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# Refoulement of Eritrean Refugees in Ethiopia: Examining the Geopolitical Shift in the Horn of Africa

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## ABSTRACT

*The political dynamics in the Horn of Africa experienced significant transformations after the Pretoria Peace Agreement was established between the Tigray People's Liberation Front (TPLF) and the Ethiopian government. Although the agreement aimed to bring an end to the devastating armed conflict in Ethiopia (2020-2022), it has been accompanied by a decline in Ethiopia's relations with Eritrea. Once an ally of the Ethiopian government during this armed conflict, Eritrea has now forged closer ties with Egypt and Somalia. This new political alignment is motivated by mutual grievances against Ethiopia, particularly Egypt's opposition to the Grand Ethiopian Renaissance Dam (GERD), which it perceives as a threat to its water security, and Somalia's claims of sovereignty violations stemming from Ethiopia's the 2024 MoU with Somaliland, a self-proclaimed independent entity that Somalia regards as part of its territory. In the present context of increasing tensions, Eritrean refugees and asylum seekers living in Ethiopia are experiencing more significant vulnerabilities. Various reports highlight occurrences of refoulement and arbitrary detentions despite claims from the Ethiopian government that these Eritreans are involved in criminal activities and unregistered. This article examines the refoulement of Eritrean refugees in light of changing Horn Africa regional alliances. By analysing this dimension, the study found out that Ethiopia bears a legal obligation to protect Eritrean refugees and asylum seekers from persecution upon return to their home country, irrespective of the new Eritrea-Egypt-Somalia Alliance.*

**Keywords:** *Refoulement, Arbitrary Detention, Eritrean Refugee, Somaliland MoU, Eritrea-Egypt-Somalia Alliances*

## I. INTRODUCTION

The relationships between Ethiopia, Egypt, Somalia, and Eritrea have evolved into a complex web of interconnected dynamics shaped by centuries of trade, religious ties, diplomatic manoeuvres, and geopolitical interests.<sup>2</sup> Scholars believed that Egypt is involved in Ethiopian

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<sup>2</sup> Jacke Phillips, 'Punt and Aksum: Egypt and the Horn of Africa' (1997) 38(3) The Journal of African History 423, 437. See Mussie Tesfagiorgis G, *Eritrea: Africa in Focus* (Bloomsbury Publishing USA 2010) xx.

interests, backing Eritrea's independence and supporting Somalia during the Ethio-Somalia War (1977–1978).<sup>3</sup> Since Eritrea gained independence (1993) and the central government in Somalia collapsed (1991), the relationship between Eritrea and Somalia has been intricate, characterized by phases of both collaboration and diplomatic disagreement. Eritrea was accused of supporting local armed groups in Somalia, a tactic seen as an attempt to reduce Ethiopian influence in the Horn of Africa, particularly following the Ethio-Eritrea war (1998-2000).<sup>4</sup> This alleged support led to the imposition of sanctions by the UNSC.<sup>5</sup> Shortly after Prime Minister Abiy Ahmed assumed office in Ethiopia in 2018, he initiated a policy to strengthen relationships with Eritrea and Somalia, whom Eritrea had provided support during the 2020-2022 war in Northern Ethiopia.

The diplomatic relations between Eritrea and Ethiopia weakened following the TPLF and the Federal government of Ethiopia peace agreement, which aimed to resolve the armed conflict in November 2022. This Pretoria peace agreement failed to engage Eritrea government despite actively participating in this armed conflict as a main actor. Eritrea provided substantial support to Prime Minister Abiy Ahmed's government during the war. This alliance was rooted in Abiy's commitment to implementing the Algiers Border Agreement and dismantling the EPRDF, a coalition long dominated by the TPLF.<sup>6</sup> Abiy's initial political measure of inviting Eritrea to friendship was a diplomatic shift in horn Africa and Ethiopia's past policy of isolating Eritrea in the region. On the other hand, the collapse of Siad Barre's regime in 1991 plunged Somalia into chaos, marked by civil strife, the breakdown of governmental authority, and the rise of extremist groups. Ethiopia was participating in countering terrorist influence and averting regional instability, actively participating in the African Union Mission in Somalia (AMISOM). However, tensions with Somalia has been escalated in January 2024 when Ethiopia signed an accord with Somaliland, seeking recognition in exchange for access to seaport—a move Somalia fiercely opposed as a violation of its sovereignty.<sup>7</sup> Driven by shared grievances, in October 2024, Eritrea and Somalia aligned with Egypt, which has longstanding disputes with

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<sup>3</sup> John Markakis, 'The Nationalist Revolution in Eritrea' (1988) 26 (1) *The Journal of Modern African Studies* 51, 56. See Teferi Mekonnen, 'The Nile issue and the Somali-Ethiopian wars (1960s-78)' (2018) 32 (1) *Persée-Portail des revues scientifiques en SHS* 271.

