

**BEFORE THE AFRICAN COMMISSION ON  
HUMAN AND PEOPLES' RIGHTS OF THE  
ORGANIZATION OF AFRICAN UNITY**

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**FRIENDLY COMMUNICATION ON THE SUBJECT  
OF ETHIOPIAN MASS EXPULSIONS OF PEOPLE  
OF ERITREAN ORIGIN OR DESCENT**

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SUBMITTED BY  
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## **STATEMENT OF PURPOSE**

The purpose of this submission is to provide the Commission with an analysis of the international legal principles applicable to Ethiopia's mass expulsion of persons of Eritrean origin or descent. The Allard K. Lowenstein International Human Rights Law Clinic at Yale Law School offers this submission because we believe the human rights issues at stake in this proceeding are of profound importance. First, mass expulsions based on ethnicity have become a frequent and troubling aspect of recent armed conflicts and a central concern of the international community. This case is an opportunity for the Commission to address the problem by delineating the African Charter's prohibitions against mass expulsions in clear and comprehensive detail. Second, although the Organization of African Unity has mounted diplomatic initiatives to address many aspects of the Eritrea-Ethiopia conflict, it has not yet focused its attention on human rights concerns. This proceeding is an occasion for the Commission to address human rights violations that have created deep antipathy between the peoples of Eritrea and Ethiopia and threaten the future stability of the region. In doing so, the Commission can make clear its support for the fundamental principle that a lasting peace between armed adversaries requires an accounting for human rights violations committed during war.

This submission is not intended to provide the Commission with new or independently collected facts. Rather, in considering how African and other human rights principles apply to this case, the instant submission will rely on facts collected by a variety of governmental, inter-governmental and non-governmental sources. These sources include the United Nations High Commissioner for Human Rights, the United Nations Children's Fund (UNICEF), the United States Department of State, Human Rights Watch and Amnesty International. To assist the Commission, relevant documentation is included in appendices to this submission. We consider these sources to be reliable, and, indeed, their accounts of the expulsions largely corroborate each other. Based on these facts, the submission concludes that Ethiopia is in violation of its legal obligations under the African Charter and other human rights instruments.

This submission takes no position on possible human rights violations committed by the Eritrean government. Any inquiry into such violations is separate from the one at hand.

### **STATEMENT OF INTEREST**

This submission is respectfully offered by the Allard K. Lowenstein International Human Rights Law Clinic at Yale Law School. The Lowenstein Clinic is a Yale Law School course that gives students first-hand experience in human rights advocacy under the supervision of international human rights lawyers. The Clinic is not affiliated with any government. The Clinic undertakes numerous litigation and research projects each term on behalf of human rights organizations and individual victims of human rights abuses. The Clinic's projects have included efforts to promote the work of regional and international organizations that develop and protect human rights, including the Inter-American Commission on Human Rights and the United Nations. The Clinic has conducted research and provided briefs for the South African Truth and Reconciliation Commission and the Foundation for the Medical Treatment of Torture Commission. It has also assisted non-governmental organizations in preparing numerous reports, legal memoranda and briefs about human rights violations around the world.

The Clinic has also acted as counsel for plaintiffs in numerous lawsuits in United States courts. *See, e.g., Kadic v. Karadzic*, 70 F.3d 232 (2d Cir. 1995), *cert. denied*, 518 U.S. 1005 (1996) (upholding U.S. district court jurisdiction for claims, including genocide, against leader of the Bosnian Serbs); *Paul v. Avril*, 901 F. Supp. 330 (S.D. Fla. 1994) (awarding \$41 million in damages against former dictator of Haiti for torture, arbitrary detention and cruel, inhuman or degrading treatment); *Xuncax v. Gramajo*, 886 F. Supp. 162 (D. Mass. 1995) (action against former defense minister of Guatemala for summary execution, disappearance, torture, arbitrary detention and cruel, inhuman or degrading treatment).

The questions presented here, regarding whether Ethiopia's recent expulsions of Eritreans and Ethiopians of Eritrean descent constitute violations of the African Charter on Human and Peoples' Rights and

fundamental principles of international law, are therefore of great interest to the Clinic, its students and its professors.

### **STATEMENT OF FACTS**

In May 1998, an armed conflict erupted along the Eritrea-Ethiopia border. According to international observers, tens of thousands of troops have died in subsequent fighting. Today, the border is heavily fortified on both sides. For almost two years, the Organization of African Unity (OAU), foreign governments and the United Nations have attempted to broker an end to the conflict.

This Communication takes no position on the causes of the war and is in no way intended to influence the peace-making initiatives currently being pursued by other branches of the OAU. It is instead directed to the distinct set of human rights violations associated with Ethiopia's mass expulsion of persons classified as Eritrean. Although the start of the war preceded the expulsions by approximately one month, the existence of hostilities has no bearing, except where noted, on the points and authorities raised in this submission.

This submission is predicated on the undisputed fact that in June 1998, Ethiopian government officials initiated a program of identifying, interning and expelling from Ethiopia persons classified as Eritrean or of Eritrean origin.<sup>1</sup> Since that time, more than 70,000 persons of Eritrean descent<sup>2</sup> have been expelled from Ethiopia,<sup>3</sup> often after periods of

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<sup>1</sup>Zakir Ibrahim, Ethiopian Minister of Foreign Affairs, *The Legal Aspects of Ethiopia's Deportation of Undesirable Eritreans*, 14 [hereinafter Ibrahim Statement] (referring to Updated Memorandum by the Government of the Federal Democratic Republic of Ethiopia on July 16, 1998). [Appendix A-1].

<sup>2</sup>For the purpose of this Communication, the terms "Eritreans," "ethnic Eritreans," "Ethiopians of Eritrean origin," "Ethiopians of Eritrean descent," "Eritrean-Ethiopians" and "expellees" are used to describe the population of persons expelled from Ethiopia since June 1998. Each of the above-mentioned terms refers to persons with personal or familial connections to the independent state, former Ethiopian province and/or one-time Italian colony of Eritrea. Although this definition is sometimes used to refer to linguistic, ethnic, national and socio-political designations, it is meant here to be primarily geographic.

<sup>3</sup>See Cheryl Hatch, *The Eritrea-Ethiopia Conflict*, THE CHRISTIAN (continued . . .)

imprisonment and long, difficult journeys by bus and on foot. According to all accounts, these expulsions continue.<sup>4</sup>

Ethiopia's Ministry of Foreign Affairs maintains that the program of mass expulsion is a defensive strategy adopted during wartime that affects exclusively (a) foreigners, a term that includes aliens unlawfully residing in Ethiopia, (b) who are deemed to be a national security risk (c) after a process that affords deportees the right to contest their deportation.<sup>5</sup> In the early stages of the expulsion program, the Ethiopian Ministry of Foreign Affairs, through its Immigration Office, announced that it could determine which Ethiopians of Eritrean descent were in fact non-Ethiopians. Second, it declared that it would ascertain which categories of alien Eritreans constituted a national security risk. Third, it informed foreign observers that if the Ethiopian government were to deport "statutorily defined categories of deportable foreign nationals,"<sup>6</sup> it would respect due process and the right of appeal while safeguarding the property interests of those required to leave Ethiopia. Ethiopian authorities also assured the international community that the deportations would be executed in a manner consistent with international human rights law guaranteeing minimum standards of treatment.<sup>7</sup>

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SCIENCE MONITOR, March 8, 2000, at 13.

<sup>4</sup>See National Public Radio (U.S.), *Ways of Ending Ethiopia's Bloody Border War Against Eritrea*, Morning Edition, February 9, 2000 [hereinafter National Public Radio report]. [Appendix A-2].

<sup>5</sup>See Ibrahim Statement, at 9-12, 14. [Appendix A-1].

<sup>6</sup>*Id.* at 9-12. [Appendix A-1]. Ethiopian identification cards use the term "Eritrean" along with other ethnic, provincial and geographic categories of classification. The meaning of the term "Eritrean" has been subject to debate. However, whether people of Eritrean descent constitute an anthropologically distinct group or whether Eritrean ethnicity is entirely invented, the program of expulsions is based on the classification "Eritrean." Ethiopian officials claim that the expulsion program is not ethnic cleansing because Eritreans are a national, not an ethnic, group, and that Ethiopia can legally expel foreigners. This claim inappropriately and misleadingly equates "national group" with "citizenship of a foreign nation."

<sup>7</sup>See Office of the Government Spokesperson of Ethiopia, *Ethiopia Takes Security Measures*, Press Release, July 11, 1998 ("Ethiopia has taken this measured and selective move within the parameters of accepted (continued . . . )

In practice, the expulsion of ethnic Eritreans by the Ethiopian government violates both Ethiopia's treaty-based obligations and its prior rhetorical assurances. The international sources appended to this communication confirm that people of Eritrean descent or national origin have been stripped of their Ethiopian citizenship with little or no legal justification.<sup>8</sup> The newly denationalized individuals have included many who posed no conceivable security risk to Ethiopia.<sup>9</sup> And, despite promises to the contrary, Eritreans have been afforded no process through which to contest their classification, denationalization or deportation.<sup>10</sup>

To be sure, not every expellee has possessed the same legal documentation and their rights depend on their status. Nevertheless, the expellees fall into two categories. The vast majority are Ethiopian citizens of Eritrean descent or origin—referred to as ethnic Eritreans—from whom the Ethiopian government has stripped citizenship. The rest are non-Ethiopian nationals, most of whom are Eritrean citizens. The legal analysis that follows addresses both of these categories.

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international laws and principles”). [Appendix A-3].

<sup>8</sup>See, e.g., Human Rights Watch, *Ethiopia*, in HUMAN RIGHTS WATCH WORLD REPORT 1999, available at <<http://www.hrw.org/hrw/worldreport99/africa/ethiopia.html>> (visited 2/24/2000) [hereinafter Human Rights Watch World Report 1999]. [Appendix A-4].

<sup>9</sup>See, e.g., Amnesty International, News Release, *Ethiopia/Eritrea: Amnesty International witnesses cruelty of mass deportations*, AFR 25/02/99 (Jan. 29, 1999) available at <<http://www.amnesty.org/news/1999/12500299.htm>> [hereinafter Amnesty News Release 1999] (noting that deportees include babies, children, pregnant women, the elderly and hospital patients) [Appendix A-5].

<sup>10</sup>Human Rights Watch, *Federal Democratic Republic of Ethiopia*, in HUMAN RIGHTS WATCH WORLD REPORT 2000, at 2, available at <<http://www.hrw.org/wr2k/Africa-03.htm>> (visited 03/22/2000) [hereinafter Human Rights Watch World Report 2000] (“The judiciary appeared to have had no role in the deportation process. It reportedly provided no recourse to the victims to challenge their arrest and subsequent forcible deportation, to defend a claim to Ethiopian nationality, or to respond to the accusation of being national security threats.”). [Appendix A-6].

While the deportation program initially targeted high-profile Eritreans, including a significant number of Eritrean citizens residing in Ethiopia,<sup>11</sup> Ethiopian police have since arrested a wide cross-section of Eritrean-Ethiopians.<sup>12</sup> Included in the growing number of people expelled have been children and infants, as well as people who have lived their entire lives in Ethiopia.<sup>13</sup> Often, expellees have been transported to the Eritrean border immediately after their identification and detention without ever having an opportunity to contest the label of “undesirable.”<sup>14</sup> In many instances deportees have been hurriedly bussed to the Eritrean border without receiving any prior notice aside from newspaper proclamations.<sup>15</sup>

With the exception of some rural expellees who have been marched across the border, the expellees have been arrested by Ethiopian security personnel and jailed in Ethiopian police stations or detention camps prior to their expulsion.<sup>16</sup> In May 1999, Amnesty International released a comprehensive report providing details about the pattern and practice of expulsions:

All of the people expelled were arrested, usually at night, and kept in detention for periods ranging from one or two days to several months. In one typical case, Michael Zewde, a former

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<sup>11</sup>See Office of the Government Spokesperson of Ethiopia, *More Deceit from the Eritrean Authorities*, Press Release, June 18, 1998. [Appendix A-7].

<sup>12</sup>See Amnesty News Release 1999. [Appendix A-5]. In mid-August 1999, Ethiopia ordered all Eritreans living in Ethiopia who were 18 years or older to register with the government; this order applied to all Eritreans who had voted in the 1993 independence referendum. See BBC, *Ethiopia: Eritrean Residents Over 18 Years Old are Ordered to Register* (Aug. 15, 1999). [Appendix A-8].

<sup>13</sup>See Yemisrach Benaflew, *A Six-Month-Old Baby Among those Deported from Ethiopia*, Inter Press Service, August 12, 1999, at 5-6. [Appendix A-9].

<sup>14</sup>See Samueal Assefa, *Ethiopia; On Deportations*, ADDIS TRIBUNE, May 7, 1999, at 1. [Appendix A-10].

<sup>15</sup>See Amnesty News Release 1999, at 5-6. [Appendix A-5]; Human Rights Watch World Report 1999, at 3-5. [Appendix A-4].

