

Enhancing Refugee Protection in Domestic Jurisdictions: Insights from Comparative Approaches in India and Ethiopia

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I. INTRODUCTION

Ethiopia has served as a safe haven for refugees originating from different parts of the world.² Historical archives show that in the 620s, the relatives of Prophet Muhammad sought refuge in Ethiopia to flee from persecution.³ Currently, 1,064,587 refugees and asylum seekers, mainly from South Sudan, Somalia, Eritrea, Sudan, and others, are sheltered in Ethiopia.⁴ In contrast, the precise moment when India began hosting refugees remains uncertain. However, following its independence in 1947, India has demonstrated an enduring commitment to hosting a significant number of refugees from Afghanistan, China, Sri Lanka, Myanmar, Somalia, Sudan, and several other countries.⁵ In 2022, the number of refugees in India stood at 242,835.00, representing a

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² See Theodore Natsoulas, *The Greeks in Ethiopia: Economic, Political, And Social Life C. 1740-1936* ((DPhil thesis, Syracuse University 1975)8-9.

³ See Haggai Erlich, 'Islam, Christianity, Judaism, and Ethiopia: The Messages of Religions' (2013) The Fifth Annual Levzion Lecture 1, 2. See Hussein Ahmed, 'The Historiography of Islam in Ethiopia', (1992) 3(1) Journal of Islamic Studies 15, 21. See Zelalem Teferra, 'Delimiting the Normative Terrain of Refugee Law: A Critical Appraisal of the Ethiopian Refugee Proclamation No. 409/2004' (2017) International Law Series, Addis Ababa University, 32.

⁴ UNHCR, 'Ethiopia Refugee Data' (UNHCR Operational Data Portal, 30 Jun 2024) <<https://data.unhcr.org/en/country/eth>> accessed on 10 June 2024.

⁵ UNHCR, 'Refugees and Asylum-Seekers as of 31 January 2024' (Global Focus India factsheet, 31 January 2024) <.India: Factsheet | Global Focus (unhcr.org).>accessed on 10 June 2024.

14.32% rise compared to 2021.⁶ The overwhelming majority of asylum seekers and refugees in both nations are those who have been compelled to leave their homes due to persecution, human rights violations, and political unrest.⁷

On November 10, 1969, Ethiopia became a party to the 1951 Refugee Convention and the 1967 Refugee Protocol, thereby formalizing its commitment to uphold the rights and protection of refugees.⁸ Additionally, the nation ratified the 1969 OAU refugee Convention on October 25, 1973.⁹ Ethiopia passed the first refugee legislation in 2004 to enforce these international treaties.¹⁰ The Refugee Proclamation No.409/2004 was later replaced by Proclamation No. 1110/2019 in 2019, which specified entitlements such as the right to employment, education, healthcare, and other fundamental right, accompanied by three supplementary directives.¹¹

⁶See Macrotrends, 'India Refugee Statistics 1964-2024' <<https://www.macrotrends.net/global-metrics/countries/IND/india/refugee-statistics>> accessed on 19 April 2024.

⁷ See Abhijit Dasgupta, *Displacement and Exile: The State-Refugee Relations in India* (Oxford University Press 2016) 2-10. See Shushum Bhatia, Tsegial Dranyi, and Derrick Rowley, 'A Social and Demographic Study of Tibetan Refugees in India' (2002) 54(3) Social Science & Medicine 411. See Miriam George, Anita Vaillancourt & S. Irudaya Rajan, 'Sri Lankan Tamil Refugees in India: Conceptual Framework of Repatriation Success' (2016) 32 Refuge 73,74.

⁸ See UNTC, 'Multilateral Treaties Deposited with the Secretary-General' <UNTC> accessed on 10 April 2024. See Convention Relating to the Status of Refugees (adopted 28 July 1951) 189 U.N.T.S. 137 [hereinafter the 1951 CSR]. See Protocol Relating to the Status of Refugees (adopted 31 January 1967) 606 U.N.T.S. 267 [hereinafter the 1967 Protocol].

⁹ See OAU Convention Governing the Specific Aspects of Refugee Problems in Africa (adopted 10 September 1969) 1001 U.N.T.S. 45 [hereinafter the 1969 OAU Refugee Convention].

¹⁰ Ethiopia Refugee Proclamation No. 409, 2004 (54 of 2004).

¹¹ Ethiopia Refugees Proclamation No.1110, 2019(38 of 2019) [hereinafter the Refugee Proclamation No.1110/2019]. See RRS, 'Directive to Determine Conditions for Movement and Residence of Refugees Outside of Camps Directive No. 01/2019'

India has neither domestic refugee legislation nor ratified the 1951 Refugee Convention and 1967 Refugee Protocol.¹² Consequently, refugees and asylum seekers fall under the laws governing foreign nationals.¹³ However, India has collaborated with UNHCR since 1963 and has been an ExCom member since 1995, showing its commitment to global refugee issues.¹⁴ In India, certain refugees receive special recognition based on their nationality or religious background.¹⁵ For instance, the government of India endeavours to offer separate humanitarian aid and recognition in its various policy initiatives to Sri Lankan, Tibetan, and Chakma of Bangladesh refugee origin.¹⁶ The other

(Adopted 30 December 2019). See RRS, 'Directive to Implement Recognized Refugee and Asylum Seeker Right to Work No. 1019/2024' (adopted 14 August 2024) Directive No. 1019/2024. See RSS, 'Refugees and Returnees Grievances and Appeals Handling Directive No. 03/2019' (Adopted 30 December 2019).

¹² Note: On August 30, 2005, Afghanistan became a party to the 1951 Refugee Convention and the 1967 Refugee Protocol. For additional details, please refer to UNTC. See Pia Oberoi, 'South Asia and the Creation of the International Refugee Regime' (2001) 19 *Refugee* 36.

¹³ B. S. Chimni, 'The Legal Condition of Refugees in India' (1994) 7 (4) *J Refugee Stud* 378, 379.