<sup>4</sup> Nicole Hirt, 'Eritrea' in Andreas Mehler, Henning Melber, and Klaas Van Walraven(eds), *Politics, Economy and Society South of the Sahara in 2011*(BRILL 2012) 320.

<sup>5</sup> See UN Security Council Resolution 1844 (20 November 2008) UN Doc S/RES/1844; UN Security Council Resolution 1862 (14 January 2009) UN Doc S/RES/1862; UN Security Council Resolution 2023 (5 December 2011) UN Doc S/RES/2023.

<sup>6</sup> See Ethiopia and Eritrea Agreement (12 December 2000) 2138 UNTS 93. See Eritrea-Ethiopia Boundary Commission, Decision regarding delimitation of the border between Eritrea and Ethiopia (13 April 2002) UN Doc S/2002/423.

<sup>7</sup> Memorandum of Understanding between the Government of the Federal Democratic Republic of Ethiopia and Joint Statement of the Tripartite Summit between Egypt, Eritrea, and Somalia (1 January 2024).

Ethiopia over the Nile—held a trilateral summit to counter Ethiopia's influence in horn of Africa.<sup>8</sup>

In response to the increasing diplomatic tensions, Ethiopia focused on arresting and deporting Eritrean nationals in Ethiopia, mainly targeting those living outside of the refugee camps.<sup>9</sup> Similarly, Ethiopia's MoU with Somaliland has resulted in specific assaults on Ethiopian nationals, predominantly from the Oromo community, within Somalia. These circumstances significantly increase the dangers on refugee and asylum seekers. In this regard, Turkey's mediation through the Ankara Agreement temporarily eased threats to Somali refugees in Ethiopia.<sup>10</sup> However, Somalia's decision to give a military base to Egypt, which Ethiopia views as a national security threat, and the unresolved Egypt-Eritrea-Somalia alliance to block Ethiopia's access to the Sea raises concerns about the Ankara agreement's sustainability on normalizing Ethio-Somali relation. Meanwhile, the undermarked Ethiopia-Eritrea border and the presence of Eritrean forces in Tigray still exacerbate regional instability, directly endangering Eritrean refugees in Ethiopia.

## **II. ETHIOPIA'S REFUGEE POLICY AMIDST ERITREA-EGYPT-SOMALIA ALLIANCE**

Ethiopia is a signatory to the 1951 CSR, its 1967 Protocol, and the 1969 OAU Refugee Convention.<sup>11</sup> These international agreements form the pillar of Ethiopia's refugee protection regime. The primary domestic legislation that regulates refugees and asylum seekers in Ethiopia is the Refugee Proclamation No. 1110/2019.<sup>12</sup> This law was developed to align with Ethiopia's obligations under the 1951 CSR and the 1969 OAU Convention. Additionally, Refugee Movement Directive No. 1/2019, Refugee Right to Work Directive No. 1019/2024, and Grievance Appeal Directive No. 3/2019 aim to support the implementation of Proclamation No. 1110/2019.<sup>13</sup> Additionally, Regulation No. 546/2024 is introduced to determine a power and

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<sup>8</sup> Eritrea Ministry of Information, 'Joint Statement of the Tripartite Summit' (10 October 2024).

<sup>9</sup> OHCHR, 'UN Experts Urge Ethiopia to Halt Mass Deportation of Eritreans' (26 July 2023) < UN experts urge Ethiopia to halt mass deportation of Eritreans | OHCHR > accessed 23 December 2024.

<sup>10</sup> A Declaration between the Federal Democratic Republic of Ethiopia and Somalia (12 December 2024) (Ankara Agreement).

<sup>11</sup> See Convention Relating to the Status of Refugees (adopted 28 July 1951, entered into force 22 April 1954) 189 UNTS 137. See Protocol Relating to the Status of Refugees (adopted 31 January 1967, entered into force 4 October 1967) 606 UNTS 267. See OAU Convention Governing the Specific Aspects of Refugee Problems in Africa (adopted 10 September 1969, entered into force 20 June 1974) 1001 UNTS 45.

