspicion and outright lies. This can include official government denials that confirmed instances of refoulement ever took place,²⁰⁴ and a denial of due process to asylum-seekers in a last-ditch attempt to prevent their arrest and deportation due to friendly country of origin - host country relations.²⁰⁵

In a recent article, refugee lawyer and advocate Michael Kagan explores various reasons that a shift of greater responsibility from state to UNHCR could be considered favorable by the host state.²⁰⁶ However, from the perspective of the international community, there is a hope that the opposite-- return to state responsibility-- would provide not only a stronger guarantee of non-refoulement, but might also lead to greater enjoyment of other essential rights such as right to education, right to work, freedom of movement, etc.

In addition to the possible benefits of greater buy-in by host states in the assistance of their refugee populations, another reason for the popularity of this position is the current overstretch of UNHCR. As the number of "persons of concern" skyrockets, UNHCR's annual budget has failed to grow at a comparable rate. With the UNHCR overextended as is, it is understandably eager to relinquish certain duties and responsibilities to willing host governments, in order to allocate its resources to refugee

²⁰² Bemma Donkoh, *A Half-Century of International Refugee Protection: Who's Responsible, What's Ahead?*, 18 Berkeley J. Int'l L. 260, 265 (2000).

²⁰³ In addition to Ethiopia's legal obligations under the 1951 and OAU Conventions, as per the International Covenant on Civil and Political Rights (ICCPR), Ethiopia is obligated to ensure the individual's right to liberty and security of person. ICCPR, *supra* note 115 at art. 9(1).

²⁰⁴ See United States Committee for Refugees and Immigrants, *World Refugee Survey 2008 - Turkey*, Jun. 19 2008, available at: <http://www.unhcr.org/refworld/docid/485f50d776.html> and Joint Statement by Helsinki Citizens' Assembly – Turkey – Amnesty International – Turkey (Aug. 2007), available at: <http://www.statewatch.org/news/2007/aug/turkey-joint-statement-ai-hca.pdf>.

²⁰⁵ In the past this has been the case in Egypt with many Arab nationality asylum-seekers. Their refugee status determination procedures vary frequently, often resulting in sub-standard determination hearings and a lack of right to appeal.

²⁰⁶ Kagan, *supra* note 88 at 6-7, 12-13. Although Kagan's article specifically addresses Arab countries, many points are generally applicable to global South refugee situations.

situations in which there is little or no involvement by the host state.²⁰⁷ Furthermore, if state protection is considered unreliable in urban refugee situations, then effective UNHCR protection is nearly impossible in the same urban environment. UNHCR's intention to address this shortcoming is one of the factors which inspired the 2009 revision of its urban refugee policy.²⁰⁸ Whether this new policy will improve upon UNHCR's current abilities has yet to be seen.

In keeping with UNHCR's ideal role as a watchdog organization, it is necessary to briefly consider whether such a role is appropriate in this situation. The practicality of this alternative can be judged based on UNHCR's current role, which has some "watchdog" capabilities. One example is the case provided earlier of registration procedures at Inda Abaguna.²⁰⁹ Despite the inclusion of asylum-seeker registration among UNHCR-Ethiopia's key objectives,²¹⁰ and its ability to oversee registration to this aim, UNHCR chooses not to have a presence at Inda Abaguna.²¹¹ Therefore it is not the UNHCR's failure to recognize the importance of registration, nor a lack of legal mandate to oversee this process, but rather a lack of impetus and accountability due to the "watchdog" nature of its role. In situations of overstretch, as in the case of UNHCR-Ethiopia (and UNHCR generally), "watchdog" functions tend to fall through the cracks, resulting in the creation of serious protection gaps.

In spite of the clear advantages to greater host state responsibility and the considerable drawbacks and limitations to UNHCR's protection capabilities, I recommend that UNHCR-Ethiopia assume full protection responsibility for Eritrean refugees until the cessation of hostilities between Eritrean and Ethiopia. I further suggest that UNHCR limit its protection staff to non-Ethiopians, in order to avoid the current

²⁰⁷ This argument is contrary to Barbara Harrell-Bond and others' critical thesis that UNHCR is actually eager to increase its control on all aspects of refugee protection, thus excluding host states from potential greater participation. See Kagan, *supra* note 88 at 5.

²⁰⁸ The main change in this revised policy is a legitimization of refugees living in urban areas. The document also contains several suggestions of creative ways to reach refugee communities hidden within an urban environment. See UN High Commissioner for Refugees, *UNHCR Policy on Refugee Protection and Solutions in Urban Areas* (Sept. 2009), available at: <http://www.unhcr.org/refworld/docid/4ab8e7f2.html>.

²⁰⁹ See above, Part V(C).

²¹⁰ UN High Commissioner for Refugees, *2011 UNHCR country operations profile – Ethiopia*, available at: <http://www.unhcr.org/cgi-bin/texis/vtx/page?page=49e483986>.