¹⁴ See Sarbani Sen, 'Paradoxes of the International Regime of Care' in, Ranabir Samaddar (ed.) *Refugees and the State: Practices of Asylum and Care in India, 1947-2000* (Sage Publications 2003) 404-407. See UNHCR ExCom, 'General Conclusion on International Protection No. 81 (XLVIII) – 1997' (48th session) UN12A <General Conclusion on International Protection | UNHCR> accessed on 11 April 2024. See UNHCR, 'August 2022 Fact Sheet: India' <UNHCR> accessed on 11 April 2024. See UNHCR, 'Executive Committee's Membership by Year of Admission of Members' <Executive Committee's membership by year of admission of members | UNHCR> accessed on 11 June 2024.

¹⁵ Anne-Sophie Bentz, 'Refugees in India: A Study of (un) Equal Status, Treatment and Prospects' in Gunnel Cederlöf and Sanjukta Das Gupta (eds.), *Subjects, Citizens and Law* (Routledge India 2016) 148-150.

¹⁶ Sen (n 13). See India Ministry of Home Affairs, 'Relief and Rehabilitation of Migrants and Repatriates-2018' <Relief and Rehabilitation Assistance to Sri Lankan Refugees in the Refugee Camps (myscheme.gov.in)> accessed on 11 April 2024. See India Ministry of Home Affairs, 'The Tibetan Rehabilitation Policy-2014' <tibetan-rehab-policy-2014.pdf (sardfund.org)> accessed on 11 April 2024. See Tashi Phuntsok, 'Livelihood Challenges of Tibetans in South Asia' (2020) 45(2) *The Tibet Journal* 45, 51-53.

'privileged' refugee and asylum seekers in India are the religious minorities of Hindus, Christians, Buddhists, Sikhs, Parsees, and Jains who hail from Bangladesh, Afghanistan, and Pakistan.¹⁷ Administratively, these 'privileged' refugees fall under the protection of the Indian government, and others not belonging to these two classes shall fall under the jurisdiction of UNHCR.¹⁸ The matter of these 'others' has become a subject of contention within the Indian judicial system due to the connotation of illegal immigrants. This article explores the significance of having specific refugee legislation and how practical realities influence the country's refugee policy. As a result, the article seeks to assess the relative strengths and weaknesses of refugee laws and practices in India and Ethiopia while also underscoring the lessons each country can learn from the other to enhance the protection and rights of refugees.

II. INDIAN ACCESSION TO THE 1951 CSR: THE DECLINING UNHCR EFFORT

The Constitution of India, along with various domestic laws such as the Civil Procedure Code and the Indian Citizenship Act, consider refugees as "aliens," primarily due to the absence of specific refugee legislation in the country.¹⁹ Furthermore, while India has not ratified the CSR 1951 or created separate domestic refugee laws, it is a signatory to various

¹⁷ The Citizenship (Amendment) Bill, 2019 (370 of 2019). Note: This bill amends the Indian Citizenship law of 1955 to give citizenship to religious minorities from Pakistan, Bangladesh, and Afghanistan living in India for at least six years.

¹⁸ Ibid. See the Passport (Entry into India) Act, 1920 (34 of 1920). See The Passports Act, 1967 (15 of 1967). See The Foreigners Act, 1946 (31 of 1946, modified in 2018). See The Illegal Migrants (Determination by Tribunals) Act, 1983 (39 of 1983). See Chimni (n 12).

¹⁹ The Constitution of India, 1955 art 22; The Civil Procedure Code, 1908 (5 of 1908) s 83; Citizenship Act, 1955 (57 of 1955) s 3(2).

international human rights agreements that apply to all individuals, including refugees.²⁰ Various domestic legislations exist to address the needs of refugees either under the framework of aliens or rights that apply to all 'persons'. In this regard, the Constitution plays a crucial role by protecting the rights of refugees, which include the right to life, equality before the law, protection against double jeopardy and ex post facto laws, as well as the freedom of conscience and religion. Moreover, the Passport Act of 1967 permits 'privileged' refugees to acquire Indian passports and travel documents based on 'public interest.'²¹ However, all foreigners in India must comply with mandatory requirements for both entry and exit, with government permission being necessary for leaving the country. The Foreigners Regional Registration Office (FRRO) is tasked with the registration and issuance of residence permits to foreign nationals intending to remain in India for a duration exceeding 180 days. These foreigners must submit their registration application within 14 days of their arrival.²²

On the other hand, India's refusal to ratify the CSR 1951 and the 1967 Protocol raises questions about the benefits that these instruments bring

²⁰ See International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171, arts 6, 7, 12 and 13. See International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976) 993 UNTS 3, arts 11, 12 and 13. See Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3, arts 6, 22, 24 and 28. See Universal Declaration of Human Rights (adopted 10 December 1948) UNGA Res 217A (III), art 14 and 25. See Convention on the Elimination of All Forms of Discrimination Against Women (adopted 18 December 1979, entered into force 3 September 1981) 1249 UNTS 13, art 2 and 16.

²¹ The Passports Act, 1967 ss 20, 27 and 28.

²² The Registration of Foreigners Rules, 1992 s 7. Note: US nationals possessing ten-year Tourist or Business Visas, Foreigners of Indian origin (subject to additional criteria), Foreigner holders of five-year Tourist Visas, and foreigners under the age of 16 are exempt from the requirement of registration with the FRRO.

to signatories. Before delving into this question, let's first see why India fail to ratify these refugee instruments. Chimni pinpointed reasons associated with the content of the instrument along with external factors that impeded the ratification.²³ These include arguments related to a narrow definition of the term refugee, burdening the developing countries, less responsiveness on national security concerns, fearing Western hijacking of UNHCR and NGO, Eurocentric rhetoric, and Indians' assumption of adequate national refugee management records.²⁴

Dipankar De Sarkar and Myron Weiner, in their respective studies, also identified geopolitical reasons, particularly Indians' fear of mass influx from conflict-prone South Asian countries.²⁵ Some of the rationales above may hold some merit; however, a complete absence of domestic legislation is largely illogical. The experiences show that there are legal constraints within the treaty instruments; they could have been addressed through regional conventions or domestic legislation. For instance, the 1969 OAU Convention and Cartagena Declaration indicated regional commitments to address the shortcomings of the 1951

²³ Chimni (n 12) 443.