<sup>16</sup>See Amnesty News Release 1999, at 2-3. [Appendix A-5]; Human Rights Watch World Report 1999, at 2. [Appendix A-4].

photographer at the Sheraton Hotel in Addis Ababa was taken by plainclothes security men to Shogole prison camp on 27 August 1998. He was told that he would be deported to Eritrea or Nairobi. He was kept in an isolation cell for 15 days, while being questioned about whether he “knew the commandos.” The police searched his house (in his presence) seeking films of the Eritrean embassy, but found nothing. Although his children knew that he was being arrested, he was not allowed to tell them where he was taken. After three months in prison, he was expelled to Eritrea on 27 November.<sup>17</sup>

Human rights observers have witnessed the arrest and detention of women (some of them pregnant), children, the elderly and hospital patients, sometimes in the middle of the night.<sup>18</sup> Following arrest and detention, expellees have been forced aboard buses under armed guard and driven to the Eritrean border.<sup>19</sup> From Addis Ababa, the journey to Eritrea takes three to four days; many passengers have developed illnesses in the extreme heat and unsanitary conditions of the buses.<sup>20</sup>

When heads of households have been arrested, their families often have been left behind, deprived of their relative’s earning potential.<sup>21</sup> Families have been separated, often for extended periods, because Ethiopians who are not deemed to be ethnic Eritreans are prohibited

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<sup>17</sup>Amnesty International, ETHIOPIA AND ERITREA: HUMAN RIGHTS ISSUES IN A YEAR OF ARMED CONFLICT, AFR 04/03/99, at 18 (May 21, 1999) [hereinafter Amnesty International Report, May 21, 1999]. [Appendix A-15].

<sup>18</sup>See Amnesty News Release 1999, at 1. [Appendix A-5].

<sup>19</sup>*Id.*

<sup>20</sup>See *id.*; Farhan Haq, *Rights-Eritrea: New Report on Mass Expulsion from Ethiopia*, Inter Press Service, March 5, 1999, at 1 [hereinafter Farhan Haq, *Rights-Eritrea*] [Appendix A-11]; U.S. Department of State, 1999 COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES: Ethiopia, at 5, 8, available at <[http://www.state.gov/www/global/human\\_rights/1999\\_hrp\\_report/ethiopia.html](http://www.state.gov/www/global/human_rights/1999_hrp_report/ethiopia.html)> (visited 2/27/2000) [hereinafter U.S. State Department 1999 Country Report]. [Appendix A-12].

<sup>21</sup>See UNITED NATIONS CONSOLIDATED INTER-AGENCY FLASH APPEAL FOR HUMANITARIAN ASSISTANCE TO ERITREA, September 1998-February 1999 (United Nations 1999), at 40. [Appendix A-13].

from joining their expelled family members on the journey.<sup>22</sup> In addition, many of those expelled have been forced to forfeit the property they own in Ethiopia.<sup>23</sup> Many of the expellees held Ethiopian passports and, until their expulsion, maintained jobs and homes in Ethiopia.<sup>24</sup>

According to UNICEF, more than 25,600 children had been expelled from Ethiopia through August, 1999.<sup>25</sup> UNICEF reports that the health of expelled children has suffered and that many have become sick during the expulsion process.<sup>26</sup> Once in Eritrea, their health has been further compromised by inadequate facilities. Expelled children often face psychological problems and are prone to depression and frequent nightmares. Children separated from family members frequently “are tortured by distress” over those from whom they have been separated.<sup>27</sup> Virtually all expelled children have had their education disrupted by the war. Expelled children now living in Asmara must contend with a new curriculum, a shortage of books and overcrowded classes.<sup>28</sup> Children in rural areas of Eritrea often have no school at all and live in temporary shelters without sufficient access to water.<sup>29</sup>

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<sup>22</sup>See Amnesty International Report, May 21, 1999, at 17-18 [Appendix A-15] (noting that the forced separation has caused “special hardship for family support and relationships, and considerable anxieties about when parents and children and their elderly dependents might be reunited”). This report also notes that more than one thousand ethnic Eritreans of military age have been separated from their families and are currently being detained in Ethiopian internment camps. *Id.* at 12-13.

<sup>23</sup>See Human Rights Watch World Report 1999, at 2 [Appendix A-4] (“The government ordered the freezing of their assets and revoked their business licenses, stripping them and their families of their livelihood”).

<sup>24</sup>See, e.g., Amnesty International Report, May 21, 1999, at 17 [Appendix A-15] (citing hometowns and occupations of deportees).

<sup>25</sup>UNICEF, CHILDREN IN ERITREA AFFECTED BY THE BORDER CONFLICT: A PSYCHOLOGICAL NEWS ASSESSMENT (Ministry of Labour & Human Welfare and UNICEF 1999). [Appendix A-14].

<sup>26</sup>See *id.* at Sec. 4.1. [Appendix A-14].

<sup>27</sup>See *id.*

<sup>28</sup>See *id.*

<sup>29</sup>See *id.* at Sec. 4.2 (describing children in Gash Barka who live in  
(continued . . . )

## **INTERNATIONAL CONDEMNATION OF THE ETHIOPIAN EXPULSIONS**

Ethiopia's acts have been widely condemned by governmental and non-governmental actors who monitor state compliance with international human rights standards. On July 1, 1998, Mary Robinson, the United Nations High Commissioner for Human Rights, released the following statement:

I am deeply concerned by the violation of human rights of Eritrean nationals being expelled from Ethiopia, and particularly by the fact that their passports are being stamped "expelled, never to return." Others, who had been trying to leave, have had their identity cards confiscated.

These are serious violations of the rights and freedoms set forth in the Universal Declaration of Human Rights, as well as in the International Covenant on Civil and Political Rights, to which Ethiopia is a party.

As High Commissioner for Human Rights, I appeal to the Governments of Ethiopia and Eritrea to look urgently at ways of restoring dialogue with each other. I also call upon the Government of Ethiopia to respect the rights of non-discrimination and freedom of movement and to meet its obligations under the international Covenants and other human rights treaties it has ratified.<sup>30</sup>

In August 1998, the U.S. Department of State issued a press release expressing concern about Ethiopia's treatment of Eritreans:

The United States Government is greatly concerned about the growing impact on civilian populations of the continuing conflict between Ethiopia and Eritrea.

The United States views with deep concern the detention and expulsion of ethnic Eritreans in and from Ethiopia. The Government of Ethiopia has a legitimate right to guarantee the safety and security of its people against potential threats. However, there are fundamental humanitarian and human rights concerns raised by the forcible separation of families, the undue hardships of those detained or expelled to Eritrea,

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tents or under plastic sheets and who make a long, daily walk for water).

<sup>30</sup>See United Nations, *High Commissioner for Human Rights Expresses Deep Concern at Continuing Expulsion of Eritrean Nationals from Ethiopia*, Press Release, July 1, 1998. [Appendix A-16].

and the financial losses caused by sudden expulsions. We urge the Government of Ethiopia to respect international human rights norms and standards and follow appropriate due process in handling its security concerns. We further urge the Government of Ethiopia to allow all those who were wrongfully expelled to return and to establish a compensation commission to investigate and recommend compensation for the claims resulting from undue financial loss and hardship as a result of rapid, forced expulsions.<sup>31</sup>

Amnesty International, in a January 1999 release entitled “Amnesty International Witnesses Cruelty of Mass Deportations,” observed that the mass expulsion of people of Eritrean origin or descent threatened the entire Eritrean community in Ethiopia.<sup>32</sup>

The U.S. Department of State’s 1998 Country Report on Human Rights Practices for Ethiopia, released on February 26, 1999, summarized the expulsions:

In response to the movement of Eritrean forces into territory previously administered by Ethiopia and the resulting outbreak of hostilities, the Government abrogated due process and detained and deported Eritreans and Ethiopian citizens of Eritrean origin. By year’s end, a total of 45,000 such persons of an estimated total population of up to 400,000 had left Ethiopia for Eritrea; the vast majority were deported, although a small number left the country voluntarily to join family members who were deported. Although prompted by national security considerations, the sudden expulsions raised fundamental concerns regarding arbitrary arrest and detention, forced exile, the forcible separation of families, nationality issues, and the hardship and financial losses suffered by those who were detained or expelled.<sup>33</sup>

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<sup>31</sup>See U.S. Department of State, Office of the Spokesman, *Ethiopia: Expulsions of Eritreans*, August 6, 1998, at 2, available at <<http://secretary.state.gov/www/briefings/statements/1998/ps980806.html>> (visited 02/27/2000). [Appendix A-17].

<sup>32</sup>See Amnesty News Release 1999. [Appendix A-5].

<sup>33</sup>See U.S. Department of State, *ETHIOPIA COUNTRY REPORT ON HUMAN RIGHTS PRACTICES FOR 1998*, February 26, 1999, at 2, available at <[http://www.state.gov/www/global/human\\_rights/1998\\_hrp\\_report/ethiopia.html](http://www.state.gov/www/global/human_rights/1998_hrp_report/ethiopia.html)> (visited 3/4/2000) [hereinafter U.S. State Department 1998 Country Report]. [Appendix A-18].

Susan Rice, Assistant U.S. Secretary of State for African Affairs, echoed the Department's concerns in a May 25, 1999, briefing before the U.S. House of Representatives' International Relations Committee:

An estimated 60,000 Eritreans and Ethiopians of Eritrean descent have been deported from Ethiopia to Eritrea, and an estimated 20,000 Ethiopians have left Eritrea under duress. We have made clear that we consider the practice of deportation to be a fundamental violation of individual rights. The nature of these expulsions and the arrangements made for transfer and holding of property were clearly susceptible to abuse.<sup>34</sup>

The U.S. Department of State reconfirmed its findings in its 1999 Country Report on Human Rights Practices for Ethiopia:

Exile is illegal, and the [Ethiopian] Constitution provides that citizens shall not be deprived of their nationality against their wills; however, since the outbreak of conflict with Eritrea in May 1998, the Government has detained and deported more than 67,000 Eritreans and Ethiopians of Eritrean origin on national security grounds. Some of the deportees were voluntary returnees who had requested return to Eritrea; however, the vast majority were deported forcibly. Deportation orders originated from the Security, Immigration, and Refugee Affairs Authority in Addis Ababa. The Government's actions raised serious issues of due process since there were no preliminary hearings to determine the merits of the deportations, no right to counsel was provided to detainees, and detainees only had a very circumscribed opportunity to register protests. In addition, the issue of the nationality of Eritrean-origin Ethiopians has not been settled yet. Heads of households were taken without warning, detained, and often deported via overland routes within 48 hours. Remaining family members were given arbitrary deadlines to sell property and sometimes were subjected to departure taxes based on estimated annual income and unpaid balances on government bank loans. The ICRC monitored most border crossings until September when government notification to the ICRC ceased. Since September 4,000 Eritreans and Ethiopians of Eritrean origin were deported,

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<sup>34</sup> See Susan Rice, *The Ethiopian-Eritrean War: U.S. Policy Options*, Testimony to the U.S. House of Representatives International Relations Committee, May 25, 1999 at 3, available at <[http://www.state.gov/www/policy\\_remarks/1999/990525\\_rice\\_ewar.html](http://www.state.gov/www/policy_remarks/1999/990525_rice_ewar.html)> (visited 02/27/2000). [Appendix A-19].

reportedly without provision for their safety, hygiene, sanitation, or food. Some of these deportees were hospitalized upon reaching Eritrea.<sup>35</sup>

The Human Rights Watch World Report 2000 questioned Ethiopia's justification for expelling Ethiopians of Eritrean origin or descent:

[Ethiopia] argued that under the [1993] Eritrean referendum proclamation only those who had opted for Eritrean citizenship were eligible to vote—although any such a choice would have been contingent upon, and meaningful, only after being ratified by each individual after Eritrea had gained its independence. . . . However, Ethiopian authorities failed to declare at the time of the referendum that participation in it would constitute a formal renunciation of Ethiopian nationality. Furthermore, many of the deportees were children and elderly persons who neither voted nor conceivably posed credible security threats. The Ethiopian government's position also belied its own role in facilitating the referendum and endorsing its result. At the time of Eritrean independence, the states and ruling fronts were the closest of allies. They focused on forging close technical, political and security ties and accorded low priority to sensitive issues such as the demarcation of the border, and the nationality status of Ethiopians of Eritrean origin. The deportees who had in fact voted in the referendum, whether for or against independence, were being retroactively punished for an act that the Ethiopian government had at the time facilitated and encouraged. The judiciary appeared to have had no role in the deportation process. It reportedly provided no recourse to the victims to challenge their arrest and subsequent forcible deportation, to defend a claim to Ethiopian nationality, or to respond to the accusation of being national security threats.<sup>36</sup>

### **LAW APPLICABLE TO ETHIOPIAN ACTIONS**

As a State Party to the African Charter on Human and Peoples' Rights (hereinafter "the Charter"), Ethiopia is legally obligated to respect the human rights principles contained in the Charter. This submission

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<sup>35</sup>See U.S. State Department 1999 Country Report, at 8. [Appendix A-12].

<sup>36</sup>Human Rights Watch World Report 2000, at 1. [Appendix A-6].

addresses the ways in which Ethiopia's expulsion of Eritreans and Ethiopians of Eritrean descent violates specific provisions and the spirit of the Charter as well as other international human rights norms that Ethiopia is legally bound to respect. Consistent with the requirements of Articles 60 and 61 of the Charter that the Commission "draw inspiration from" or "take into consideration" a wide range of international treaties and customary law, this submission incorporates, where appropriate, references to other international human rights instruments, customary international law and decisions of other international bodies.

The Commission has the authority under the Charter to use such sources of law for two purposes. First, when interpreting specific provisions of the Charter, the Commission may look to international human rights law, including the jurisprudence of other international bodies that have developed interpretations of similar or identical provisions in other human rights instruments. Second, the Commission can refer to the substantive requirements of customary international law or various instruments when pursuing its broad mandate under Article 45(b) "to formulate and lay down, principles and rules aimed at solving legal problems relating to human and peoples' rights and fundamental freedoms." In the present case, the Commission need not look beyond the provisions of the Charter itself in order to determine that Ethiopia's expulsions of Eritreans and Ethiopians of Eritrean descent constitute violations of international human rights law. However, we believe that it is appropriate for the Commission to supplement its discussion of the Charter with reference to other sources of international law. In so doing, the Commission will fulfill its mandate under Articles 45(b), 60 and 61, and affirm the universality of the important rights at issue.