<sup>12</sup> See Refugees Proclamation No.1110/2019, 2019(38 of 2019).

<sup>13</sup> See RRS, 'Directive to Determine Conditions for Movement and Residence of Refugees Outside of Camps, Directive No. 01/2019' (adopted 30 December 2019) Directive No. 01/2019. See RRS, 'Directive to Implement Recognized Refugee and Asylum Seeker Right to Work No. 1019/2024' (adopted 14 August 2024) Directive No. 1019/2024. See RRS, 'Refugees and Returnees Grievances and Appeals Handling Directive, Directive No. 03/2019' (adopted 30 December 2019) Directive No. 03/2019.

accountability of Refugee and Returnees Service (RRS).<sup>14</sup>

Similarly, Ethiopia has ratified several human rights and humanitarian law treaties that have universal applicability, including for refugees.<sup>15</sup> These instruments along with the 1951 CSR and the OAU Refugee Convention are recognized as "an integral part of the law of the land" under the FDRE Constitution, highlighting Ethiopia's legal obligations to protect refugees and promote human rights.<sup>16</sup> Ethiopia currently shelters over 180,000 Eritrean and 361,691 Somali refugees, constituting approximately 16.7% and 33.7% of its refugee population, respectively.<sup>17</sup> Most Somali refugees in Ethiopia—99.6%—reside in the Somali region, close to the Somali border. Of these, 81.9% (220,598 individuals) live in five major refugee camps: Hilaweyn (23.9% or 52,748), Buramino (22.6% or 49,899), Melkadida (20.2% or 44,553), Kobe (18.0% or 39,693), and Bokolmanyo (15.3% or 33,705).<sup>18</sup> In contrast, Eritrean refugees are predominantly sheltered in the Afar region, with over 60,845 residing in Asayta and Berhale refugee camps. Additionally, more than 22,000 Eritrean refugees are housed in the Alem Wach camp of the Amhara region.<sup>19</sup> The remaining Eritrean refugees live throughout urban areas, particularly in the capital city of Addis Ababa and other major cities, underscoring the

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<sup>14</sup> Regulation Issued to Determine the Organization, Powers, and Functions of the Refugees and Returnees Service Service Council of Ministers Regulation No. 546/2024, 2024 (27 of 2024).

<sup>15</sup> See Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (adopted 10 December 1984, entered into force 26 June 1987) 1465 UNTS 85 (Ethiopia's Ratification: 14 March 1994). See International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (Ethiopia's Accession: 11 June 1993). See Convention on the Elimination of All Forms of Discrimination against Women (adopted 18 December 1979, entered into force 3 September 1981) 1249 UNTS 13 (Ethiopia's Ratification: 10 September 1981). See International Convention on the Elimination of All Forms of Racial Discrimination (adopted 21 December 1965, entered into force 4 January 1969) 660 UNTS 195 (Ethiopia's Ratification: 23 June 1976). See International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976) 993 UNTS 3 (Ethiopia's Accession: 11 June 1993). See Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3 (Ethiopia's Ratification: 14 May 1991). See Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict (adopted 25 May 2000, entered into force 12 February 2002) 2173 UNTS 222 (Ethiopia's Signature: 28 September 2010; Ratification: 14 May 2014). See Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography (adopted 25 May 2000, entered into force 18 January 2002) 2171 UNTS 227 (Ethiopia's Ratification: 25 March 2014). See Convention on the Rights of Persons with Disabilities (adopted 13 December 2006, entered into force 3 May 2008) 2515 UNTS 3 (Ethiopia's Ratification: 7 July 2010). See Geneva Convention relative to the Protection of Civilian Persons in Time of War (adopted 12 August 1949, entered into force 21 October 1950) 75 UNTS 287 (Ethiopia's Ratification: 2 October 1969). See Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (adopted 8 June 1977, entered into force 7 December 1978) 1125 UNTS 3. See Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (adopted 8 June 1977, entered into force 7 December 1978) 1125 UNTS 609 (Ethiopia's Ratification: 8 April 1994). See Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Adoption of an Additional Distinctive Emblem (adopted 8 December 2005, entered into force 14 January 2007) 2404 UNTS 261 (Ethiopia's Ratification: 8 April 1994).