²⁴ See James C. Hathaway, 'A Reconsideration of the Underlying Premise of Refugee Law' in Helene Lambert(ed.) *International Refugee Law* (Routledge 2017) 65-67. See, T. Alexander Aleinikoff, 'The Refugee Convention at Forty: Reflections on the IJRL Colloquium' (1991) 3 Int'l J Refugee L 617, 623. See David James Cantor, 'The End of Refugee Law?' (2017) 9(2) Journal of Human Rights Practice 203, 204. Sara E. Davies, 'The Asian Rejection? International Refugee Law in Asia' (2006) 52(4) Australian Journal of Politics & History 562. See Gil Loescher, 'The UNHCR and World Politics: State Interests vs. Institutional Autonomy' (2001) 35 Int'l Migration Rev 33,34.

²⁵ See Dipankar De Sarkar, 'Why India Won't Sign Refugee Treaty (Mint. 11 Sep 2015) < Why India won't sign Refugee Treaty | Mint (livemint.com)> accessed on 15 April 2024. See Myron Weiner, 'Rejected Peoples and Unwanted Migrants in South Asia' (1993) 28 (34) Economic and Political Weekly 1737.

Refugee Convention and the 1967 Refugee Protocol on the definition of refugee. This signifies a strong global dedication to safeguarding refugees within their respective regions. In contrast, major countries in Southern Asia, including India, have not ratified any binding refugee instruments and have been unable to establish regional binding instruments, thereby failing to demonstrate a similar level of commitment. Additionally, an Indian argument of having a robust 'national record' is not a strong argument. Even in countries with more moderate refugee laws, the management of refugees is a complicated task.

On the other hand, while more than 146 countries have signed the 1951 CSR and the 1967 Protocol, this does not end by itself. Instead, it's a means to provide better protection for those escaping persecution. As a member of these treaties, nations are expected to cooperate and share the burden under the auspices of UNHCR.²⁶ This does not imply that signatory States provide better protection than non-signatory States or that they don't collaborate with UNHCR.²⁷ However, UNHCR promotes the ratification of the 1951 Convention and the 1967 Protocol, emphasising that joining these agreements could have a significant impact. Currently, addressing the global refugee crisis requires more than just urging countries to sign refugee agreements; instead, it requires

²⁶ See Martin Gottwald, 'Burden sharing and refugee protection' in Elena Fiddian-Qasmiyeh and others (eds.) *The Oxford Handbook of Refugee and Forced Migration Studies* (Oxford University Press 2014) 525. See Rebecca Dowd & Jane McAdam, 'International Cooperation and Responsibility-Sharing to Protect Refugees: What, Why and How' (2017) 66 *Int'l & Comp LQ* 863, 864.

²⁷ See Maja Janmyr, 'The 1951 Refugee Convention and Non-Signatory States: Charting a Research Agenda' (2019) 33(2) *International Journal of Refugee Law* 188. See Marjoleine Zieck, 'Accession of Pakistan to the 1951 Convention and 1967 Protocol Relating to the Status of Refugees: Signing on Could Make All the Difference' (2010) 5 *PLR* 1, 5.

collaboration and domestic legislative flexibility. Even though UNHCR Statute Article 8(a) imposes a duty on UNHCR to encourage countries to join refugee instruments, only four countries, namely Afghanistan (2005), Montenegro (2006), Nauru (2011), and South Sudan (2018), have done so in the last two decades (2004 to 2024). Instead of becoming signatories, countries have opted to sign MoUs with UNHCR to enhance the protection of refugees and asylum seekers.

In India, there has to be a dual refugee management system, with one group under Indian government authority and another under UNHCR jurisdiction.²⁸ UNHCR assesses refugee status, provides aid, promotes self-reliance, facilitates repatriation, and arranges resettlement for those who fall under its jurisdiction.²⁹ Furthermore, UNHCR actively engages in India by promoting refugee rights awareness, participating in *amicus curie*, supporting government refugee initiatives, and coordinating stakeholders.³⁰ The claim of having an adequate law to regulate foreign nationals imposed hardships on UNHCR-registered refugees in India.³¹

Like any other countries, refugees in India are also facing socio-economic challenges in their daily lives due to government-imposed

²⁸ See *Ktaer Abbas Habib Al Qutaifi and Anr. vs Union of India (Uoi) and Ors.* Gujarat High Court. 1999CRILJ919. See UNHCR ExCom, 'Determination of Refugee Status No. 8 (XXVIII)-

1977' <<https://www.refworld.org/policy/exconc/excom/1977/en/42839>> accessed on 15 July 2024. See Sen (n 13) 399-401.

²⁹ See James C. Hathaway, *The Rights of Refugees Under International Law* (Cambridge University Press 2021) 913. See Guy S. Goodwin-Gill, Guy S., Jane McAdam, and Emma Dunlop, *The Refugee in International Law* (Oxford University Press 2021) 532.

³⁰ See Rubina Grewal, 'Right Status and Problem of Refugees in Indian Context a Legal Study' <<http://hdl.handle.net/10603/434660>> accessed on 11 July 2024.

³¹ Roshni Shanker and Hamsa Vijayaraghavan, 'Refugee Recognition Challenges in India' (2020) Forced Migration Review <<https://www.fmreview.org/recognising-refugees/shanker-vijayaraghavan>> accessed on 11 July 2024.

restrictions on employment and access to essential services.³² These challenges greatly affect refugees' ability to access healthcare and education services, making them vulnerable to poor working conditions and low wage. Additionally, the 'forced return' of refugees, particularly Rohingya Muslim refugees, to Myanmar from 2018 to 2022 and the exclusion of Muslims from the list of the 2019 Citizenship Bill have sparked backlash from UNHCR and international organizations against India.³³ However, the Indian government denied forced repatriation, claiming the return was voluntary, but denied UNHCR access for verification. UNHCR, besides the 50k registered refugees, actively participates in Indian government initiatives to find solutions for government-registered refugees, playing a crucial role in determining the fate of refugees and asylum seekers.³⁴

India unlike Ethiopia is not a source of refugees globally. However, the presence of refugees has created significant challenges on nation, as refugees increased demand for scarce resources such as food, shelter, healthcare, education, employment opportunities and others.³⁵ This situation is particularly acute in areas already grappling with poverty,

³² Gladston Xavier G, 'A Study on the Livelihood of Sri Lankan Refugees Living in the Camps of Tamil Nadu' (DPhil thesis, University of Madras 2020)206.