## ARGUMENT

### I.

#### **THE ARMED CONFLICT BETWEEN ETHIOPIA AND ERITREA DOES NOT JUSTIFY ETHIOPIAN DEROGATION FROM ITS HUMAN RIGHTS OBLIGATIONS UNDER THE CHARTER.**

Ethiopia's primary justification<sup>37</sup> for the mass expulsion of a population that it classifies as Eritrean is that it is at war with Eritrea and that each expelled Eritrean constitutes a threat to Ethiopian national security.<sup>38</sup> The Charter, however, does not permit derogation from its provisions during armed conflict or other times of national emergency. As the Commission observed in its decision regarding Communication 74/92 *Commission Nationale des Droits de l'Homme et des Libertés/Chad*, "the African Charter unlike other human rights instruments does not allow for state parties to derogate from their treaty obligations during emergency situations. Thus even a civil war . . . cannot be used as an excuse by a state violating or permitting violations of rights in the Charter."<sup>39</sup> No claim of national emergency or

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<sup>37</sup>The national security argument is one among a series of justifications offered by Ethiopian officials to minimize the significance of the expulsions. Other justifications include claims that mass deportation is an accepted response to territorial disputes, that the 1998 Eritrean bombing of the Mekele school warrants the policy of expulsion, that Eritrea allegedly deported Ethiopians in 1991 and again at the beginning of this conflict, that Ethiopians of Eritrean origin are deportable because they are allegedly sending money to Eritrea, that most expellees are actually "voluntary repatriates" and that not all Ethiopians of Eritrean origin have been expelled because some of them are "good Ethiopians"—suggesting that those who have been expelled are "undesirable" by virtue of their deportation. While none of these arguments has a basis in the Charter or international human rights law, this submission addresses those arguments phrased in legal terms by Ethiopian officials.

<sup>38</sup>*See* Ibrahim Statement, at 13. [Appendix A-1] ("In the past few months, Ethiopia has, as a measure of safeguarding its national security, applied deportation measures on selected few categories of Eritreans who were involved in espionage, conspiracy and other clandestine activities . . .").

<sup>39</sup>Commission Decision regarding Communication 74/92 *Commission Nationale des Droits de l'Homme et de Libertés/Chad*, at ¶21. Furthermore, in its decision regarding Communication 159/96 *Union Inter* (continued . . .)

extraordinary circumstances can justify departure from Charter standards. Because this is precisely the nature of Ethiopia's "national security" argument, the Commission should disregard it.

The other major human rights treaty to which Ethiopia is party—the International Covenant on Civil and Political Rights (hereinafter "ICCPR")—permits derogation only under certain well-defined circumstances, none of which is present here.<sup>40</sup> Furthermore, any state party derogating from the ICCPR must promptly notify the U.N. Secretary-General "of the provisions from which it has derogated and of the reasons by which it was actuated."<sup>41</sup> Ethiopia has sent no such notice.<sup>42</sup> Thus, it cannot now invoke the conflict as a justification for

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*Africaine des Droits de l'Homme, Fédération Internationale des Ligues de Droits de l'Homme, Recontre Africaine des Droits de l'Homme, Organisation Nationale des Droits de l'Homme au Sénégal and Association Malienne des Droits de l'Homme vs. Angola*, at ¶16 [hereinafter 159/96 Union Inter Africaine], the Commission recognized that fundamental violations of human rights such as mass expulsions are impermissible regardless of their circumstances: "In the face of such difficulties, States often resort to radical measures aimed at protecting their nationals and their economies from non-nationals. Whatever the circumstances may be, however, such measures should not be taken at the detriment of the enjoyment of human rights."

<sup>40</sup>INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS, *entered into force* 23 March 1976, 993 U.N.T.S. 171, *reprinted in* 6 I.L.M. 368 (1967) [hereinafter ICCPR]. Ethiopia ratified the ICCPR on 11 June 1993. The ICCPR provides that there must be a "public emergency which threatens the life of the nation and the existence of which is officially proclaimed." ICCPR, at Article 4(1). The Human Rights Committee, in its General Comment on Article 4, has stated that "measures taken under article 4 are of an exceptional and temporary nature and may only last as long as the life of the nation concerned is threatened and that, in times of emergency, the protection of human rights becomes all the more important, particularly those rights from which no derogations can be made." U.N. Human Rights Committee, *General Comment No. 5: "Derogation of Rights,"* 13th Sess. (July 31, 1981) *available at* <<http://www.unhchr.ch/tbs/doc.nsf/MasterFrameView/ecb5519dedd9b550c12563ed0046d1a1?Opendocument>> (visited 3/6/2000). [Appendix B-1].

<sup>41</sup>ICCPR, at Article 4(3).

<sup>42</sup>All notices of derogation are recorded in the compilation *Multilateral Instruments on Deposit with the Secretary-General*. As of March 31, 2000, no notice of derogation from Ethiopia was listed. *See* (continued . . . )

derogation from its international human rights obligations.<sup>43</sup> Any claim, therefore, that the violations listed below are justified by concerns of national security must be rejected.

## II.

### **MASS EXPULSION OF ETHNIC ERITREANS VIOLATES THE CHARTER'S PROHIBITION OF MASS EXPULSIONS OF ETHNIC GROUPS AND OTHER INTERNATIONAL HUMAN RIGHTS LAW.**

Regardless of the nationality of affected populations, mass expulsion violates the Charter and central tenets of international human rights law.<sup>44</sup> Ethiopia has said that the expellees were denationalized, as a class, because of their participation in the 1993 Eritrean Independence Referendum.<sup>45</sup> Relevant Charter provisions and other human rights principles clearly prohibit the attempted denationalization of Ethiopian nationals. But whether the expellees were Ethiopian, Eritrean or of unknown nationality, they are protected by the Charter and other international human rights instruments. Thus, the legality of the expulsions is in no way contingent on the validity of Ethiopia's attempted denationalizations of citizens it classifies as Eritrean.

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Declarations and Reservations to the International Covenant on Civil and Political Rights, *available at* [http://www.un.org/Depts/Treaty/final/ts2/newfiles/part\\_boo/iv\\_boo/iv\\_4.htm](http://www.un.org/Depts/Treaty/final/ts2/newfiles/part_boo/iv_boo/iv_4.htm) (visited 3/31/2000). [Appendix B-2].

<sup>43</sup>Of course, even if derogation were permissible under the ICCPR, that permissibility would not affect Ethiopia's obligations under the African Charter.

<sup>44</sup>The nationality of affected persons is a mixed question of law and fact. This submission is addressed to legal principles rather than contested questions of proof. It is undisputed that prior to 1993, virtually all of the affected population held Ethiopian citizenship. One of the purposes of this submission is to explain why, as a matter of law, the deported population may not be denationalized.

<sup>45</sup>*See* Ibrahim Statement, at 17 ("deportees confirmed to have taken part in the Referendum have voluntarily lost Ethiopian nationality and should be considered as Eritrean nationals"). [Appendix A-1].

**A. Mass Expulsion of Non-Nationals Violates Provisions of the Charter and Other International Human Rights Law.**

Ethiopia's assertion that it has expelled only Eritrean nationals, and is therefore exercising its right as a sovereign nation to protect itself, fails for several reasons to vindicate the expulsions under the Charter. First, the Charter protects non-nationals from mass expulsions that are aimed at national or ethnic groups. Article 12(5) of the Charter provides, "The mass expulsion of non-nationals shall be prohibited. Mass expulsion shall be that which is aimed at national, racial, ethnic or religious groups." The prohibition of mass expulsion of national or ethnic groups arises from the drafters' belief that mass expulsion presents a "special threat to human rights."<sup>46</sup> Ethiopia appears to concede that it has expelled Eritreans based on national origin; by way of justification, Ethiopian leaders have claimed they have the right to expel whomever they want.<sup>47</sup> This admission constitutes an acknowledgment by the Government of Ethiopia that it has violated, and continues to violate, this clear Charter provision.

Second, the mass expulsion of Eritreans, even if they are aliens, violates Article 2, which provides that "every individual shall be entitled to the enjoyment of rights and freedoms recognized and guaranteed in the [ ] Charter without any distinction of any kind." According to the Commission's decision regarding Communication 71/92 *Rencontre Africaine*, Article 2 "imposes obligations on the contracting state to secure the rights protected in the Charter to all persons within their

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<sup>46</sup>See Commission Decision regarding Communication 71/92 *Rencontre Africaine pour la Défense des Droites de l'Homme/Zambia*, at ¶20 [hereinafter 71/92 *Rencontre Africaine*] (considering the expulsion of 517 West Africans from Zambia and noting that "the drafters of the Charter believed that mass expulsion presented a special threat to human rights"). See also Commission Decision regarding Communication 159/96 *Union Inter Africaine*, at ¶15 (citing holding of 71/92 that mass expulsion was a special threat to human rights).

<sup>47</sup>See Human Rights Watch World Report 1999, at 2, citing statement of Prime Minister Meles Zenawi ("any foreign national . . . lives in Ethiopia because of the goodwill of the Ethiopian government. If we say 'Go, because we don't like the color of your eyes,' they have to leave"). [Appendix A-4].

jurisdiction, nationals or non-nationals.”<sup>48</sup> Similarly, the Commission’s decision regarding Communication 159/96 *Union Inter Africaine* states that “Article 2 . . . obligates State Parties to ensure that persons living on their territory, [be] they their nationals or non-nationals[,] enjoy the rights guaranteed in the Charter.”<sup>49</sup> A finding that the expellees were non-nationals does not diminish Ethiopia’s obligations under Article 2. In singling out non-nationals, Ethiopia violates Article 12(5) as well as Article 2.

Third, by targeting only people of Eritrean origin or descent, Ethiopia has violated Article 19 of the Charter, which states: “All peoples shall be equal; they shall enjoy the same respect and shall have the same rights. Nothing shall justify the domination of a people by another.” The Ethiopian government has not treated people of Eritrean descent in the same manner as others. By expelling only ethnic Eritreans, even those who were not citizens of Ethiopia, Ethiopia has violated the right to equality guaranteed by Article 19 of the Charter.

Ethiopia’s mass expulsions also violate Article 13 of the ICCPR, which Ethiopia ratified in 1993. Article 13 provides that an alien may be expelled “only in pursuance of a decision reached in accordance with law.”<sup>50</sup> After examining reports submitted by States Parties to the ICCPR, the U.N. Human Rights Committee noted that Article 13 entitles each alien to a decision in his or her own case; thus, “Article 13 would not be satisfied with laws or decisions providing for collective or mass expulsions.”<sup>51</sup>

Regional human rights systems outside Africa have also recognized the prohibition against mass expulsion.<sup>52</sup> Article 4 of the Fourth Protocol to the European Convention for the Protection of Human Rights

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<sup>48</sup>Commission Decision regarding 71/92 *Rencontre Africaine*, at ¶22.

<sup>49</sup>Commission Decision regarding 159/96 *Union Inter Africaine*, at ¶18.

<sup>50</sup>ICCPR, at Article 13.

<sup>51</sup>United Nations, *Report of the Human Rights Committee*, U.N. Doc. GAOR/41/40, Annex VI, ¶¶9-10 (1986). [Appendix B-3].

<sup>52</sup>As noted above, the Commission can, and should, look to other human rights instruments to more fully interpret the Charter.

and Fundamental Freedoms provides that “collective expulsion of aliens is prohibited.”<sup>53</sup> Likewise, Article 22(9) of the American Convention on Human Rights prohibits the collective expulsion of aliens.<sup>54</sup> One prominent international law scholar has recently argued that the African Charter is most appropriately read as akin to the European and American Conventions, noting that “a mass expulsion judged to be illegal under one of the regional human rights conventions would also violate the other two conventions.”<sup>55</sup> The well-established principles of the European and Inter-American human rights systems reinforce the conclusion that Ethiopia’s expulsion of ethnic Eritreans *en masse* violates international human rights norms reflected in the Charter.

#### **B. Mass Deportation of Nationals Violates the Charter and Other International Human Rights Law.**

For those expellees who held Ethiopian citizenship, Ethiopia’s expulsions violate Article 12(2) of the Charter, which provides, “Every individual shall have the right to leave any country including his own, and to return to his country. This right may only be subject to restrictions provided for by law for the protection of national security, law and order, public health or morality.” Importantly, the permissible “restrictions” set out in Article 12(2) are inapplicable to the Eritrean expellees. First, the expulsions as they have occurred are not “provided for by law.” No legislative body, no recognized rule-making authority and certainly no court of law has sanctioned the expulsions. Second,

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<sup>53</sup>See the 1950 EUROPEAN CONVENTION FOR THE PROTECTION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS, Protocol No. 4, E.T.S., 46, *entered into force* May 2, 1968, 213 U.N.T.S. 221, at Article 4.

<sup>54</sup>AMERICAN CONVENTION ON HUMAN RIGHTS, *entered into force* 18 July 1978, 1114 U.N.T.S. 123, *reprinted at* 9 I.L.M. 673 (1970), at Article 22(9) [hereinafter AMERICAN CONVENTION ON HUMAN RIGHTS] (“The collective expulsion of aliens is prohibited”). In 1991, the Inter-American Commission on Human Rights invoked Article 22 to condemn the mass expulsion of Haitians from the Dominican Republic. *See* Inter-American Commission on Human Rights, ANNUAL REPORT 1991 (General Secretariat OAS 1992), at 275. [Appendix B-4].

<sup>55</sup>Jean-Marie Henckaerts, *Mass Expulsion in Modern International Law and Practice* 19 (1995) [hereinafter Henckaerts, *Mass Expulsion*]. [Appendix B-5].

even if Ethiopia had found that some individual Eritrean-Ethiopians posed a threat to national security (determinations which have *not* occurred in a judicial, transparent or contestable manner), this would not justify mass expulsions based on immutable characteristics. Ethiopia cannot invoke this exception to justify its actions; to do so would clearly extend this provision beyond its intended limits.