<sup>16</sup> FDRE Constitution, 1995 art 9(4) and 13(2).

<sup>17</sup> UNHCR, 'Ethiopia: Refugees and Asylum Seekers' (UNHCR Operational Data Portal) < Country - Ethiopia (unhcr.org) > accessed 24 December 2024.

<sup>18</sup> *Ibid.*

<sup>19</sup> *Ibid.*

geographic distribution and integration of these communities within Ethiopia.

Ethiopia's Refugee Proclamation No. 1110/2019 reflects the principles and rights outlined in the 1951 CSR and the 1969 OAU Refugee Convention while addressing the legal gap in Refugee Proclamation No. 409/2004. However, 1951 CSR and the 1969 OAU Refugee Convention still have visible legal gaps, including a narrow definition of contemporary refugee concept and the absence of an explicit obligation of states to provide humanitarian assistance as hosting state until refugees self-reliance effort realized. Despite these legal and enforcement limitations, Refugee Proclamation No. 1110/2019 marks significant progress by incorporating 47 provisions that expand refugee rights to work, vital registration, driving license, and education. Still, it adopts a broader definition of refugees compared to the 1951 CSR. Furthermore, guarantees rights such as access to justice, education, employment, driving licenses, health services, banking, freedom of movement, telecommunications, property ownership, and the right to reside in Ethiopia.<sup>20</sup>

The principle of non-refoulement is recognized under Ethiopia Refugee Proclamation No.1110/2019. Article 11 and 12 of this proclamation is relevant regarding deportation of refugees and asylum seekers in Ethiopia. As indicated under Article 11(2) of this proclamation, it forbids the expulsion or return of refugees or asylum seekers to nations where they may encounter persecution or where their life, physical safety, or freedom could be jeopardised due to external aggression, occupation, foreign control, or situations that significantly disrupt public order. Nevertheless, this principle is not without exceptions. The Proclamation allows for expulsion under two specific conditions: if a refugee or asylum seeker presents a "real risk" to national security or if they have been convicted of a serious crime, as determined by a final judgment, thereby posing a threat to the public.<sup>21</sup> Article 12 of the same proclamation specifies that recognized refugees cannot be expelled unless there are compelling reasons concerning national security or public order. This provision limits the government's power to deport recognized refugees, highlighting the importance of protecting them from arbitrary removal.<sup>22</sup>

As indicated above, the Refugee Proclamation No.1110/2019 allows for specific exceptions to the non-refoulement principle, but these exceptions should be interpreted restrictively and cannot justify arbitrary decision-making. While the Proclamation does not clearly define the court's role in reviewing these decisions, the FDRE Criminal Code provides a legal framework for expulsion in serious criminal offences, provided there is consultation with the relevant

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<sup>20</sup> Refugee Proclamation No 1110/2019, arts 23-42.

<sup>21</sup> Ibid, art 11(2).

<sup>22</sup> Ibid, art 12.

government authorities.<sup>23</sup> Nevertheless, when read in conjunction with the 1951 CSR and human rights instruments, the Refugee Proclamation No.1110/2019 suggests that any expulsion of refugees and asylum seekers must adhere to strict legal standards and cannot be arbitrary. Moreover, Article 30 of the Refugee Proclamation and the FDRE Constitution guarantees access to justice, ensuring that individuals can challenge the decision of expulsion order.<sup>24</sup>

The judiciary is critical in upholding fundamental rights and ensuring that executive actions, including expulsion orders, are subject to rigorous legal scrutiny under international human rights law.<sup>25</sup> However, Refugee Proclamation No. 1110/2019 permits the RRS to issue expulsion orders but remains silent on the procedural safeguards for appeals against such decisions in court of law.<sup>26</sup> This legislative gap raises concerns regarding the adequacy of judicial oversight in Ethiopia regarding refoulement order. Nevertheless, Ethiopia's broader legal framework provides avenues for judicial review. Federal Administrative Procedure Proclamation No. 1183/2020 empowers the Federal High Court to review decisions made by any administrative bodies.<sup>27</sup> Additionally, Article 37 of the FDRE Constitution guarantees the right of individuals to seek judicial recourse, thereby safeguarding access to justice. Federal Courts Establishment Proclamation No. 1234/2021 also reinforces this constitutional right by granting the Federal Supreme Court Cassation Bench to review decisions containing errors of law.<sup>28</sup> The aforementioned legislations along with international human right instruments ratified by Ethiopia establish a clear legal obligation for judicial oversight over administrative decisions, including the refoulement of refugees and asylum seekers.