³³ See UNHCR, 'UNHCR Seeking Clarification from India over Returns of Rohingya' (Refugee and Migrants 2019) <UNHCR seeking clarification from India over returns of Rohingya | UNHCR.> accessed 9 July 2024. See Human Rights Watch, 'Shoot the Traitors: Discrimination Against Muslims under India's New Citizenship Policy'(2022)< India: Rohingya Deported to Myanmar Face Danger | Human Rights Watch (hrw.org)> accessed on 9 July 2024.

³⁴ UNHCR, 'Global Appeal 2024: Status Determination'<Publications | Global Focus (unhcr.org)> accessed 9 July 2024. See UNHCR, 'India'< India | UNHCR.> accessed on 9 July 2024.

³⁵ India, 'Statement at the General Debate of the 69th Annual Session of the Executive Committee of the United Nations High Commissioner for Refugees Programme' (Delivered by Dr Sadre Alam, First Secretary, Geneva, Switzerland, 1-5 October 2018) para 10 <Statement of India | UNHCR India>accessed on 9 July 2024.

especially in urban settings where refugee populations are concentrated. Furthermore, the influx of refugees can lead to overcrowding in cities and may heighten the risks of cross-border crime and religious radicalization. Additionally, the involvement of refugees in informal labour markets can result in the exploitation of these refugees and contribute to wage suppression for local workers.

III. ETHIOPIA'S REFUGEE PROCLAMATION: A LEGISLATIVE PROGRESS

The Ethiopia Refugee Proclamation No.1110/2019 consists of 47 articles covering different aspects concerning refugees and asylum seekers, including the OAU definition of refugee, core principles, processes for RSD, reasons for revoking status, and rights and obligations of asylum-seekers and refugees. The majority of the provisions in this proclamation are essentially duplicates of the 1951 CSR and the 1969 OAU Refugee Convention. For instance, the definition of refugees includes individuals who have fled due to persecution based on factors such as race, religion, nationality, membership in a particular social group, or political opinions, as well as those compelled to leave their residence due to external aggression, occupation, foreign domination, or events disrupting public order in their country.³⁶ This definition aligns with the broad definition outlined in the 1969 OAU Refugee Convention, regardless of the refugees' countries' origin.³⁷ Nevertheless, this particular definition has faced

³⁶ Refugee Proclamation No.1110/2019, art 5.

³⁷ See 1951 Refugee Convention, art 3. See the 1969 OAU Refugee Convention, art 3. See Eduardo. Arboleda, 'Refugee definition in Africa and Latin America: The Lessons of Pragmatism' (2019) 3 (2) International Journal of Refugee Law 185, 186-889. See, Emmanuel

criticism due to its limited scope, as it fails to encompass the concept of environmental refugees, those displaced by acts of terrorism, and individuals forced to flee due to pandemics.³⁸

The process of RSD in Ethiopia requires individuals seeking asylum to submit their application within thirty days to the nearest office of the Refugee and Returnees Service (RRS) or a police station.³⁹ The police are responsible for receiving the application and promptly forwarding it to the RRS.⁴⁰ The office then allows time for the individual to present their case, conducts interviews with an interpreter, and ensures UNHCR's presence.⁴¹ RRS's decision regarding the rejection of refugee status can be challenged before the Appeal Hearing Council, which is composed of five members, within 60 days.⁴² Furthermore, the decision of this council can be further appealed to the Supreme Court on the grounds of error of law within 30 days from the receipt of the council's

Opoku Awuku. 'Refugee Movements in Africa and the OAU Convention on Refugees' (1995) 39(1) *Journal of African Law* 79. See Alice Edwards, 'Refugee status determination in Africa' (2006) 14(2) *African Journal of International and Comparative Law* 204.

³⁸ See Issa Ibrahim Berchin and others, 'Climate Change and Forced Migrations: An Effort Towards Recognizing Climate Refugees' (2017) 84 *Geoforum* 147-150. See Frank Biermann, and Ingrid Boas, 'Protecting Climate Refugees: The Case for a Global Protocol' (2008) 50(6) *Environment: Science and Policy for Sustainable Development* 8, 10-14. See Betsy Hartmann, 'Rethinking climate refugees and climate conflict: Rhetoric, reality and the politics of policy discourse' (2020) 22(2) *Journal of International Development: The Journal of the Development Studies Association* 233, 233-236. See Diane C. Bates, 'Environmental Refugees? Classifying Human Migrations Caused by Environmental Change' (2002) 23 *Population and environment* 465.

³⁹ See Refugee Proclamation No.1110/2019, Art 15. See UNHCR, *Handbook on Procedures and Criteria for Determining Refugee Status* (UNHCR 1979) See Michael Alexander, 'Refugee Status Determination Conducted by UNHCR' (1999) 11(2) *International Journal of Refugee Law* 251, 252.

⁴⁰ Refugee Proclamation No.1110/2019, art 15(3).

⁴¹ *ibid*, art 16(2).