Expulsion of a country's nationals on the basis of ethnicity, birth or political opinion also violates Article 2 of the Charter, which provides:

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

Since Article 12 of the Charter guarantees the right to leave and return to one's country, evidence that Ethiopia has expelled its citizens based on Eritrean ethnicity, birth or parentage constitutes a *prima facie* violation of Article 2.

Historically, mass expulsion of one's own nationals was so uncommon that it was not explicitly banned by international law until after World War II. The 1907 Hague Conventions Respecting the Laws and Customs of War on Land omitted mention of the question because mass expulsions were "generally rejected as falling below the minimum standard of civilization and, therefore, not requiring express prohibition."<sup>56</sup> Since the end of World War II, however, "it [has been] a firmly established rule of international law that a State may not expel or deport its own nationals."<sup>57</sup> As a former official in the Office of the U.S. Coordinator of Refugee Affairs has stated:

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<sup>56</sup>George Schwarzenberger, *quoted in* Roy Gutman & David Rieff (eds.), *CRIMES OF WAR, WHAT THE PUBLIC SHOULD KNOW* 124 (1999). [Appendix B-6].

<sup>57</sup>Louis B. Sohn & Thomas Buergenthal (eds.), *THE MOVEMENT OF PERSONS ACROSS BORDERS* 85 (1992). [Appendix B-7]. *See also* Henckaerts, *Mass Expulsion*, at 78. [Appendix B-5].

("Nationals cannot be expelled from their own country, not by way of mass expulsion nor even by way of individual expulsion. . . . The Universal Declaration of Human Rights . . . contained a provision  
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[T]he expulsion of nationals by their governments is a gross violation of human rights and international law . . . . Although prohibition of mass expulsion of nationals from their countries is not explicitly provided in existing human rights instruments, it is undoubtedly implied, for how can a government which has physically banished its citizens from its territory fulfill its obligations toward them under the Universal Declaration of Human Rights and other human rights instruments? Thus a violation of human rights is total and instantaneous.<sup>58</sup>

The Universal Declaration of Human Rights states in Article 9 that no one shall be subjected to exile.<sup>59</sup> Likewise, the Inter-American and European human rights treaties expressly prohibit the expulsion of nationals.<sup>60</sup> The principle has long been accepted in Ethiopia. For example, the Public Rights Proclamation, No. 139 of 1953, which related to the Federated Empire of Ethiopia and Eritrea, stated in Article 49: “No Ethiopian subject may be banished from the Empire.”<sup>61</sup>

The prohibition of mass expulsion of nationals is directly linked to numerous international human rights provisions guaranteeing the right to

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prohibiting arbitrary exile. This prohibition acquired the status of customary international law”). [Appendix B-5]; Jean-Marie Henckaerts, *The Current Status and Content of the Prohibition of Mass Expulsion of Aliens* 15 HUMAN RIGHTS L.J. 301, 317 (1994). [Appendix B-8].

<sup>58</sup>Remarks of Luke T. Lee, *Human Rights and the Movement of Persons*, American Society of International Law, Proceedings of the 78th Meeting, 342, 343 (1984) (speaking in his personal capacity). [Appendix B-9].

<sup>59</sup>UNIVERSAL DECLARATION OF HUMAN RIGHTS, *adopted* by the U.N. General Assembly, 10 December 1948, 71, U.N. Doc. A/810 (1948), at Article 9 [hereinafter UNIVERSAL DECLARATION OF HUMAN RIGHTS] (“No one shall be subjected to . . . exile”).

<sup>60</sup>*See* EUROPEAN CONVENTION FOR THE PROTECTION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS, Protocol IV, Article 3 (“No one shall be expelled, by means either of an individual or of a collective measure, from the territory of the State of which he is a national.”); AMERICAN CONVENTION ON HUMAN RIGHTS, Article 22(5) (“No one can be expelled from the territory of the state of which he is a national or be deprived of the right to enter it”).

<sup>61</sup>United Nations, *Freedom from Arbitrary Arrest, Detention and Exile*, 1959 Y.B. on H.R. 91, 1st Supp. Vol. (quoting the Ethiopian Public Proclamation, No. 139 of 1953). [Appendix B-10].

freedom of movement and the right to return to one's country. These rights are enshrined in Article 13 of the Universal Declaration,<sup>62</sup> Article 12 of the ICCPR,<sup>63</sup> and various other international human rights instruments.<sup>64</sup>

Finally, Article 32 of the Ethiopian Constitution guarantees freedom of movement, stating, "Any Ethiopian or foreign national lawfully in Ethiopia has, within the national territory, the right to liberty of movement and freedom to choose his residence, as well as the freedom to leave the country at any time he wishes to. Any Ethiopian national has the right to return to his country."<sup>65</sup>

The gravity of deporting nationals is confirmed by its classification as a crime against humanity. The Nuremberg Charter, which was enacted to prosecute war criminals in the aftermath of World War II, first enunciated crimes against humanity and established two categories—inhumane acts and persecution on racial, political or religious grounds.<sup>66</sup> Deportation of nationals is one of the inhumane acts listed in Article 6(c)

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<sup>62</sup>UNIVERSAL DECLARATION OF HUMAN RIGHTS, Article 13 ("(1) Everyone has the right to freedom of movement and residence within borders of each State. (2) Everyone has the right to leave any country, including his own, and to return to his country").

<sup>63</sup>ICCPR, Article 12(4) ("No one shall be arbitrarily deprived of the right to enter his own country").

<sup>64</sup>*See* AMERICAN DECLARATION ON THE RIGHTS AND DUTIES OF MAN, O.A.S. Res. XXX, O.A.S. Off. Rec. OEA/Ser.L/V/I.4 Rev. (1965), Article VIII ("Every person has the right to fix his residence within the territory of the state of which he is a national, to move about freely within such territory, and not to leave it except of his own will"); INTERNATIONAL CONVENTION ON THE ELIMINATION OF ALL FORMS OF RACIAL DISCRIMINATION (CERD), *entered into force* 4 January 1969, 660 U.N.T.S. 195, *reprinted in* 5 I.L.M. 352 (1966), Article 5 [hereinafter CERD] (providing that the denial of the right to return to one's own country is a violation of international human rights law when it is discriminatory). Ethiopia ratified the CERD on 23 June 1976.

<sup>65</sup>CONSTITUTION OF THE FEDERAL DEMOCRATIC REPUBLIC OF ETHIOPIA (1994), Article 32. [Appendix B-11].

<sup>66</sup>*See Charter of the International Military Tribunal (IMT)*, in AGREEMENT FOR THE PROSECUTION AND PUNISHMENT OF THE MAJOR WAR CRIMINALS OF THE EUROPEAN AXIS (London Agreement), 8 August 1945, 82 U.N.T.S. 280. [Appendix B-12].

of the Nuremberg Charter. Similar provisions are incorporated into Article II of the Control Council Law No. 10,<sup>67</sup> Article 18 of the International Law Commission's draft Code of Crimes Against the Peace and Security of Mankind,<sup>68</sup> Article 5 of the Statute of the International Criminal Tribunal for the Former Yugoslavia (ICTY)<sup>69</sup> and Article 3 of the Statute of the International Criminal Tribunal for Rwanda (ICTR).<sup>70</sup> The ICTY indictments of 21 July 1995 against Miroslav Tadic and Simo Zaric include charges of deportation and forcible transfer.<sup>71</sup> The ICTY's indictments of 24 May 1999 against Slobodan Milosevic, Milan Milutinovic, Dragoljub Ojdanic, Vljako Stojiljkovic and Nikola Sainovic include charges for the deportation and forcible expulsion of thousands of Kosovo Albanians from their homes in Kosovo and similar actions against non-Serbs during the wars in Croatia and Bosnia and Herzegovina between 1991 and 1995.<sup>72</sup> In 1998, the Rome Statute of the

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<sup>67</sup>Control Council Law No. 10, *Punishment of Persons Guilty of War Crimes, Crimes Against Peace and Against Humanity*, 3 Official Gazette Control Council for Germany 50-55 (1946). [Appendix B-13].

<sup>68</sup>International Law Commission, DRAFT CODE OF CRIMES AGAINST THE PEACE AND SECURITY OF MANKIND, U.N. Doc. A/51/10 (1996). [Appendix B-14].

<sup>69</sup>STATUTE OF THE INTERNATIONAL TRIBUNAL FOR THE FORMER YUGOSLAVIA, *established by* U.N. Security Council, 48th Sess., Resolution 827, S/Res/827 (1993). [Appendix B-15].

<sup>70</sup>STATUTE OF THE INTERNATIONAL TRIBUNAL FOR RWANDA, *established by* U.N. Security Council, 49th Sess., Resolution 955, S/Res/955 (1994). [Appendix B-16].

<sup>71</sup>*The Prosecutor of the Tribunal v. Slobodan Miljkovic, Blagoje Simic, Milan Simic, Miroslav Tadic, Stevan Todorovic, Simo Zaric, Indictment*, Case IT-95-9 (July 21, 1995), at ¶20, *available at* <<http://www.un.org/ICTY/indictment/english/sim-ii950721e.htm>> (visited 3/17/2000) (indicting Zaric and Tadic for crimes against humanity on the allegation that they "participated in the planning of, and preparation for, the unlawful deportation and forcible transfer of hundreds of Bosnian Croat and Muslim residents, including women, children and the elderly"). [Appendix B-17].

<sup>72</sup>*The Prosecutor of the Tribunal v. Slobodan Milosevic, Milan Milutinovic, Nikola Sainovic, Dragoljub Odjanic, Vljako Stojiljkovic, Indictment*, Case IT-99-37, (May 24, 1999), at ¶35, *available at* <<http://www.un.org/ICTY/indictment/english/mil-ii990524ehtm>> (visited (continued . . . ))

International Criminal Court described “deportation or forcible transfer of population” as a crime against humanity.<sup>73</sup> The Rome Statute defines “deportation or forcible transfer of population” as the “forced displacement of the persons concerned by expulsion or other coercive acts from the area in which they are lawfully present, without grounds permitted under international law.”<sup>74</sup>

### **C. Ethiopia’s Mass Expulsion of Ethnic Eritreans Constitutes Ethnic Cleansing.**

Finally, the massive scale of Ethiopia’s systematic expulsion of ethnic Eritreans from Ethiopia is strong evidence that these acts constitute “ethnic cleansing” under international human rights law. The term “ethnic cleansing” is of relatively recent origin and has been defined broadly to encompass “a variety of acts which either a state or an individual may commit, and that violate other legal prohibitions.”<sup>75</sup> International legal actors have nonetheless defined the practice in fairly precise terms. The Commission of Experts established as a precursor to the ICTY defined ethnic cleansing as “rendering an area ethnically homogenous by using force or intimidation to remove persons of given groups from the area.”<sup>76</sup> Similarly, the U.N. Committee on the Elimination of Racial Discrimination condemned ethnic cleansing in Bosnia, which it described as the elimination of a group of people “on the basis of ‘ethnic identity’ for the purpose of attempting to create

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3/17/2000) [hereinafter *Milosevic Indictment*] (indicting defendants for, *inter alia*, “the unlawful deportation and forcible transfer of thousands of Kosovo Albanians from their homes in Kosovo [that] involved well-planned and co-ordinated efforts”). [Appendix B-18].

<sup>73</sup>ROME STATUTE OF THE INTERNATIONAL CRIMINAL COURT, U.N. Doc. A/Conf. 183/9 (1998), at Article 7 §1(d).

<sup>74</sup>*Id.*, at Article 7 §2(d).

<sup>75</sup>John Quigley, *State Responsibility for Ethnic Cleansing*, 32 U.C. DAVIS L. REV. 341, 345 (1999) [hereinafter Quigley, *State Responsibility*]. [Appendix B-19].

<sup>76</sup>*Interim Report of the Commission of Experts Established Pursuant to Security Council Resolution 780* (1992), U.N. SCOR, Annex I, at 16, U.N. Doc. S/25274 (1993). [Appendix B-20].

ethnically pure States.”<sup>77</sup> In a May 1999 report, the U.S. Department of State defined “ethnic cleansing” as “the systematic and forced removal of members of an ethnic group from a community or communities to change the ethnic composition of a region.”<sup>78</sup> To qualify as ethnic cleansing, according to one legal scholar, a population’s removal must be forced and deliberate.<sup>79</sup>

Ethnic cleansing has been uniformly condemned by states and U.N. organs, leaving no doubt that the practice involves serious violations of international law. The Security Council has “strongly condemn[ed] . . . the unacceptable practice of ‘ethnic cleansing.’”<sup>80</sup> The General Assembly has stated that “the abhorrent practice of ‘ethnic cleansing’ constitutes a grave and serious violation of international humanitarian law.”<sup>81</sup> In December 1992, the U.N. Human Rights Committee, the monitoring organ of the ICCPR, asked the Federal Republic of Yugoslavia to submit a supplementary report explaining “[m]easures taken to prevent and combat the policy of ‘ethnic cleansing.’”<sup>82</sup> In addition, the ICTY’s May 24, 1999, indictment of President Milosevic

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<sup>77</sup>See Quigley, *State Responsibility*, at 346 [Appendix B-19], citing the *Report of the Committee on the Elimination of Racial Discrimination*, U.N. GAOR, 48th Sess., Supp. No. 18, at 91, U.N. Doc. A/48/18 (1993).

<sup>78</sup>U.S. State Department, *Erasing History: Ethnic Cleansing in Kosovo*, 1 (May 1999), available at <[http://www.state.gov/www/regions/eur/rpt\\_9905\\_ethnic\\_ksvo\\_exec.html](http://www.state.gov/www/regions/eur/rpt_9905_ethnic_ksvo_exec.html)> (visited 03/5/2000). [Appendix B-21].