²¹¹ US Committee for Refugees and Immigrants, *supra* note 135.

environment of suspicion, insecurity, and sense of futility (from the refugee perspective) in seeking protection.

The fact that UNHCR is not equipped to provide actual protection is often cited; there is no UNHCR police force or military. It is therefore essential that, when circumstances call for a full investigation or apprehension of the perpetrator of a crime against a refugee, UNHCR act as the intermediary and, in a sense, the advocate of the refugee. This suggestion is not such a drastic shift—particularly given the original mission of the agency--and in some countries UNHCR has already adopted this approach to protection. UNHCR protection staff can inspire confidence and trust in the refugee population, making individuals more willing to seek protection when necessary.

UNHCR can also play an important role in helping vulnerable individuals to pursue their case within the Ethiopian legal system if necessary. The two study participants who had previously dealt with Ethiopian police had positive reports about police responsiveness.²¹² Under the current system, however, participants stated that when attempting to report a crime or protection issue to either UNHCR or Ethiopian state police, they are turned away on the basis of their refugee status, and told that they must go to ARRA with all protection issues.²¹³ As asserted by refugee advocate Amy Slaughter, “UNHCR has an obligation to uphold its protection mandate, and thus has a legitimate concern to avoid any coordination arrangements that might compromise that mandate.”²¹⁴ Refugee policy expert Gil Loescher has also expressed disappointment at what he calls the “erosion of refugee protection”, calling for UNHCR to raise its protection profile and be more assertive in the fulfillment of its protection mandate.²¹⁵ I therefore argue that it would be more effective to relieve ARRA of its protection duties,

²¹² One individual was targeted by police and then pursued them in court, the other reported to the police but when they found out they were a refugee, sent them to ARRA. Author interviews, Jan. 2011.

²¹³ Author interviews, Jan. Feb. 2011. This “passing-of-the-buck” and exclusion from access to Ethiopian state police protection is a violation of Article 26 of the ICCPR, which 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.” This would necessarily include “refugee status”. ICCPR, *supra* note 115 at Art. 26.

²¹⁴ Slaughter & Crisp, *supra* note 201 at 14.

²¹⁵ Gil Loescher, *UNHCR at Fifty*, in *Problems of Protection: The UNHCR, Refugees, and Human Rights* 3, 17 (Ed. Niklaus Steiner, Mark Gibney, & Gil Loescher eds., 2003).

and instead develop and expand the UNHCR protection team and its capacity in order to reflect its primary responsibility of refugee protection.²¹⁶ When the protection needs of an individual go beyond the scope of UNHCR protection, UNHCR protection staff should act as an intermediary and advocate for the individual in accessing Ethiopian state protection.

²¹⁶ This consolidation of protection matters also serves the purpose of efficiency and better case management. Under the current system, it seems that UNHCR is unaware of the protection needs of many individuals who might be eligible for resettlement on these grounds. This unawareness of the UNHCR can be due to the individual's unwillingness to go to the UNHCR out of fear or the expectation that no action will be taken, the refusal of the UNHCR to assume protection responsibilities which fall within ARRA's scope, and/or incomplete sharing of information between ARRA and UNHCR on protection matters.

IX. CONCLUSION

Refugee protection is a tricky business, requiring both consistency and fairness, as well as flexibility to the specific needs of different refugee populations and host country environments. Already complex and often tenuous partnerships between UNHCR and host governments are further complicated by political agendas when host governments have more than a humanitarian interest in certain refugee populations. The first step for both parties is the recognition of these complicating factors and the harmful effect they can have on refugee protection. The U.S. State Department's 2008 P-2 Group Designation for Eritrean refugees in Shimelba camp—a decision taken in consultation with both UNHCR and ARRA—is based on the impossibility of local integration, allegedly due to the political situation between Eritrea and Ethiopia. However, some 40,000+ Eritrean refugees are not included in this group resettlement program, with the numbers increasing each day as the Eritrean government's hold on its citizens only becomes tighter and more oppressive.

Therefore the next step will require action in order to, to the extent possible, separate politics from the humanitarian mission of refugee protection.²¹⁷ This action, requiring a revision of the current division of labor between UNHCR, ARRA, and other Ethiopian governmental bodies, necessitates cooperation between these parties and a willingness to assume and relinquish certain duties and responsibilities. Both the Ethiopian government and citizens have shown that, despite the many years of war fought against Eritreans, there are still strong ties between the two countries, and a genuine concern for the human rights violations that are now nearly synonymous with life in Eritrea. For the time being, Ethiopia can best serve the Eritreans seeking refuge within its borders by taking a step back and supporting UNHCR in providing the best protection possible.

²¹⁷ For an interesting analysis of UNHCR's own struggles to remain non-political, see David Forsythe, *UNHCR's mandate: the politics of being non-political* (Mar. 2001), available at: <http://www.unhcr.org/3ae6a0d08.html>.