⁴² *ibid*, art 16(4) and 18(1).

written decision.⁴³ In the decision-making process regarding the refugee status, including the appeal, UNHCR will participate as an observer.⁴⁴ The legislation further ensures that the asylum seekers cannot be refused entry or face any criminal charges for illegal entry.⁴⁵

The RRS has the authority to deny refugee status based on three specific grounds: involvement in severe human rights violations, serious non-political crimes, or actions that contradict UN or AU principles.⁴⁶ These exclusions are directly derived from Article 1(F) of the 1951 Refugee Convention and Article I (5) of the 1969 OAU Refugee Convention. Further, the refugee's status can end if the refugee willingly seeks the protection of their home country, regains their former nationality by choice, resettles in the country they originally left, obtains Ethiopian nationality or that of another country, and the reasons that initially forced them to flee no longer exist.⁴⁷ The act of expulsion, as an exception of non-refoulement, is strictly prohibited unless it is justified on the basis of national security or public order.⁴⁸ It must undergo a thorough legal process, ensuring that all avenues for admission to another country have been explored and exhausted.⁴⁹

Concerning the rights and duties of refugees, the Proclamation explicitly states that they are entitled to all rights outlined in international refugee

⁴³ *ibid*, art 19(5).

⁴⁴ *ibid*, art 16(2) (f) and 18(2).

⁴⁵ *ibid*, art 11(1) and 15(8).

⁴⁶ *ibid*, art 7.

⁴⁷ *ibid*, art 9.

⁴⁸ *ibid*, art 11 and 12. See CSR 1951, art. 33(2). See Betsy C. Cooper, 'Refugees and National Security: Crossing the Threshold of Insecurity' (2012) 3 *Refugees Worldwide: Mental health* 173.

⁴⁹ Refugee Proclamation No.1110/2019, art 12(2) and 12(4).

agreements as well as rights indicated in the legislation.⁵⁰ Unlike the 1951 Refugee Convention and the 1969 OAU Refugee Convention, asylum seekers in the Ethiopian are granted equal rights to those of refugees.⁵¹ Concerning their duties, their primary obligation is to respect the laws of the country and cooperate with RRS.⁵² They are also obligated to respect the cultures of the host community, refrain from engaging in immoral activities, protect the environment, and comply with other obligations outlined in the refugee instruments mentioned above.⁵³ The proclamation lists various rights for refugees and asylum seekers, including the right to education (Art. 24), health (Art. 25), employment (Art. 26), associations (Art.27), freedom of movement (Art. 28), property (Art. 29), access to justice (Art. 30), the right to possess a driving license (Art. 31), the right to possess identity papers and travel documents (Art. 32), banking services (Art. 33), telecommunications (Art.34) and rationing (Art.35). They can access these rights without discrimination as Ethiopian nationals or they receive most favourable treatment, depending on the nature of the rights.⁵⁴

Proclamation No. 1110/2019 in Ethiopia, like the 1951 Refugee Convention, fails to explicitly recognise certain key issues, including the right to security, the government's role in providing humanitarian assistance, right to religion, protection of refugees during armed

⁵⁰ *ibid*, art 22.

⁵¹ See, Andreas Zimmermann, Jonas Dörschner, and Felix Machts, *the 1951 Convention Relating to The Status of Refugees and Its 1967 Protocol: A Commentary* (Oxford University Press 2011) 2-5. See, P. Weis, "The Travaux Préparatoires Analysed with a Commentary" (1995)1.

⁵² Ethiopia Refugee Proclamation No.1110/2019, art 39.

⁵³ See CSR 1951, art. 2. See OAU Refugee Convention 1969, art 3.

⁵⁴ Refugee Proclamation No.1110/2019, art 4.

conflicts, acknowledgement of environmental refugee status, and lack of inclusive out camp policy for impoverished refugees. Furthermore, *Regulation No. 546/2024, issued by the Council of Ministers in April 2024, delineates the powers Refugees and Returnees Service (RRS). states that the RRS does not merely seek external funding but relies its refugee administration entirely on donors' funds.* However, the general legislative measures taken by Ethiopia can serve as a valuable example in ensuring the protection of refugees and asylum seekers, thereby mitigating the uncertainties and legal disputes arising from unauthorized entry and deportation issues. Consequently, Ethiopia has practically minimized court proceedings concerning RSD and discrimination claims. Having domestic refugee laws will foster consistent enforcement of refugee-related rights across the nation. This will ensure a predictable and non-discriminatory approach to refugee administration. Moreover, the presence of such a refugee instrument has motivated other countries to undertake similar measures, owing to the influence of Ethiopia in the continent.⁵⁵

Ethiopia cooperates with UNHCR as a signatory, while India, as a non-signatory, engages through MoUs. UNHCR provided legal and technical advice in the drafting of the 2004 and 2019 Ethiopia refugee proclamations.⁵⁶ It also plays a pivotal position in the facilitation of

⁵⁵ See Mohammed Ayoob, 'India in South Asia: The quest for regional predominance' (1989) 7(1) World Policy Journal 107, 108. See Rajiv Kumar and Manjeeta Singh, 'India's role in South Asia trade and investment integration' (2009) ADB Working Paper Series on Regional Economic Integration 1.

⁵⁶ See UNHCR, 'Submission by the United Nations High Commissioner for Refugees for the Office of the High Commissioner for Human Rights' Compilation Report – Universal Periodic Review: Ethiopia, September 2013' <<https://www.refworld.org/policy/upr/unhcr/2013/en/95736>. > accessed on 11 July 2024.

humanitarian aid, financing and coordinating local integration, and the facilitation of resettlement programs. Without UNHCR and its partners, practically protecting refugees and asylum seekers in Ethiopia is unimaginable due to Ethiopia's financial constraints to provide basic services. As a result, Ethiopia can reap numerous benefits by ratifying the international refugee instruments. These advantages encompass gaining access to international assistance and resources, fostering collaboration with other nations on matters concerning refugees, and upholding universally acknowledged standards and humanitarian principles that safeguard the rights and well-being of refugees. *Although the international community acknowledges Ethiopia for its progressive legislative efforts, refugees in the country still face considerable difficulties. Key challenges include delays and a lack of adequate humanitarian aid, security risks due to internal armed conflicts and political instability, overcrowded camps, poor infrastructure, limited job opportunities, and a dependence on donor funding. While the root causes may vary, refugees in both Ethiopia and India experience similar socio-economic hardships.*