<sup>79</sup>Andrew Bell-Fialkoff, *ETHNIC CLEANSING 2* (1996) (“[T]o qualify as cleansing, a population removal must be forced and deliberate”). [Appendix B-22].

<sup>80</sup>U.N. Security Council, 3428th mtg., Resolution 941 (Sept. 23, 1994), S/Res/941 [Appendix B-23]. See also U.N. Security Council, 3175th mtg., Resolution 808 (Feb. 23, 1993) S/Res/808 [Appendix B-24]; and U.N. Security Council, 3217th mtg., Resolution 827, May 25, 1993, S/Res/827 [Appendix B-25].

<sup>81</sup>U.N. GAOR, “*Ethnic Cleansing*” and *Racial Hatred*, G.A. Res. 47/80, U.N. GAOR, 89th Plen. mtg., U.N. Doc. A/RES/47/80 (1992), available at <[gopher://gopher.un.org/00/ga/recs/47/80](http://gopher://gopher.un.org/00/ga/recs/47/80)>. [Appendix B-26].

<sup>82</sup>Human Rights Committee, *Comments of the Human Rights Committee: Federal Republic of Yugoslavia (Serbia and Montenegro)*, U.N. Doc. CCPR/C/79/Add.16 (Dec. 28, 1992), at 1. [Appendix B-27].

repeatedly mentions the forcible expulsion of ethnic Albanians from Kosovo as a basis for the offenses charged.<sup>83</sup>

Both the objective that Ethiopia has sought to accomplish and the means it has employed fit the definition of ethnic cleansing. The objective appears to be to rid Ethiopia of some or all of its Eritrean population; the means used to achieve this objective are forcible expulsions of populations defined as Eritrean. The facts before the Commission, which have been documented and corroborated by the relevant sources appended to this submission, show that Eritreans have been compelled to register with the government, that Eritreans are being expelled solely because of their ethnicity, that no other group is being systematically expelled, and that the expulsions are frequently brutal. Such evidence suggests that the expulsions constitute ethnic cleansing, a forced and deliberate population removal in order to change the ethnic composition of Ethiopia.<sup>84</sup>

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<sup>83</sup>*Milosevic Indictment*, at ¶¶36-37, 39, 92, 93, 97. [Appendix B-18].

<sup>84</sup>As noted earlier, Ethiopia cannot avoid responsibility for ethnic cleansing by claiming that Eritreans are not an “ethnic” group. First, while this question may be debatable as a matter of anthropology, Ethiopia has itself targeted Eritreans as a group and subjected them to all the indignities characteristic of “ethnic cleansing.” The Government of Ethiopia cannot now disclaim legal responsibility toward these persons whom it has treated as an undifferentiated whole. The realities of the mass expulsions, and not fine semantic distinctions, should guide the Commission’s inquiry in this area. Second, international actors have described the Eritrean population of Ethiopia as an “ethnic group.” The U. S. Department of State, for example, stated in August 1998 that the United States “views with deep concern the detention and expulsion of ethnic Eritreans in and from Ethiopia.” See U.S. State Department 1999 Country Report. [Appendix A-12].

### III.

#### **ETHIOPIA'S MASS EXPULSION OF ETHNIC ERITREANS IS DISCRIMINATORY AND ARBITRARY AND THUS VIOLATES THE CHARTER AND OTHER INTERNATIONAL HUMAN RIGHTS LAW.**

##### **A. Ethiopian Discrimination against Eritreans and Ethiopians of Eritrean Origin and the Failure to Provide Equal Protection Violate the Charter and Other International Human Rights Law.**

While the Charter does not bar individual deportations *per se*, it does proscribe discrimination based on ethnicity or national origin and the failure to provide equal protection under the law. Discrimination on the basis of ethnic group or national origin is a violation of Article 2 of the Charter, which prohibits “distinction[s] of any kind such as race, ethnic group, color, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or other status.” By singling out people of Eritrean national origin, ethnicity or descent for deportations, the government of Ethiopia is in violation of this most fundamental provision of the Charter. In its decision regarding Communication 71/92 *Rencontre Africaine*, the Commission found discrimination to be a clear prohibition of Article 2, which “imposes an obligation on the contracting state to secure the rights protected in the Charter to all persons within their jurisdiction, nationals or non-nationals.”<sup>85</sup> The same logic applies with equal force to Article 3(2) of the Charter, which mandates that state parties ensure equal protection of the law for all individuals.

Ethiopia's discriminatory treatment of ethnic Eritreans also violates the Ethiopian Constitution. Article 25 of the Constitution provides:

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

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<sup>85</sup>Commission Decision regarding Communication 71/92 *Rencontre Africaine*, at ¶22.

language, religion, political or other opinion, property, birth or other status.<sup>86</sup>

By targeting persons classified as Eritrean, whether on the basis of ethnicity or national origin, Ethiopia is in violation of its own Constitutional prohibition against discrimination.

The prohibition against discriminatory treatment contained in the Charter and Ethiopia's Constitution reflects basic principles of international law. The Universal Declaration of Human Rights provides that "everyone is entitled to all the rights and freedoms set forth in [the] Declaration, without distinction of any kind, such as race, colour, [. . .] political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs."<sup>87</sup> The Declaration further provides that "all people are equal before the law and are entitled without any discrimination to equal protection of the law."<sup>88</sup> The ICCPR provides: "Each State Party to the . . . Covenant undertakes to respect and ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the . . . Covenant, without distinction of any kind, such as race, colour . . . political or other opinion, national or social origin, property, birth or other status."<sup>89</sup> The Convention on the Elimination of All Forms of Racial Discrimination (CERD) provides that States Parties "condemn racial discrimination and undertake to pursue a policy of . . . eliminating racial discrimination in all its forms."<sup>90</sup> The CERD defines racial discrimination as any discrimination based on "race, colour, descent, or national or ethnic origin."<sup>91</sup> Therefore, by carrying out a discriminatory program of expulsions of people of

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<sup>86</sup>CONSTITUTION OF THE FEDERAL DEMOCRATIC REPUBLIC OF ETHIOPIA (1994), at Article 25. [Appendix B-11].

<sup>87</sup>UNIVERSAL DECLARATION OF HUMAN RIGHTS, at Article 2.

<sup>88</sup>*Id.* at Article 7.

<sup>89</sup>ICCPR, at Article 2(1).

<sup>90</sup>CERD, at Article 2. Ethiopia ratified this Convention on 23 June 1976.

<sup>91</sup>*Id.* at Article 1.

Eritrean descent or national origin, the Ethiopian government has violated and continues to violate the Charter, as well as other well-established principles of international human rights law.

**B. Ethiopia's Failure to Provide Eritreans and Ethiopians of Eritrean Origin Due Process of Law Violates the Charter and Other International Human Rights Law.**

The Charter prohibits deportations without due process of law. Article 7 of the Charter provides:

Every individual shall have the right to have his cause heard. This comprises: (a) the right to an appeal to competent national organs against acts violating his fundamental rights as recognized and guaranteed by conventions, laws, regulations, and customs in force. . . .

The Commission has stated that the guarantee of due process of law applies to deportations. In criticizing Zambia's expulsion of 517 West Africans, the Commission held that the deprivation of the expellees' right to have their cause heard constituted a "flagrant violation" of Article 7 of the Charter.<sup>92</sup> Prior Commission decisions regarding several communications have also found it unacceptable under Article 7 "to deport individuals without giving them the possibility to plead their case before competent national courts."<sup>93</sup> Amnesty International has reported that deportees and their families "were deported to Eritrea without any

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<sup>92</sup>Commission Decision regarding Communication 71/92 *Rencontre Africaine*, at ¶40. *See also id.* at ¶30 (holding that "none of the deportees had the opportunity to seize the Zambian courts to challenge their detention or deportation. This constitutes a violation of their rights under Article 7 of the Charter").

<sup>93</sup>Commission Decision regarding Communication 159/96 *Union Inter Africaine*, at ¶19 (holding victims' lack of opportunity to challenge expulsions before competent jurisdictions that should have ruled on their detention and the legality of expulsions violated Article 7.1(a)). *See also* Commission Decision regarding Communications 27/89, 46/91, 49/91, 99/93 *Organisation Mondiale Contre La Torture and Association Internationale des Juristes Democrates, Commission Internationale des Juristes, Union Inter africaine des Droits de l'Homme vs. Rwanda* [hereinafter 27/89 *Organisation Mondiale*] (holding that "expelling . . . refugees from Rwanda without giving them the opportunity to be heard by the national judicial authorities" is a violation of Article 7.1").

formal or judicial process or opportunity to challenge their deportations.”<sup>94</sup> The expulsion of Eritreans and Ethiopians of Eritrean origin *en masse* and with no individual appeals process violates the basic mandate of Article 7.

In its decision regarding Communication 71/92 *Rencontre Africaine*, the Commission rejected the Zambian government’s claim that its deportations had not been committed *en masse* since “the deportees were arrested over a two-month period of time, at different places, and served with deportation orders on different dates.”<sup>95</sup> The Commission held instead that once applicants assert that they had no opportunity to appeal a deportation decision, the deporting government has the burden to prove that such a right of appeal was available. There, the Commission concluded that Zambia could not “prove that the deportees were given the opportunity to seek appeal against the decision on their deportations.”<sup>96</sup> Ethiopia should be held to the same standards; if Ethiopia cannot show that it did, in fact, provide the expellees with an opportunity to appeal their deportation orders, Ethiopia must be found to have violated Article 7.

Even if, as Ethiopia contends, it deported only those people of Eritrean descent who were a security risk, those deportees were nonetheless entitled to the procedural protections guaranteed in Article 7 of the Charter. According to the Charter, “*every individual*,” including those suspected of national security risks, has the right to a hearing before an impartial court or tribunal.<sup>97</sup> Ethiopia’s failure to provide deportees with judicial review of the decision to deport them thus

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<sup>94</sup>Amnesty International, *AI Report 1999: Ethiopia*, in AMNESTY INTERNATIONAL ANNUAL REPORT 1999, available at <<http://www.amnesty.org/ailib/aireport/ar99/afr25.htm>> (visited 02/24/2000). [Appendix A-20].

<sup>95</sup>Commission Decision regarding Communication 71/92 *Rencontre Africaine*, at ¶27.

<sup>96</sup>*Id.*

<sup>97</sup>*See* Article 7, AFRICAN CHARTER ON HUMAN AND PEOPLES’ RIGHTS. (“Every individual shall have the right to have his cause heard. This comprises: . . . d) the right to be tried within a reasonable time by an impartial court or tribunal”) (emphasis added).

constitutes a continuing violation of Article 7 regardless of the security risk they may have posed. In any event, the sheer scale of the deportations suggests that Ethiopia lacks evidence that each deported individual poses a security risk and that it has acted instead on mere suspicion.

Article 7 also guarantees “the right to be presumed innocent until proved guilty by a competent court or tribunal,” and the Commission has held that “[d]etention on the mere suspect that an individual may cause problems is a violation of [this] right.”<sup>98</sup> Neither xenophobia in a time of armed conflict nor the suspicion that an entire class of people constitutes a security threat can provide a lawful basis for Ethiopia’s detention and ultimate expulsion of Eritrean citizens and ethnic Eritreans.

The guarantee of due process is a basic tenet of international law. Article 10 of the Universal Declaration of Human Rights states that “everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations . . . .”<sup>99</sup> In the context of deportation, the ICCPR requires an even more explicit assurance of due process. Article 13 provides: “An alien lawfully in the territory of a State Party to the present Covenant may be expelled therefrom only in pursuance of a decision reached in accordance with law and shall, except where compelling reasons of national security otherwise require, be allowed to submit the reasons against his expulsion and to have his case reviewed by, and be represented for the purpose before, the competent authority or person or persons especially designated by the competent authority.”<sup>100</sup> Ethiopia’s

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<sup>98</sup>Commission Decision regarding Communication 39/90 *Annette Pagnouille (on behalf of Abdoulaye Mazou)/Cameroon*, at ¶21 [hereinafter 39/90 Annette Pagnouille].

<sup>99</sup>UNIVERSAL DECLARATION OF HUMAN RIGHTS at Article 10.

<sup>100</sup>ICCPR, at Article 13; *see also* ICCPR, at Article 9 (“Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful”). Similarly, Article 8 of the AMERICAN CONVENTION ON HUMAN RIGHTS provides that “every person has the right to a hearing with due guarantees and within reasonable time, by a competent, independent and impartial tribunal, previously established by  
(continued . . . )

failure to provide expellees with due process of law violates well established and binding international law.

#### IV.

### **MASS DENATIONALIZATION OF ETHIOPIANS VIOLATES THE CHARTER AND INTERNATIONAL HUMAN RIGHTS LAW.**

Ethiopia asserts that the expellees as a group are Eritrean nationals because many of them voted in the 1993 referendum on Eritrean independence. This assertion is incorrect as a matter of both domestic and international law. It is particularly inapplicable to Ethiopian citizens, including persons holding Ethiopian passports until the outbreak of hostilities between Eritrea and Ethiopia. As discussed below, voting in the Eritrean referendum did not constitute a forfeiture of Ethiopian citizenship under either Eritrean or Ethiopian law. Even if a forfeiture did occur under national law (which it did not), the denationalizations would be void as violations of the Charter and other international law binding on Ethiopia.

#### **A. Mass Denationalization of Ethiopians Who Voted in the Eritrean Independence Referendum Cannot be Supported by the Domestic Law of Ethiopia or Eritrea.**

Ethiopia claims that voting in the 1993 Eritrean independence referendum by itself, without more, constituted a forfeiture of Ethiopian citizenship. This claim is plainly contradicted by Ethiopian law. Article 33(1) of the Ethiopian Constitution guarantees, “No Ethiopian national shall be deprived of his or her Ethiopian nationality against his or her will.”<sup>101</sup> Put differently, an Ethiopian citizen can voluntarily renounce his or her Ethiopian citizenship, but the Government cannot remove his or her Ethiopian citizenship without his or her consent. By denationalizing Ethiopian citizens without an affirmative indication of

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law . . . for the determination of his rights and obligations of a civil, labor, fiscal, or any other nature.”