Despite sheltering more than one million refugees nowadays, Ethiopia's historical treatment of foreign nationals reflects the intricate interplay between domestic political dynamics and regional geopolitics, often resulting in reactive and sweeping policies. A significant example is the mass expulsion of around 30,000 Arabs in the 1970s, which was triggered by bombing and hijacking incidents involving Ethiopian Airlines by Eritrean Liberation Front, allegedly backed by Arab nations.<sup>29</sup> Similarly, in retaliation to Eritrea's alleged forcible deportation of Ethiopians

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<sup>23</sup> The Criminal Code of the Federal Democratic Republic of Ethiopia Proclamation No. 414/2004, art 150 and 151.

<sup>24</sup> FDRE Constitution, 1995 arts 9(4), 13(2) and 37.

<sup>25</sup> Universal Declaration of Human Rights (adopted 10 December 1948 UNGA Res 217 A(III)) art 8. See ICCPR 1966, art 2(3) and 14(1); CAT 1984, art 13; AfCHPR 1981, art 7(1).

<sup>26</sup> Refugee Proclamation No.1110/2019, art 12(2) and 12(3).

<sup>27</sup> Federal Administrative Procedure Proclamation No. 1183/2020, 2020(32 of 2020) art 49.

<sup>28</sup> Federal Courts Proclamation No. 1234/2021, 2021(26 of 2021) art 10(1) and 27.

<sup>29</sup> Hussein Ahmed, 'Archival Sources on the Yemeni Arabs in Urban Ethiopia: The Dessie Municipality' (2000) 27 *History in Africa* 31. See Brian M. Jenkins and Janera A. Johnson, *International Terrorism: A Chronology (1974 supplement)* (The Rand Cooperation 1976)4-5.

due to border conflict (1998-2000), Ethiopia expelled approximately 80,000 Eritreans.<sup>30</sup> Since mid-2023 also, similar trends have been re-emerging, particularly following the Pretoria Peace Agreement. According to the OHCHR, hundreds of Eritrean refugees and migrants have been deported in violation of the principle of non-refoulement.<sup>31</sup> Similarly, at the end of 2024, UNHCR and reports from refugees in Addis Ababa and other areas revealed widespread arbitrary arrests, forced repatriations via border areas, and relocations to refugee camps.<sup>32</sup> However, while the RRS denies the allegation, the FDRE Immigration and Citizenship Service (ICS) admitted that some Eritreans refugees and asylum seekers, have exploited fraudulent identified while engage in unauthorized work and illicit activities such as illegal brokerage and human trafficking.<sup>33</sup>

The recent deportations and arbitrary detentions of Eritrean refugees in Ethiopia are indicative of past historical trends observed in the 1970s and 1998. The emerging alliance among Eritrea, Egypt, and Somalia is a root cause and further complicates the situation of Eritrean refugees who suffered a lot due to norther Ethiopian war held in 2020-2022. Apart from refolement, it also increased the risk of Ethiopia policy shift of adopting a strict refugee movement measure in Ethiopia. If this alliance persist, Ethiopia might implement more stringent border controls and enhanced screening procedures for asylum seekers, particularly those coming from Eritrea and Somalia. Furthermore, such potential restrictive measures may result in the confinement of refugees to camps. These actions not only threaten Ethiopia's international reputation but also put at risk the safety of refugees and asylum seekers. In such situation, host nation shall navigate its national interests while fulfilling its human rights obligations and safeguarding refugees, ensuring that regional conflicts do not compromise the rights and dignity of innocent civilians.

### **III. LEGAL CONSEQUENCES OF FAILING TO ADHERE TO THE PRINCIPLE OF NON-REFOULEMENT**

Ethiopia's recent decision to deport refugees has raised serious global concerns about its

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<sup>30</sup> See Amnesty International, 'Ethiopia/Eritrea: Amnesty International Witnesses Cruelty of Mass Deportations' (AFR 25/02/99, 29 January 1999).

<sup>31</sup> United Nations, 'UN Experts Urge Ethiopia to Halt Mass Deportation of Eritreans' (UN News, 13 July 2023) <<https://news.un.org/en/story/2023/07/1138662>. > accessed 26 December 2024. See OHCHR, 'UN Experts Urge Ethiopia to Halt Mass Deportation of Eritreans' (12 July 2023) <<https://www.ohchr.org/en/press-releases/2023/07/un-experts-urge-ethiopia-halt-mass-deportation-eritreans>.> accessed 26 December 2024.