IV. THE ROLE OF COURTS IN THE PROTECTION OF REFUGEES: INDIA EXPERIENCE

Both nations have ratified the bills of rights and IHL instruments to protect the rights of individuals, such as refugees, regardless of their legal status.⁵⁷ Refugees, like any other civilians, have protection from

⁵⁷ See OHCHR, 'View the Ratification Status by Country or by Treaty' <https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=59> accessed on 15 April 2024. See ICRC, 'International Humanitarian Law Databases' <<https://ihl-databases.icrc.org/en/ihl-treaties/treaties-and-states-parties?title=&topic=&state=ET>> accessed on 15 July 2024.

the effects of hostility and special safeguards as non-nationals.⁵⁸ Furthermore, under international human rights law, individuals are also entitled to protection from abuse, unlawful imprisonment, and access to basic needs.⁵⁹ Additionally, they possess the liberty and access to education, healthcare, and other services without discrimination.⁶⁰ Moreover, certain international instruments prohibit the expulsion to a country where they may face the risk of torture and grave human rights violations.⁶¹ The majority of these rights are protected in both countries' constitutions and overseen by different constitutional interpreting bodies.

In India, the court can review the legislation and interpret the constitution, while in Ethiopia, the House of Federation (HoF) is responsible for settling constitutional disputes.⁶² The jurisdiction of the Indian courts essentially includes the power to rule on the validity of constitutional amendments, too.⁶³ In a specific scenario, the court may declare the constitutional amendment null and void, a stance that the

⁵⁸ ICRC, 'Geneva Convention Relative to the Protection of Civilian Persons in Time of War' 75 UNTS 287(1949) (Fourth Geneva Convention) arts 4, 16, 17, 24, 44, 45, and 70. See ICRC, 'Protocol Additions to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts 1125 UNTS 3(1977) (Additional Protocol I) art 63 and 69. See Common Article 3 of the Geneva Conventions.

⁵⁹ See UNGA, 'Universal Declaration of Human Rights' 217 (III) A (1948) (UDHR) arts 9, 14, and 25.

⁶⁰ See UNGA, 'International Covenant on Civil and Political Rights' 189 UNTS 137(1948) (ICCPR) art 13. See UNGA, 'International Covenant on Economic, Social and Cultural Rights' 993 UNTS 3(1966) (ICESC) art 12.

⁶¹ UNGA, 'Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment' 1465 UNTS 85(1984) (CAT) art 3.

⁶² FDRE Constitution, arts 62(1), 83 and 84(2). See Proclamation to Determine Define the Powers and Functions of the House of Federation Proclamation No.126, 2021(43 of 2021) art 5(2). The Constitution of India, 1950 art 32 and 226.

⁶³ *Kenavanananda Bharati Sripadagalvaru and Ors v State of Kerala and Anr* [1973] 4 SCC 225 (3C).

Ethiopian House of Federation will not.⁶⁴ According to Anchinesh, the rejection rate for cases submitted to this House for constitutional interpretation was 96.7%.⁶⁵ From its inception until 2023, the Constitutional Bench in India decided 2188 cases.⁶⁶ Constitutionally, the judiciary in India is mandated to protect basic human rights and interpret legislation in line with international agreements.⁶⁷ As a result, among others, the court has made rulings on issues related to non-refoulement, unlawful entry, and access to UNHCR in relation to asylum seekers.⁶⁸ Nevertheless, in Ethiopia, despite the clear delineation of refugee and asylum seekers' rights, their implementation within the judicial system is predominantly less, except in certain instances involving criminal offences.

The case precedent in Ethiopia is limited to rulings issued by the Federal Supreme Court of Cassation Bench. Further, this particular bench has not issued any decisions pertaining to refugee cases. Therefore, for the sake of this section, the fundamental rights delineated in the refugee laws can be briefly discussed as follows. The priority right in the administration of refugees is related to the principle of *non-refoulement*.

⁶⁴ *Supreme Court Advocates on Record Association v Union of India* AIR 2015 SC 5457.

⁶⁵ Anchinesh Shiferaw Mulu, 'The Jurisprudence and Approaches of Constitutional Interpretation by the House of Federation in Ethiopia' (2019) 13(3) *Mizan Law Review* 419.

⁶⁶ See Lok Sabha, 'Unstarred Question No. 64 to be Answered on Friday, the 2nd February, 2024 Pending Cases Before Constitution Benches.' <<https://lawchakra.in/supreme-courts-caseload-crisis-54-constitution-bench-cases-await-resolution/>> accessed on 15 July 2024.

⁶⁷ See *Vishaka v State of Rajasthan* [1997] 6 SCC 241 (SC).

⁶⁸ See *Nandita Haksar v State of Manipur W.P.(Crl.) No. 6 of 2021 with MC [W.P.(Crl.)] No. 1 of 2021 and MC [W.P.(Crl.)] No. 2 of 2021* [2021] SC. See *State of Arunachal Pradesh v Khudiram Chakma* [1993] AIR 1994 SC 1461. See *Ktaer Abbas Habib Al Qutaifi and Anr v Union of India (UoI) and Ors* [1998] 1999 Cri LJ 919 (SC).

The principle is recognised in Article 33 of the 1951 CSR and Article 11 of Ethiopia Refugee Proclamation No.1110/2019. On the contrary, it had a contentious issue that lacked uniformity of application in Indian courts for a long time. Certain courts may infringe upon this fundamental right concerning illegal entry. For instance, in 2021, the Supreme Court of India in *Mohammad Salimullah and Ors. v. Union of India and Ors* case ruled that although Rohingya Muslim refugees have a right to equality and due process of law in India, there is no constitutional provision prohibiting the government from deporting illegal immigrants.⁶⁹ Additionally, the court neglects to examine the customary international law status of this principle, merely stating that India is not bound by the principle of non-refoulement as outlined in the Refugee Convention. Ultimately, the acceptance of the decision regarding the deportation of applicants is contingent upon the proper execution of due process of law.