<sup>101</sup>CONSTITUTION OF THE FEDERAL DEMOCRATIC REPUBLIC OF ETHIOPIA, at Article 33(1). [Appendix B-11].

consent before expelling them, Ethiopia has violated this Constitutional provision.

Moreover, Ethiopia's own actions provide strong evidence that the ethnic Eritreans who were Ethiopian citizens and participated in the referendum remained Ethiopian citizens. Nothing in the Referendum Proclamation gave notice to the participants that voting would result in a loss of citizenship. In the five years between the Eritrean referendum in 1993 and the start of the Ethiopian-Eritrean war in May 1998, ethnic Eritreans participated in Ethiopian life in ways only citizens of Ethiopia could: they voted in Ethiopian elections, paid taxes as Ethiopians and received valid Ethiopian identification cards from the Ethiopian Government.<sup>102</sup> Until the war with Eritrea, Ethiopia treated its ethnic Eritrean population as it treated other Ethiopian citizens.

Ethiopia cannot look to Eritrean law to justify its claim that, by voting in the referendum, Ethiopian citizens of Eritrean origin or descent became Eritrean citizens. Article 2(5) of the 1992 Eritrean Nationality Proclamation directly addresses the nationality of people of Eritrean origin or descent living outside of Eritrea. The paragraph reads:

Any person who is Eritrean by birth, resides abroad and possesses foreign nationality shall apply to the Department of Internal Affairs if he wishes to officially renounce his foreign nationality or wishes, after providing adequate justification, to have his Eritrean nationality accepted while maintaining his foreign nationality.<sup>103</sup>

The proclamation is very clear that someone of Eritrean origin or descent who lives abroad—including in Ethiopia—could not automatically become an Eritrean citizen by voting in the referendum; nor would such a person become an Eritrean citizen because the state of Eritrea came into existence. Rather, a person of Eritrean origin or descent who lives in Ethiopia must follow a specific procedure of making an application to Eritrea's Department of Internal Affairs in order to become an Eritrean citizen. The application form for a

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<sup>102</sup>See Farhan Haq, *Rights-Eritrea*. [Appendix A-11].

<sup>103</sup>*Eritrean Nationality Proclamation No. 21/1992, reprinted in GAZETTE OF ERITREAN LAWS, Vol. 2/1992, No. 3 (Provisional Government of Eritrea 1992).* [Appendix B-28].

nationality certificate and passport,<sup>104</sup> which is appended to this submission for informational purposes, clearly requires more than an Eritrean identity card issued by the transitional authorities to indicate voting eligibility in the 1993 referendum. An Eritrean identity card number is merely the first item of information that an applicant must provide. Without more, an identity card of this kind does not confer Eritrean citizenship on an applicant. Prospective Eritrean citizens must also supply information about their financial resources, property, any former passports, criminal history and visits outside of Eritrea before being granted citizenship. Thus, the acquisition of Eritrean citizenship involves an entire bureaucratic process that follows upon an individual supplying this detailed information. A vote alone does not begin to satisfy the requirements for citizenship under Eritrean law. A person of Eritrean origin residing in Ethiopia did not acquire Eritrean citizenship under these standards by voting in the referendum any more than did a person of Eritrean origin residing and voting in Sweden, France, Germany or the United States.

Therefore, regardless of the national origin ascribed to them by Ethiopian authorities and irrespective of their participation in Eritrea's referendum, these people should have remained Ethiopian citizens according to Eritrean law and Ethiopian law and practice.

Finally, the fact that Eritrea has accepted many of the people expelled from Ethiopia has no bearing on the legality of the expulsions. Eritrea's assistance of those expelled, once they are within Eritrean territory, does not constitute a position on the legal significance of Ethiopia's practice of mass expulsion, the original citizenship of the expellees, or the rights of those expellees under international human rights law.

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<sup>104</sup>State of Eritrea, Ministry of Internal Affairs, Department of Immigration, Nationality & Passports, Application Form for Nationality Certificate and Passport. [Appendix A-21].

## **B. The Denationalizations Violate the Charter and Other International Human Rights Law.**

Separate and apart from the invalidity of the denationalizations under domestic law, Ethiopia's program of mass denationalization violates the Charter and other international human rights law. Although the Charter does not explicitly address nationality rights, the right to a nationality is implicit in the Charter. Nationality is necessary for a person to enjoy political rights, and only a citizen has the right to participate in government, a right guaranteed by Article 13. Likewise, only citizens enjoy "the right of equal access to the public service of his country" afforded by Article 13.

Removing people's citizenship because of their participation in political processes, such as the referendum on Eritrean independence, is a violation of Articles 9(2) and 13(1) of the Charter. Article 9(2) states, "Every individual shall have the right to express and disseminate his opinions within the law." Article 13(1) states, "Every citizen shall have the right to participate freely in the government of his country, either directly or through freely chosen representatives in accordance with the provisions of the law." By voting in the 1993 referendum, Ethiopians of Eritrean origin or descent simply exercised their rights under these two provisions. The referendum was a political process of the highest importance, sanctioned and monitored by the United Nations. Indeed, the referendum led to the acceptance of Eritrea as a U.N. member state.<sup>105</sup> Through their vote, Ethiopians of Eritrean descent expressed their opinion on the fate of an Ethiopian province.<sup>106</sup> To punish individuals for exercising a legal right is itself a denial of that right. Thus, Ethiopia's denationalization of citizens who participated in the 1993 referendum violates Article 9(2) of the Charter.

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<sup>105</sup>See Admission of Eritrea to Membership in the United Nations, G.A. Res. 47/230, U.N. G.A.O.R., 47th Sess., Supp. No. 49, 104th mtg., U.N. Doc. A/47/49 (1992). [Appendix B-29].

<sup>106</sup>One might reasonably read the Ethiopian Constitution as having *encouraged* the referendum. Article 39(1) of the Ethiopian Constitution provides that "[e]very Nation, Nationality and People in Ethiopia has an unconditional right to self-determination, including the right to secession." CONSTITUTION OF THE FEDERAL DEMOCRATIC REPUBLIC OF ETHIOPIA, Art. 39(1). [Appendix B-11].

For the same reason, Ethiopia's stated rationale for the denationalizations violates Article 13(1). In voting on the question of Eritrea's independence, Ethiopians of Eritrean origin or descent were participating in the political process in a fundamental way. There are few political questions of greater moment than whether a country will divide into two. To punish a person for participating in the process by which this decision is made, like punishing someone for exercising the right to freedom of expression, is a violation of a basic political right.<sup>107</sup>

The denationalizations' invalidity under the Charter is reflected in international law by several human rights instruments. Article 15 of the Universal Declaration of Human Rights states:

1. Everyone has the right to a nationality.
2. No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.

Virtually the same language appears in Article 20 of the American Convention on Human Rights.<sup>108</sup> The Inter-American Court of Human Rights has reaffirmed this position, stating, "It is generally accepted today that nationality is an inherent right of all human beings."<sup>109</sup>

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<sup>107</sup>The Commission need not interpret the phrase "in the government of his country" as applying narrowly to participation related to the domestic government. Article 13(1) should be interpreted as providing a more general conception of activities concerning the public sphere. In accord with the spirit of other international covenants, which substitute the more general "public affairs," the phrase "in the government of his country" in the African Charter should be read to include matters beyond the election of public officials. Voting in a referendum to determine whether or not part of a country will become independent is participation of the most important kind and must fall within the protection of Article 13(1). *See, e.g.*, ICCPR, Article 25(a) ("Every citizen shall have the right and opportunity . . . [t]o take part in the conduct of public affairs, directly or through freely chosen representatives"); AMERICAN CONVENTION ON HUMAN RIGHTS, Article 23(1)(a) (same).

<sup>108</sup>AMERICAN CONVENTION OF HUMAN RIGHTS, Article 20 ("Every person has a right to a nationality [and] no one shall be arbitrarily deprived of his nationality or of his right to change it"). *See also* AMERICAN DECLARATION OF THE RIGHTS AND DUTIES OF MAN, at Article 19 ("Every person has the right to the nationality to which he is entitled by law and to change it he so wishes for the nationality of any other country that is willing to grant it to him").

<sup>109</sup>Case No. OC-4/84, Inter-Am. C.H.R. *Proposed Amendments to the*  
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Finally, the Convention on the Reduction of Statelessness articulates the generally accepted belief that states have an affirmative obligation to grant nationality to persons in their jurisdiction who would otherwise be stateless.<sup>110</sup> At the time of the referendum, the State of Eritrea did not exist. Consequently, Ethiopia cannot now argue that its deportation of ethnic Eritreans is lawful based on retroactive denationalization. Because the denationalization itself would have left the affected group stateless, it would have constituted a violation of international law at the time of the referendum.

Ethiopia's denationalization of Ethiopian citizens of Eritrean origin or descent also violates the principles of international law governing state succession. The United Nations International Law Commission's Draft Articles on Nationality in Relation to State Succession codifies existing customary international law in this area.<sup>111</sup> These articles describe the fundamental principle that habitual residents have the right to choose citizenship in either the predecessor or the successor state. In addition, the predecessor state cannot unilaterally alter the citizenship of habitual residents who do not clearly opt for citizenship in the successor state. In other words, their citizenship is not altered by the mere fact of state succession; only a clearly articulated choice can alter citizenship.<sup>112</sup>

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*Naturalization Provision of the Constitution of Costa Rica*, at ¶32 (January 19, 1984) (issuing an Advisory Judgment on amendments to Costa Rica's Constitution that would have put restrictions on naturalization). [Appendix B-30].

<sup>110</sup>CONVENTION ON THE REDUCTION OF STATELESSNESS, *entered into force* 13 December 1975, 989 U.N.T.S. 175.

<sup>111</sup>*See* International Law Commission, REPORT OF THE INTERNATIONAL LAW COMMISSION 1999, CHAPTER IV: NATIONALITY IN RELATION TO THE SUCCESSION OF STATES, at Preamble, U.N. G.A.O.R., 54th Sess., Supp. No. 10, U.N. Doc. A/54/10, [hereinafter ILC, State Succession Draft Articles] (declaring that one of its purposes was the "need for the codification and progressive development of the rules of international law concerning nationality in relation to the succession of States as a means for ensuring greater juridical security for States and for individuals"). [Appendix B-31].

<sup>112</sup>*See id.* at Article 14(1) ("The status of persons concerned as habitual residents shall not be affected by the succession of States"); and Article 25 ("Unless otherwise indicated by the exercise of a right of option, (continued . . . )

The case of Eritrean independence from Ethiopia was a clear instance of state succession.<sup>113</sup> Ethnic Eritreans who had been citizens of Ethiopia when Eritrea became independent and who have exercised no such option with regard to their citizenship cannot be stripped of their citizenship by Ethiopia. Thus, the *de facto* denationalizations carried out by Ethiopia in this instance constitute violations of the modern law of state succession.

Lastly, even if the Ethiopian government demonstrates that it had cause to denationalize certain Ethiopians of Eritrean descent, the government would still have to show that it made a specific determination for each individual that denationalization was justified. As noted previously, Article 7 of the Charter guarantees the right to due process of law, including the right to appeal any action that interferes with “fundamental rights as recognized and guaranteed by conventions, laws, regulations, and customs in force. . . .” The denationalization process violated these due process rights. Few, if any, of those who have been denationalized in the course of their expulsion have had an opportunity to appeal their denationalization before a court or competent judicial body; the denationalizations occurred *en masse*; and individuals did not have an opportunity to be heard in the first instance. Each of these circumstances is a violation of Article 7(1)(a). In addition, those denationalized had no opportunity to be defended by counsel, a violation of Article 7(1)(c).

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the predecessor State shall not, however, withdraw its nationality from persons [qualified to acquire the nationality of the successor State] who: (a) have their habitual residence in its territory . . . .”). [Appendix B-31].

<sup>113</sup>The ILC defines a “succession of States” as “the replacement of one State by another in the responsibility for the international relations of territory.” *Id.*, Article 2(a). [Appendix B-31]. Upon achieving independence, Eritrea clearly replaced Ethiopia as the state responsible for the international relations of its territory. *See* United Nations Office of Public Information, *The United Nations and the Independence of Eritrea* 3-5 (1996) (detailing the history of Eritrea’s independence and succession from Ethiopia, including its “free and fair referendum”). [Appendix B-32].

## V.

### **ETHIOPIA'S CAMPAIGN OF MASS EXPULSION VIOLATES OTHER PROVISIONS OF THE CHARTER AND OTHER INTERNATIONAL HUMAN RIGHTS LAW.**

#### **A. Ethiopia's Arbitrary Arrest and Detention of Deportees Violates the Charter and Other International Human Rights Law.**

Article 6 of the Charter provides that persons should not be subject to arrest and detention without legitimate cause, without having the cause explained to them, and without having the chance to contest their detention. Article 6 states:

Every individual shall have the right to liberty and to the security of his person. No one may be deprived of his freedom except for reasons and conditions previously laid down by law. In particular, no one may be arbitrarily arrested or detained.

This clear and absolute prohibition on arbitrary arrest and detention has been recognized by the Commission in prior decisions. In its decision regarding Communication 64/92 *Krishna Achutan (on behalf of Aleke Banda)/Malawi*, the Commission found that the arbitrary arrest and detention of office workers, trade unionists, Roman Catholic bishops and students violated Article 6.<sup>114</sup> Similarly, in its decision regarding Communication 25/89 *Free Legal Assistance Group et al./Zaire*, the Commission held that the “indefinite detention” of “protestors against torture” violated the Charter’s prohibition on arbitrary detention.<sup>115</sup> Ethiopia’s arbitrary detention of ethnic Eritreans preceding their deportation similarly violates the Charter and other international human rights instruments. Indeed, many of those expelled, though not formally arrested, were forcibly removed from their homes and held in jails and

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<sup>114</sup>Commission Decision regarding Communications 64/92, 68/92, 78/92 *Krishna Achutan (on behalf of Aleke Banda)*, and *Amnesty International (on behalf of Orton and Vera Chirwa v. Malawi)*, at ¶10.