<sup>32</sup> BBC News, 'Ethiopia Denies Claims of Detaining Eritrean Refugees' < Eritrean refugees describe police crackdown in the Ethiopian capital Addis Ababa (bbc.com)> accessed 26 December 2024.

<sup>33</sup> See Borkena, 'Ethiopia Government Says No Eritreans Arrested Illegally' (14 December 2024) <<https://borkena.com/2024/12/14/ethiopia-government-says-no-eritreans-arrested-illegally/>.> accessed 26 December 2024. See EthioNegari, 'Ethiopia Denies Claims of Detaining Eritrean Refugees' (12 December 2024)<<https://ethionegari.com/2024/12/12/ethiopia-denies-claims-of-detaining-eritrean-refugees/>.>accessed 26 December 2024.



compliance with Article 33 (1) of the 1951 CSR. To assess the legality of Ethiopia's actions, it is essential to analyze the principle of non-refoulement as established in international law.<sup>34</sup> This principle is enshrined in multiple human right and refugee treaty instruments.<sup>35</sup> The principle of non-refoulement is a cornerstone of international refugee protection and has gained recognition as both a treaty obligation and a norm of customary international law. Article 3 of the CAT prohibits the repatriation of individuals to nations where they may be subjected to torture. This principle is further supported by Article 14 of the UDHR, which asserts the right to seek. Additionally, the ICCPR mandates state responsibilities through Articles 6 (right to life) and 7 (prohibition of torture) to safeguard individuals against refoulement. The Banjul Charter also emphasizes the duty of states to respect, protect, and fulfil these fundamental rights.<sup>36</sup>

States' violations of non-refoulement carry profound legal, diplomatic, and moral consequences. The 1969 VCLT requires states to fulfil their treaty obligations in good faith.<sup>37</sup> Breaching treaty obligation constitutes a clear violation of international law, exposing the violating state to claims of non-compliance.<sup>38</sup> However, refugees are legally excluded from receiving diplomatic protection from their country of origin. In this regard either host state or UNHCR provide protection instead. Third states also play essential role in the protection of refugees particularly in resettlement, humanitarian assistance and diplomatic advocacy. Particularly Gambia case against Myanmar significantly change the dynamics of refugee protection in international arena, which third state invite international scrutiny for the breaches of refugee rights both in the country of origin and host nation.<sup>39</sup> This underscores potentially states violating non-refoulement principle could face diplomatic isolation, sanctions, or legal actions in international forums, including ICJ, and potential prosecutions under the ICC if the violations involve crimes against humanity, genocide, and war crimes.

The principle of non-refoulement is also well-established as a norm of customary international law, a position broadly recognized by legal scholars without contention. This recognition is bolstered by state practice and *opinio juris*, as demonstrated in significant cases such as the

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<sup>34</sup> Statute of the International Court of Justice (adopted 26 June 1945, entered into force 24 October 1945) art 38 (herein after ICJ statute).

<sup>35</sup> CSR 1951, art 33; 1967 PSR, art 1(A); ICCPR 1966, art 6 and 7; OAU Refugee Convention, art III.

<sup>36</sup> See African Charter on Human and Peoples' Rights (adopted 27 June 1981, entered into force 21 October 1986) 1520 UNTS 217 (Banjul Charter), art 5.

<sup>37</sup> Vienna Convention on the Law of Treaties (adopted 23 May 1969, entered into force 27 January 1980) 1155 UNTS 331 (VCLT 1969), art 26.

<sup>38</sup> International Law Commission, 'Draft Articles on Responsibility of States for Internationally Wrongful Acts, with commentaries' (2001) UN Doc A/56/10, art 31 and 42.

<sup>39</sup> *Application of the Convention on the Prevention and Punishment of the Crime of Genocide* [2020] ICJ Rep (The Gambia v Myanmar).