Later, the Indian Court ruled in the case of *Nandita Haksar v State of Manipur* that the principle of *non-refoulment* is encompassed within the ambit of Article 21(the right to life) of the Indian Constitution.⁷⁰ As indicated in the *National Human Rights Commission v State of Arunachal Pradesh and ANR* case, this right to life applies to foreigners without any discrimination. The court further noted that the government has an obligation to guarantee the safeguarding of the life and personal

⁶⁹ See *Mohammad Salimullah and Ors v Union of India and Ors* AIR 2021 SC 1789. See Kay Hailbronner, 'Non-refoulement and "Humanitarian" Refugees: Customary International Law or Wishful Legal Thinking?' in David A. Martin (ed), *The New Asylum Seekers: Refugee Law in the 1980's* (Brill Nijhoff 1988) 124. See Jean Allain, 'The Jus Cogens Nature of Non-refoulement' (2001) 13(4) *International Journal of Refugee Law* 533.

⁷⁰ See UDHR, art. 14, CAT, art.3(1), and Geneva Convention IV, art 45.

freedom of refugees.⁷¹ However, the right to life is not absolute in India.⁷² In this regard, the court can only allow expulsion if it is related to national security or public order. However, if expulsion leads to torture, human rights abuses, or genocide, the court must protect at-risk refugees and asylum seekers based on human rights treaty obligations and customary international laws.⁷³

India, unlike Ethiopia, however, refrained from embracing a hospitable stance towards asylum seekers and instead has implemented various administrative restrictions. Moreover, illegal entry of an asylum seeker is a crime that is subject to imprisonment and/or fine, while in Ethiopia, it is not.⁷⁴ Even in India, asylum seekers, after completing their sentence, could face re-detention and deportation. However, courts often halt the deportation proceedings of refugees when UNHCR grants them refugee status.⁷⁵ The High Court ruling in *Syed Ata Mohammadi v Union of India* emphasised that the issue of deportation would not arise if the refugee obtained refugee status under UNHCR.⁷⁶ Prior to reaching this conclusion, the court vehemently dismissed the application in numerous instances on the grounds of lacking jurisdiction to address asylum

⁷¹ *National Human Rights Commission v State of Arunachal Pradesh and Anr* AIR 1996 SC 1234.

⁷² See CSR 1951, art 33 (2); CAT, art 3.

⁷³ See UNGA, 'Convention on the Prevention and Punishment of the Crime of Genocide 78 UNTS 277 (1951) (Genocide Convention).

⁷⁴ See *State v Mohd Riza Ali* [1995] FIR No. 414/93, India Magistrate Courts. See *State v Montasir M. Gubara* [1996] C.C. No. 427/P/1994, India Magistrate Courts. See Refugee Proclamation No. 1110/2019, art 15(8).

⁷⁵ See *State v Mohd Ehsan* [1994] FIR No. 435/93, Court of V.K. Malhotra, Metropolitan Magistrate, Delhi. See *State v Shri K Htoon Htoon and 4 Others* [1994] FIR No. 18(3)89 SGT.P.S., India Magistrate Courts.

See *State v Teresi* [1990] FIR No. 406 of 1996, India Magistrate Courts of Kozhikode. See *S.P. Tyagi F.R.R.O. v Eva Masar Musa Ahmed* [1995] FIR No. 278/95, Ravinder Dudeja, Metropolitan Magistrate, New Delhi.

⁷⁶ See *Syed Ata Mohamamdi v Union of India and Others* [1994] A.D. 1458 of 1994.

requests for access to the UNHCR.⁷⁷ In the cases of *Nur Mahammad & Ors v Union of India & Ors* and *Saidur Rahman v Union of India* in 2021 and 2022, respectively, the court expanded the interpretation of refugee protection and confirmed the government's obligation to enable access to UNHCR for detained asylum seekers.⁷⁸ In *Gurunathan and Seven Others v Union of India* and similar cases, the Court also allowed UNHCR to verify the involuntary repatriation claim.⁷⁹

As previously stated, the Indian government bears the duty of aiding and governing 'privileged' refugees. Some of these refugees are currently residing in refugee camps, while others are living in urban areas alongside the host communities. Unlike the Ethiopian, the Indian government has budgeted for and is providing shelter, education, healthcare services, and financial assistance from the treasury to these refugees. However, the accessibility of these services is not uniform, and it depends upon the willingness and capacity of the regional state governments. As a result, the government's responsibilities towards these refugees are unclear and can be influenced by political decisions rather than the legally prescribed duties.

To determine the government's responsibility towards the 'privileged' refugees and asylum seekers, it needs a careful examination of constitutional clauses that apply to both citizens and foreigners. The Constitution protects arrested, accused, and convicted individuals irrespective of nationality (Art. 14, 20, 21, 22). Furthermore, it prohibits

⁷⁷ See *State v Benjamin Zang Nang* [1996] G.R. Case No. 1235: T.R. 62/94.

⁷⁸ See *Nur Mahammad & Ors v Union of India & Ors* [2021] WPA 22311 of 2019. See *Md. Saidur @ Sidur Rahman v The Union of India* [2022] WP(C) 983 of 2022.

⁷⁹ See *P. Nedumaran v Union of India* [1993] 1993(2) ALT 291. See *Saidur Rahman v Union of India* (2022) WP(C) 3576 of 2017.

human trafficking (Article 23), child labour (Article 24), infringement on freedom of religion (Article 25), guarantees the right to education (Article 21A), and other essential rights to all, including refugees and asylum seekers. In this regard, as well as noticed above, the judiciary remains crucial in safeguarding the constitutional rights of individuals in India.⁸⁰ Hence, the refugee administrative authorities in India shall give due regard to the court rulings pertaining to these rights while addressing refugee matters, even if they primarily involve disputes between the citizens and the government.