<sup>115</sup>Commission Decision regarding Communications 25/89, 47/90, 56/91, 100/93 *Free Legal Assistance Group, Lawyers' Committee for Human Rights, Union Inter Africaine des Droits de l'Homme, Les Témoins de Jehovah/Zaire*, at ¶42.

police stations prior to their expulsion. Such actions constitute arbitrary detention in violation of Article 6.

Previous Commission decisions establish that detentions on the basis of ethnicity or national origin are forms of arbitrary detention, and are, therefore, violations of Article 6. In its decision concerning 27/89 *Organisation Mondiale* and joined cases, the Commission pointed to the nondiscrimination requirement of Article 2 in concluding that ethnic origin can never be a lawful reason for detention. The Commission ruled that detention on that basis comprised a violation of Article 6.<sup>116</sup> This reasoning makes clear that the detention of persons classified as Eritreans is arbitrary if it is not carried out (in the language of Article 6) for “reasons and conditions previously laid down by law.” Even if such laws had been clearly articulated, in this instance, their discriminatory nature would render detentions based on such laws arbitrary under Article 6.

Ethiopia also cannot argue that the detention of ethnic Eritreans is lawful because they constitute a security risk. The Commission need not consider whether the national security argument has factual merit in order to conclude that the detention of ethnic Eritreans is arbitrary. The detention of an individual on the basis that he or she poses an alleged risk of crime or wrongdoing, without trial for the past commission of such acts, is wrongful. Such actions constitute a violation of Article 7(1)(b), which guarantees “the right to be presumed innocent until proven guilty by a competent court or tribunal.” In its decision regarding Communication 39/90 *Annette Pagnouille*, the Commission concluded that Cameroon had violated the Charter by detaining the petitioner without a hearing. The Commission found that the “detention on the mere suspect that an individual may cause problems is a violation of the right to be presumed innocent.”<sup>117</sup>

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<sup>116</sup>Commission Decision regarding Communication 27/89 *Organisation Mondiale*, at ¶28 (“The arrests and detentions of the Rwandan Government based on grounds of ethnic origin alone, in light of Article 2 in particular, constitute arbitrary deprivation of the liberty of an individual. These acts are clear evidence of a violation of Article 6”).

<sup>117</sup>Commission Decision regarding Communication 39/90 *Annette Pagnouille*, at ¶21.

The Commission has recognized the wide scope of due process rights in its decision concerning Communication 144/95 *William A. Courson v. Equatorial Guinea*. Although declining to find a Charter violation in that specific case because of a lack of evidence, the Commission noted that the right to defend oneself includes the right to be fully informed of the charges and the right to counsel at all times, including during detention, and not merely during trial.<sup>118</sup> Thus, by depriving ethnic Eritreans of the right to counsel and by failing to inform them of the reasons for their detention, the Government of Ethiopia has violated Article 7.

The attached appendices from human rights observers testify to a pattern of treatment that falls well short of the standards mandated by the Charter and elaborated by the Commission's decisions. These reports corroborate claims that many expellees have been jailed for brief periods before being deported while others have been imprisoned in detention camps for many months.<sup>119</sup> The detainees have included pregnant women, children, the elderly and hospital patients.<sup>120</sup> Many were seized in the middle of the night, forced aboard buses at gunpoint and driven to the border.<sup>121</sup> They have generally had no opportunity to contest their detention, and they have not had access to the sort of due process envisioned by Article 7. These detentions have been arbitrary and without due process and, therefore, have violated the African Charter.

The pattern and practice of mass detentions also violate well established international human rights norms. Article 9 of the Universal Declaration of Human Rights states: "No one shall be subject to arbitrary arrest, detention or exile." The ICCPR further elaborates this right:

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<sup>118</sup>Commission Decision regarding Communication 144/95 *William A. Courson v. Equatorial Guinea*, at ¶22 ("The Commission recalls that the right to defence, including the right to a counsel is exercised not only during the trial, but also during detention").

<sup>119</sup>*See, e.g.*, Human Rights Watch World Report 1999, at 2. [Appendix A-4].

<sup>120</sup>*See* Amnesty News Release 1999, at 1. [Appendix A-5].

<sup>121</sup>*See id.* [Appendix A-5].

Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest and detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedures as are established by law. Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him. . . . Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.<sup>122</sup>

ICCPR Article 9 makes clear that detainees are entitled to a fair hearing before an impartial court or tribunal. The provision makes no distinction between persons who are arrested or detained for deportation purposes and those who are arrested or detained for alleged violations of criminal law. To detain an individual without affording prompt access to a court where he or she may challenge the lawfulness of the detention is a clear violation of the ICCPR.

Finally, the policy of detention targets ethnic Eritreans and is, therefore, a violation of the CERD.<sup>123</sup> This Convention states, “Each State Party undertakes to engage in no act or practice of racial discrimination against persons, groups of persons or institutions and to ensure that all public authorities and public institutions, national and local, shall act in conformity with this obligation.” Arrest or detention on the basis of race or ethnicity plainly violates this provision of the CERD.

#### **B. The Expropriation of Property Violates the Charter and Other International Human Rights Laws.**

The expropriation of property and assets belonging to people of Eritrean origin or descent, based on ethnic origin, violates several articles of the Charter. First, the expropriation of property based on ethnic origin is a clear violation of the right to property. Article 14 states: “The right to property shall be guaranteed. It may only be encroached upon in the interest of public need or in the general interest

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<sup>122</sup>ICCPR, at Article 9.

<sup>123</sup>CERD, at Article 2(1).

of the community and in accordance with the provisions of appropriate laws.”<sup>124</sup> Absent a clear showing that each individual expropriation was “in the interest of public need,” each expropriation violates this provision of the Charter. In its decision concerning Communication 159/96 *Union Inter Africaine*, the Commission found that Article 14 had been violated by deportations that resulted in the loss of belongings.<sup>125</sup>

The protection against discriminatory expropriation of property does not diminish under the Charter simply because a property owner is a national of the expropriating state. Thus, even the Eritrean expellees suffering expropriations who are recognized to have been Ethiopian citizens at the time of expropriation (a status denied by the Ethiopian government), were covered by the Charter’s guarantee of freedom from discriminatory expropriation. All provisions of the Charter, including the right to property, apply to the nationals of States parties.

The European Court of Human Rights has interpreted virtually identical protections contained in Protocol 1 to the European Convention as applying to a government’s interference with the property rights of its own citizens. Protocol 1 states: “Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law” (emphasis added).<sup>126</sup> In *Selcuk and Asker v. Turkey*, the European Court held that acts by Turkish security forces against Turkish citizens “constituted particularly grave and unjustified interferences with the applicants’ right to respect for their private family lives and homes, and to the peaceful enjoyment of their possessions” and thus were in violation of the European Convention and general principles

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<sup>124</sup>The right to property in the Charter reflects customary law standards, including Article 17 of the Universal Declaration of Human Rights which provides that “[e]veryone has the right to own property alone as well as in association with others,” and that “[n]o one shall be arbitrarily deprived of his or her property.” See UNIVERSAL DECLARATION OF HUMAN RIGHTS, at Article 17.

<sup>125</sup>Commission Decision regarding Communication 159/96, *Union Inter Africaine*, at ¶17.

<sup>126</sup>[EUROPEAN] CONVENTION FOR THE PROTECTION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS, Protocol No. 1.

of international law.<sup>127</sup> The Court made no mention of the fact that the victims of the Turkish security forces' actions were Turkish citizens.<sup>128</sup>

The discriminatory nature of the expropriations at issue here provides an independent basis for the Commission to condemn Ethiopia's actions. Numerous international human rights instruments provide that distinctions made on prohibited grounds are illegal.<sup>129</sup> Distinctions based on national origin are plainly prohibited. This prohibition is unequivocal and contains no express or implied limitation applicable to the enjoyment of property rights. International law may permit a government to engage in undercompensated takings across a cross-section of its population. But to target a specific national community and to take its property in the course of expulsion is altogether different and violates the fundamental prohibition against discrimination. Such discriminatory takings are not a discretionary economic policy but an important concern of human rights law.

The discriminatory and uncompensated expropriation of property has been a defining characteristic of ethnic cleansing campaigns in the former Yugoslavia. In that context, the international community has condemned ethnic cleansing without equivocation. Indeed, one of the foremost obstacles now facing the international community in Bosnia is the return of Muslim refugees to homes occupied by Serbs. The Dayton Accords<sup>130</sup> and numerous Security Council resolutions<sup>131</sup> have stated that

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<sup>127</sup>*Selcuk & Askev v. Turkey*, 26 E.H.R.R. 477 at ¶86 (1998). [Appendix B-33].

<sup>128</sup>*Id.*

<sup>129</sup>Examples include: Universal Declaration of Human Rights in Article 2; ICCPR in Article 2; Article 2(2) of International Covenant on Economic, Social and Cultural Rights in Article 2(2); Article 14 of the European Convention for the Protection of Human Rights and Fundamental Freedoms; Article 1 of the American Declaration of the Rights and Duties of Man.

<sup>130</sup>DAYTON PEACE AGREEMENT, *Annex 7: Agreement on Refugees and Displaced Persons*, at ch. 1, art. 1, December 1, 1995, available at <<http://www1.umn.edu/humanrts/ICTY/dayton/daytonannex7.html>> (visited 3/4/2000) ("All refugees and displaced persons have the right freely to return to their homes of origin. They shall have the right to have restored to them property of which they were deprived in the course of hostilities since 1991 and to be compensated for any property that cannot be restored (continued . . . )

Bosnian Muslims have an absolute right to retake their homes and property; the Serb expropriations, in other words, must be reversed. The Bosnian precedent is significant because both Serbs and Muslims are Bosnian citizens. Yet the international community did not hesitate to recognize the fundamental injustice of people losing their homes and possessions for no other reason than their ethnic heritage. An essential purpose of ethnic cleansing is to appropriate the economic resources (including land) of one ethnic group and transfer them to another ethnic group. In the contemporary context of civil conflict, these acts rarely involve governments acting against aliens. Expropriation is part and parcel of ethnic cleansing campaigns and should be condemned for that reason.

Lastly, Article 23 of the 1907 Hague Regulations Respecting the Laws and Customs of War on Land provides that it is forbidden “to destroy or seize the enemy’s property, unless such destruction or seizure be imperatively demanded by the necessities of war.”<sup>132</sup> The same provision is found in the 1899 Hague Convention with Respect to the

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( . . . continued)  
to them”). [Appendix B-34].

<sup>131</sup>See, e.g., U.N. Security Council, 3723rd mtg., Resolution 1088 (1996) S/Res/1088 (noting that the Security Council “[w]elcomes the commitment of the parties to the right of all refugees and displaced persons freely to return to their homes of origin or to other places of their choice in Bosnia and Herzegovina in safety”). [Appendix B-35]; *Bosnia and Herzegovina* U.N. Security Council, 3607th mtg. Resolution 1031 (1995) “[Bosnia and Herzegovina]” S/Res/1031 (noting that the Security Council “[w]elcomes further the parties’ commitment to the right of all refugees and displaced persons freely to return to their homes of origin in safety”). [Appendix B-36]; and U.N. Security Council, 3428th mtg., Resolution 941 (1994), S/Res/941 (reaffirming the Security Council’s “support for the established principles that . . . all displaced persons should be enabled to return in peace to their former homes”). [Appendix B-37].

<sup>132</sup>*Hague Convention (IV) Respecting the Laws and Customs of War on Land, entered into force* January 26, 1910, U.S.T.S. 539, 2 A.J.I.L. Supp. 90, at Art. 23, available at <<http://sunsite.wits.ac.za/law/humanrts/peace/docs/con4.html>> (visited 3/3/2000) (“In addition to the prohibitions provided by special Conventions, it is especially forbidden . . . [t]o destroy or seize the enemy’s property, unless such destruction or seizure be imperatively demanded by the necessities of war”).

Laws and Customs of War on Land.<sup>133</sup> This provision has become customary international law.<sup>134</sup> Thus, even if Ethiopia could argue that it was literally seizing the property of enemies rather than that of its own citizens, the seizures would be unlawful.

### **C. The Separation of Families Violates the Charter and International Human Rights Law.**

The separation of families is a natural consequence of Ethiopia's expulsions and violates the Charter. Article 18 of the Charter states: "The family shall be the natural unit and basis of society. It shall be protected by the state which shall take care of its physical and moral health." The Ethiopian government, by expelling ethnic Eritreans and separating them from their family members, has injured, rather than protected, the family. In its decision regarding Communication 159/96 *Union Inter Africaine*, the Commission held that "by deporting the victims, thus separating some of them from their families, the Defendant State has violated and violates the letter of" Article 18.<sup>135</sup> Furthermore,

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<sup>133</sup>*The Hague Convention (II) with Respect to the Laws and Customs of War on Land*, entered into force September 4, 1900, at Article 23, available at <<http://www.lib.byu.edu/~rdh/wwi/hague/hague2.html>> (visited 3/3/2000) ("Besides the prohibitions provided by special Conventions, it is especially prohibited . . . [t]o destroy the enemy's property, unless such destruction or seizure be imperatively demanded by the necessities of war").