North Sea Continental Shelf, SS Lotus, ICJ Nuclear advisory, and the Nicaragua case.<sup>40</sup> Additionally, Articles 53 and 64 of the 1969 VCLT emphasize the obligatory character of customary international law. A law of this kind renders any state actions or policies that violate it null and void, making such actions legally ineffective and unenforceable—the widespread acceptance of this non-refoulement underscores states' legal responsibilities to maintain protection. The UNGA declaration on territorial asylum, along with the UNHCR and UN Human Rights Council, recognizes the ban on expulsion for individuals who are at risk of serious human rights violations and persecution.<sup>41</sup>

Ethiopia's deportation of Eritrean refugees directly contravenes the above fundamental principle, especially considering the well-documented dangers of arbitrary detention, torture, forced conscription, and persecution prevalent in Eritrea.<sup>42</sup> Many deporting Eritreans reported that they had endured arbitrary detention, were denied access to court, and were coerced into accepting deportation. These actions further violate the right to life and access to justice recognized under the FDRE Constitution. Furthermore, these actions breach Ethiopia's obligations under key human rights treaties, including the UDHR, ICCPR, and CAT, which explicitly forbid deportation to countries where individuals may face the risk of serious human rights violations without due process of law.

Therefore, the global community, including the UN and its agencies like UNHCR, must denounce the actions taken by Ethiopia and call for adherence to its national Refugee Proclamation and its international commitments through suitable mechanisms provided by the UN and the African Union. Moreover, they shall promote and work on the legal remedies such as compensation, restitution, and assurances against future violations through international judicial institutions in conjunction with diplomatic pressure. On a national level, Ethiopia's Ministry of Justice must ensure accountability for breaches of the non-refoulement principle that have occurred without due process. This aligns with Article 8 of the UDHR and Article 2(3) of the ICCPR, both of which mandate the availability of effective remedies for violations of fundamental rights. Legal advocates should also seek injunctions to prevent these actions

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<sup>40</sup> See *North Sea Continental Shelf* [1969] ICJ Rep 3, para 44. See *France v Turkey* (1927) PCIJ Series A No 10. See *Legality of the Threat or Use of Nuclear Weapons* (Advisory Opinion) [1996] ICJ Rep 226. See *Military and Paramilitary Activities in and against Nicaragua* (*Nicaragua v United States of America*) [1986] ICJ Rep 14, para 98.

<sup>41</sup> Declaration on Territorial Asylum (adopted 14 December 1967) UNGA Res 2312 (XXII). See UNHCR, 'Advisory Opinion on the Extraterritorial Application of Non-Refoulement Obligations under the 1951 Convention and its 1967 Protocol' (2007). See UNHCR, 'Note on Non-Refoulement (Submitted by the High Commissioner)' (23 August 1977) EC/SCP/2.

<sup>42</sup> Human Rights Watch, 'Eritrea: Events of 2023' <World Report 2024: Eritrea | Human Rights Watch (hrw.org)> accessed 26 December 2024.

from continuing in domestic courts based on Article 14(1) of the ICCPR and FDRE constitution. Furthermore, entities such as the Ethiopian Human Rights Commission and the Office of the Ombudsman must hold the government accountable for its actions as indicated under the Paris Principles. Similarly, non-governmental organizations must advocate, as stated in Article 1 of the UN Declaration on Human Rights Defenders, which recognizes the right to promote and protect human rights and fundamental freedoms at national and international levels.

#### **IV. CONCLUSION**

Undeniably, a state's domestic policies are often influenced by geopolitical dynamics, mainly when national interests are at stake, especially in countries with weaker judicial systems and the rule of law. However, punishing innocent civilians seeking asylum due to strained diplomatic relations with their country of origin is fundamentally unjust and must be treated separately. While it is true that some refugees may engage in espionage or pose security threats to host nations, exceptions to the principle of non-refoulement must be applied with the utmost scrutiny to ensure a fair balance between protecting refugees and national interests. Ethiopia's political instability, compounded by the perceived threat from the Eritrea-Egypt-Somalia alliance, further jeopardizes the safety of Eritrean refugees. These individuals originate from a country globally recognised for serious human rights abuses, including the absence of a constitution, indefinite military conscription, lack of free elections, and one-party rule. In light of these realities, Ethiopia bears a moral and legal obligation to protect Eritrean refugees from persecution upon return to their home country. While concerns about national security and the involvement of some refugees in criminal activities are lawful, such issues must be passed through the rule of law. Ethiopia must guarantee that all deportation cases are subject to judicial review and access to legal representation and conduct in consultation with the UNHCR and other relevant stakeholders. Furthermore, domestic institutions, such as the Ethiopian Human Rights Commission and the parliament, monitor deportation and detention of Eritrean refugees.

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