As an example, in the case of *Unni Krishnan v State of Andhra Pradesh* and *M.C. Mehta v State of Tamil Nadu & Ors*, the courts underscored the significance of the Constitution in ensuring the provision of education at all levels, including the fundamental right to education for children below the age of six.⁸¹ Consequently, 'privileged' refugees in India are entitled to the right to education, and the right to education for children below the age of 16 is considered a fundamental right. In the cases of *Romesh Thapar v State of Madras* and *B. G. Rao v State of Madras*, it is evident that the court serves as a guardian of fundamental rights, which includes the right to education for refugee children.⁸² Additionally, it should be noted that refugees and asylum seekers are entitled to free legal assistance and a prompt trial, as established in the *M.H. Hoskot v State of Maharashtra* and *Abdul Rahman Antulay v R.S.*

⁸⁰ See Mohd Hammaad Siddiqui and Sheheen Marakkar. 'The Judicial Response to Human Rights in India: Upholding Dignity and Ensuring Justice' (2023) 2(5) *International Journal of Human Rights Law Review* 155, 156.

⁸¹ See *Unni Krishnan, J.P. and Ors. v State of Andhra Pradesh and Ors.* [1993] AIR 1993 SC 2178. See *M.C. Mehta v State of Tamil Nadu and Others* [1996] AIR 1997 SC 699.

⁸² See *Romesh Thappar v The State of Madras* [1950] AIR 1950 SC 124. See *State of Madras v V.G. Row* [1952] AIR 1952 SC 196.

Nayak cases.⁸³ Furthermore, law enforcement agencies must refrain from arbitrary detentions of refugees and asylum seekers, as explicitly stated in the landmark case of *Joginder Kumar v the State of U.P.*⁸⁴ Finally, refugees and asylum seekers must be protected from any cruel, inhuman, or degrading treatment, as seen in the cases of *Kishore Singh v State of Rajasthan* and *Nilabati Behra v State of Orissa*.⁸⁵

The Ethiopia Refugee Proclamation No.1110/2019 and the FDRE constitution under Article 37 guarantee the right to access justice. To uphold this right, Ethiopian courts must ensure that trials are conducted on time, cost-effective, easily accessible, and provide refugees with legal representation. In this regard, the strong jurisprudence and dedicated efforts of Indian courts demonstrate the essential role of courts in safeguarding the rights of refugees, even in the absence of domestic refugee legislation. Furthermore, collaboration with UNHCR and NGOs can also play a crucial role in enhancing refugees' access to justice by providing legal assistance, advocacy, and capacity-building support. By ensuring that refugees have equal access to justice, Ethiopia can uphold its commitment to protecting the rights and dignity of all individuals, regardless of their nationality or status. Therefore, Ethiopia must focus on improving refugees' access to justice for the effective enforcement of the refugee proclamation.

⁸³ See *Hardeep Singh v State of Madhya Pradesh* [2011] AIR 2012 SC 1485. See *Madhav Hayawadanrao Hoskot v State of Maharashtra* [1978] AIR 1978 SC 1548. See *Abdul Rehman Antulay & Ors v R.S. Nayak & Anr* [1991] AIR 1992 SC 1701. See *Rattiram & Ors v State of M.P. through Inspector of Police* [2012] AIR 2012 SC 1485.

⁸⁴ See *Joginder Kumar v State of U.P.* [1994] AIR 1994 SC 1349.

⁸⁵ See *Kishor Singh Ravinder Dev Etc v State of Rajasthan* [1980] AIR 1981 SC 625. See *Smt. Nilabati Behera Alias Lalit Behera v State of Orissa and Ors* [1993] AIR 1993 SC 1960.

V. CONCLUSION

India and Ethiopia have both made commendable efforts to address refugee matters. However, India has been criticized for its 'ad-hocism' and discriminatory approach towards refugees based on their nationality or religion. Even though there is legal gap in refugee proclamation and other relevant domestic refugee instruments, in Ethiopia, the violation of refugees' rights is a frequent occurrence as a result of non-enforcement of laws. The practice of Ethiopia in this article shows that the challenge relating to refugee administration cannot be avoided either by signing an international refugee treaty or enacting domestic refugee legislation. Because merely having a legislative framework in place does not automatically guarantee successful enforcement. In this regard, the court shall play a crucial role in the protection of refugees, particularly in intervening in the expulsion orders and guaranteeing access to justice for refugees and asylum seekers. *The complete dependence on donor funding, encompassing all administrative expenses of the RRS, raises concerns regarding the Ethiopian legislative initiative, which appears to be a zero-sum game.*

India's case, on the other hand, demonstrates that the judicial system has failed to effectively tackle the challenges faced by refugees and asylum seekers because of the absence of a comprehensive legal framework for refugees. Moreover, UNHCR functions within both countries, with its responsibilities in India primarily focused on coordinating humanitarian aid and overseeing the needs of 'non-privileged' refugees. On the other hand, in Ethiopia, its role expands to include observer status in the determination of refugee status and the coordination of humanitarian aid efforts. Presently, UNHCR is

confronted with a worldwide challenge in delivering sufficient protection and humanitarian aid, largely due to constrained financial resources resulting from ongoing armed conflicts. Given the vulnerable geographical positions of both countries for mass influx as well as UNHCR financial and role limitations, the enactment of domestic refugee legislation, political commitment, and a responsive court system is not a matter of choice but rather a necessity to safeguard the well-being of both the host community and the refugees themselves.

India should enact domestic refugee legislation that demonstrates administrative flexibility and inclusivity to effectively address the needs of all refugees within its borders. This legislation should integrate refugee issues into poverty alleviation strategies, facilitate the reintegration of refugees, and support voluntary repatriation efforts. Furthermore, India should advocate for a shared global responsibility and promote amendments to the 1951 CSR. In a similar vein, Ethiopia should consider revising restrictive refugee policies following detail investigations, share the burden of humanitarian assistance, and address its reliance on donor funding while solving the political unrest that significantly impact the lives and freedoms of refugees. Further, Ethiopia must also enhance refugees' access to justice including amicus curie and ensure that all stakeholders, including refugees themselves, are educated about refugee laws. Additionally, there should be a push for amendments to the 1951 CSR and the 1969 OAU Refugee Convention to reflect the advancements in refugee law jurisprudence over the past fifty years and beyond.