<sup>134</sup>See, e.g., *Prosecutor of the [ICTY] Tribunal v. Zejnil Delalic, Zdravko Mucic, Hazim Delic and Esad Landzo* (the Celebici Judgment), Indictment, Case IT-96-21 (Nov. 16, 1998), at ¶587, available at <<http://www.un.org/icty/celebici/trialc2/jugement/htm>> (stating that "international law today imposes strict limitations on the measures which a party to an armed conflict may lawfully take in relation to the private and public property of an opposing party. The basic norms in this respect, which form part of customary international law . . . [include] the fundamental principle . . . that private property must be respected and cannot be confiscated . . . [and p]illage is formally forbidden"). [Appendix B-38]. See also L.C. Green, *THE CONTEMPORARY LAW OF ARMED CONFLICT* 329 (1993) ("the basic principles of humanitarian law are so fundamental that they apply in any conflict even though not all the parties to the conflict are parties to any particular Hague, Geneva or other humanitarian convention"). [Appendix B-39].

<sup>135</sup>Commission Decision regarding Communication 159/96 *Union* (continued . . .)

this prohibition against the separation of families cannot be minimized by a claim that the deportees who left Ethiopia to follow an expelled family member left voluntarily.<sup>136</sup>

The separation of families is also a well established violation of rights under international law, to which the Commission is entitled to look to interpret the Charter. In particular, the Convention on the Rights of the Child, to which Ethiopia is a State party, sets out the broad rule that “[i]n all actions concerning children . . . the best interests of the child shall be a primary consideration.”<sup>137</sup> Article 9 specifies the way this mandate is to be carried out: “States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child.”<sup>138</sup> Importantly, the Convention on the Rights of the Child contains no provisions allowing derogation from parties’ obligations in times of war or other national emergencies. Similarly, the African Charter on the Rights and Welfare of the Child prohibits the separation of parents and children without judicial authority, and provides that “the family shall be the natural unit and basis of society [which] shall enjoy the protection and support of the State for its establishment and development.”<sup>139</sup> Absent evidence that

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( . . . continued)  
*Inter Africaine* at ¶17.

<sup>136</sup>By expelling family members, including heads of households, the Ethiopian government has forced families to choose between indefinite separation from their kin and following their relations into exile. Those who have left Ethiopia under such extreme circumstances cannot be considered to have chosen exile of their own volition. Thus, individuals who have followed expelled family members must be seen themselves as expellees.

<sup>137</sup>CONVENTION ON THE RIGHTS OF THE CHILD, *entered into force* 2 September 1990, U.N. Doc. A/RES/44/49 (1990), *reprinted in* 30 I.L.M. 1448 (1989). Ethiopia ratified this Convention on 14 May 1991.

<sup>138</sup>*Id.* at Article 9.

<sup>139</sup>AFRICAN CHARTER ON THE RIGHTS AND WELFARE OF THE CHILD, OAU Doc. CAB/LEG/24.9/49 (1990), at Article 19 (“No child shall be separated from his parents against his will, except when judicial authority determines in accordance with the appropriate law, that such separation is  
(continued . . . )

competent authorities have made the decision to separate families, that appropriate judicial review of those decisions is available, and that the decisions are based on the best interests of each individual child, Ethiopia has violated its obligations under this Convention.

The African Charter on the Rights and Welfare of the Child, furthermore, puts extra burdens on States to protect children in times of war.<sup>140</sup> Article 22 states:

States Parties to the present Charter shall, in accordance with their obligations under international humanitarian law, protect the civilian population in armed conflicts and shall take all feasible measures to ensure the protection and care of children who are affected by armed conflicts. Such rules shall also apply to children in situations of internal conflicts, tension and strife.

Ethiopia's actions are inconsistent with these requirements.

Moreover, insofar as Ethiopia has assigned different nationalities to parents in a nuclear family, resulting in the separation of families, its conduct violates Article 12 of the International Law Commission Draft on State Succession, which states that where the acquisition or loss of nationality in relation to the succession of states impairs the unity of the family, states concerned shall take all appropriate measures to see that all families shall remain together.<sup>141</sup> In addition, Article 13 provides, "A child of a person concerned, born after the date of the succession of States, who has not acquired any nationality, has the right to the nationality of the State concerned on whose territory that child was born."<sup>142</sup> Ethiopia's actions have resulted in the denationalization of infants born after Eritrea's succession, which is a violation of the customary norm articulated by the International Law Commission.

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( . . . continued)

in the best interest of the child"), and Article 18 ("The family shall be the natural unit and basis of society. It shall enjoy the protection and support of the state for its establishment and development.").

<sup>140</sup>*Id.* at Article 22.

<sup>141</sup>ILC, State Succession Draft Articles, at Article 12. [Appendix B-31].

<sup>142</sup>*Id.* at Article 13.

**D. Inhumane and Degrading Conditions during Detention and Expulsion Violate the Charter and Other International Human Rights Law.**

A state's duty to treat a detainee in a humane and non-degrading fashion is enshrined in Article 5 of the Charter:

Every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status. All forms of exploitation and degradation of man, particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment shall be prohibited.

Article 16 places an additional duty upon the government to ensure, or at least refrain from harming, the health of individuals. It states:

1. Every individual shall have the right to enjoy the best attainable state of physical and mental health. 2. States parties to the present Charter shall take the necessary measures to protect the health of their people and to ensure that they receive medical attention when they are sick.

Ethiopia's detention and expulsion of ethnic Eritreans has violated the prohibition against "cruel, inhuman or degrading punishment and treatment" and has deprived the victims of the "dignity inherent in a human being." To the extent that the conditions in which the detainees and expellees are kept and transported endangers their physical health, the government also violates Article 16.<sup>143</sup> According to reports, the jail conditions in which many of the detainees have been kept result in extreme suffering. Detainees and expellees have been deprived of necessary food, water and medical attention.<sup>144</sup> Cells are often crowded to three times their capacity, and toilet facilities are minimal or nonexistent; deportees must relieve themselves in the presence of police

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<sup>143</sup>See U.N. Report 9, *REPORT: Field visit to the Decamhare Reception Centre for Deportees from Ethiopia, 8 September 1998* (Sept. 9, 1998), at 2 (reporting that among one group of deportees, seven people had to be hospitalized after arriving in Eritrea). [Appendix A-22].

<sup>144</sup>See U.S. State Department 1999 Country Report, at 8 (noting that many "Eritreans and Ethiopians of Eritrean origin were deported, reportedly without provision for their safety, hygiene, sanitation, or food. Some of these deportees were hospitalized upon reaching Eritrea"). [Appendix A-12].

officers.<sup>145</sup> Some deportees report that they have not been allowed to sleep for up to ten days.<sup>146</sup> Other deportees report that they were beaten by security forces while in detention.<sup>147</sup>

Furthermore, according to reports of international human rights observers, the conditions under which expellees have been transported to the Eritrean border also constitute an illegal deprivation of dignity and cruel, inhumane or degrading treatment. The journey can take up to fifteen days.<sup>148</sup> Many passengers have become sick from the extreme heat and unsanitary, overcrowded conditions on the buses.<sup>149</sup> At the end of the bus journey, many have been forced to walk several kilometers through minefields to reach the Eritrean military line.<sup>150</sup>

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<sup>145</sup>See Amnesty International Report, May 21, 1999, at 19. [Appendix A-15].

<sup>146</sup>See National Public Radio report, February 9, 2000, at 2. [Appendix A-2].

<sup>147</sup>See Martyn Ngwenya, *United Nations Development Program Asmara-Eritrea*, Facsimile (July 22, 1998), at 45 (Mr. Alazar Asfaha, a deportee, “was locked in prison while in Addis and was beaten”). [Appendix A-23]; U.N. Report 3A, *Victims and Scapegoats of this Conflict, that is what we are . . . said one of the Eritrean deportees* (June 29, 1998), at 1 (“deportees who were taken from jail cells reported physical abuse on a number of occasions”). [Appendix A-24]; Elsa Teferi, *The Deportee Speaks* 17-18 (1999) (A deportee, DS, reported, “one of the soldiers hit me at the back of my head with the bottom of the clash. I fell down unconscious . . . I had some pain on the border of my left eye due to the beating.” DS’s “eyes were blurred because he was badly beaten by the police in Ethiopia and could not read”). [Appendix A-25].

<sup>148</sup>U.N. Report, *Report: Field Visit to the Decamhare Reception Centre from Ethiopia* (Sept. 8, 1999) (“Depending on where the people had to be transported from, they had traveled on buses from 4 to 15 days”). [Appendix A-22].

<sup>149</sup>See Amnesty News Release 1999. [Appendix A-5].

<sup>150</sup>See Elsa Teferi, *The Deportee Speaks* 46 (1999) (“We were threatened not to walk on the sides [of the road] because of mines”). [Appendix A-25]. See also Craig Calhoun, ETHIOPIA’S ETHNIC CLEANSING, IN *DISSSENT* (Winter 1999) 47, 50, available at <<http://denden.com/Conflict/deportees/calhoun-winter99.htm>> (visited 03/06/2000) (describing how refugees had to walk through “a no-man’s land between the armies that face each other over the border”). [Appendix A-26]. However, the International Committee of the Red Cross has ensured safe passage for a portion of the deportees. See International  
(continued . . . )

These conditions of detention and transport constitute a violation of Article 5 of the Charter. The Commission found similarly harsh conditions to be a violation of the Charter in its decision regarding Communication 68/92 *Chirwa v. Malawi*. In that case, the Commission found that “overcrowding and acts of beating and torture . . . [and] extremely poor quality food and denial of access to medical care” contravened Article 5.<sup>151</sup>

These conditions violate other treaty obligations and Ethiopia’s own Constitution. Article 7 of the ICCPR states: “No one shall be subjected to torture or to cruel, inhumane or degrading treatment or punishment.” Article 10 of the ICCPR further provides, “All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.” Article 18 of Ethiopia’s Constitution provides that “everyone has the right to protection against cruel, inhuman and degrading treatment or punishment,” while Article 93 declares that this prohibition may not be derogated from regardless of the existence of a state of emergency.<sup>152</sup> The conditions suffered by ethnic Eritrean expellees during detention and expulsion violate international law and the constitution of Ethiopia, as well as the Charter’s prohibition of cruel, inhuman, or degrading treatment.

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( . . . continued)

Committee of the Red Cross, ERITREA/ETHIOPIAN CONFLICT: 1998 ANNUAL REPORT (June 1, 1999), *available at* <<http://www.icrc.org/icrceng.nsf/4dc394db5b54f3fa4125673900241f2f/dec76b1163bcf503412567bb003a37a3?OpenDocument>> (visited 3/31/2000) (“In its capacity as a neutral intermediary, the ICRC ensured the safe passage across the front lines of thousands of Ethiopian and Eritrean civilians who were either deported or returning voluntarily to their countries of origin.”). [Appendix B-40].

<sup>151</sup>Commission Decision regarding Communication 68/92 *Chirwa v. Malawi* at ¶8. *See also* Commission Decision regarding Communications 27/89 *Organisation Mondiale*, at ¶26 (finding that “the conditions in which children, women, and the aged were held violates their physical and psychological integrity and therefore constitutes a violation of Article 5”).

<sup>152</sup>CONSTITUTION OF THE FEDERAL DEMOCRATIC REPUBLIC OF ETHIOPIA (1994), at Articles 18, 93 (providing that “in the exercise of its emergency powers, the Council of Ministers cannot . . . suspend or limit the rights provided for in Article[] . . . 18 . . .”). [Appendix B-11].

## **CONCLUSION**

For the foregoing reasons, we conclude that Ethiopia has violated, and continues to violate, numerous articles of the Charter. Specifically:

- By expelling, in some instances, non-nationals on the basis of nationality, Ethiopia has violated, and continues to violate, Article 12(5) of the Charter.
- By not allowing people of Eritrean origin or descent to leave and return to Ethiopia, Ethiopia has violated, and continues to violate, Article 12(2) of the Charter.
- By failing to secure for individuals of Eritrean origin or descent the enjoyment of rights and freedoms recognized and guaranteed in the Charter without any distinction of any kind, Ethiopia has violated, and continues to violate, Articles 2 and 3 of the Charter.
- By detaining people of Eritrean origin or descent arbitrarily, Ethiopia has violated, and continues to violate, Article 6 of the Charter.
- By treating detainees in an inhuman and degrading fashion, Ethiopia has violated, and continues to violate, Article 5 of the Charter.
- By failing to ensure the health and safety of detainees, and by contributing to conditions that endanger their health, Ethiopia has violated, and continues to violate, Article 16 of the Charter.
- By failing to allow individuals of Eritrean origin or descent to have their cause heard by competent national organs before being expelled, Ethiopia has violated, and continues to violate, Article 7 of the Charter.
- By failing to provide people of Eritrean origin or descent an appropriate appeals process when their expulsion interferes with fundamental rights guaranteed by conventions, laws, regulations and customs in force, Ethiopia has violated, and continues to violate, Article 7(1) of the Charter.
- By denationalizing those who participated in a United Nations-monitored referendum on Eritrean independence, and thereby punishing them for expressing their opinions and participating

in the processes of government, Ethiopia has violated, and continues to violate, Articles 9(2) and 13(1) of the Charter.

- By expropriating the property of people of Eritrean origin or descent, Ethiopia has violated, and continues to violate, Article 14 of the Charter.
- By punishing individuals and their group collectively for participating in a democratic process, Ethiopia has failed to guarantee a people's right to freely determine their political status and has violated, and continues to violate, Article 20 of the Charter.
- By separating families through the mass expulsion of people of Eritrean origin or descent, Ethiopia has violated, and continues to violate, Article 18 of the Charter.
- By targeting only people of Eritrean origin or descent, and by not guaranteeing them the same rights enjoyed by all Ethiopian citizens, Ethiopia has violated, and continues to violate, Article 19 of the Charter.

We believe the Commission should take this opportunity to condemn these violations of the Charter and to affirm the illegality of mass expulsion.

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Respectfully,

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