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ADDIS ABABA UNIVERSITY

COLLEGE OF LAW AND GOVERNANCE GRADUATE STUDIES

SCHOOL OF LAW

**THE RIGHT TO WAGE-EARNING EMPLOYMENT UNDER THE
2019 REFUGEE PROCLAMATION OF ETHIOPIA`**

BY

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the Requirements for the Degree of Master of Law (LL.M) in Public International
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DECLARATION

I, the undersigned, declare that this thesis entitled "*The Right To Wage-Earning Employment Under The 2019 Refugee Proclamation Of Ethiopia*", is my original work and has not been presented for a degree in any of other University or Organization, and that all sources of materials used have been duly acknowledged.

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LIST OF ACRONYMS AND ABBREVIATIONS

ARRA	Authority for Refugees and Returnee Affairs
CRRF	Comprehensive Refuge Response Framework
CRR	Comprehensive Refugee Response
DFID	Department for International Development
EIB	European Investment Bank
EIC	Ethiopian Investment Commission
EOP	Economic Opportunities Program
EPP	Employment Promotion and Protection
ESSA	Economic and Social Systems Assessment
EU	European Union
FoEO	Foreigners of Ethiopian Origin
GC	General Comment
GCR	Global Compact on Refugees
GoE	Government of Ethiopia
GTP-II	Growth and Transformation Plan II
ICESCRs	International Covenant on Economic, Social and Cultural Rights
IDA	International Development Association
IGAD	Inter-government Authority on Development
ILO	International Labor Organization
IPF	Investment Project Financing
MoFEC	Ministry of Finance and Economic Cooperation
MoLSA	Ministry of Labor and Social Affairs
NGOs	Non-Governmental Organizations

NISS	National Intelligence and Security Services
OAU	Organization for African Unity
ReDSS	Regional Durable Solutions Secretariat
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNDP	United Nations Development Program
UNHCR	United Nations Higher Commissioner for Refugees
UNICEF	United Nations International Children’s Emergency Fund
USA	United States of America
WFP	World Food Program

ABSTRACT

The 2019 Refugee Proclamation, which is one of the very progressive refugee laws in the world, is aimed at ensuring the right to gainful employment without undue constraints. Unlike the 2004 refugee proclamation, the 2019 Proclamation eases the restriction in order to align Ethiopian laws with that of the 1951 Refugee Convention. One of the challenges to make the right to wage-earning employment practical is lack of implementation tools like regulation and directive. Moreover, incompatibility of labor law also influences the implementation of the new refugee legislation. The implementation of Refugees right to wage-earning employment decided based on reference to and interpretation of other relevant laws like the labor law, Civil Servants Proclamation and Foreigners of Ethiopian Origin (FoEO) laws. Article 26(1) of the refugee proclamation sets the standard of treatment for refugees and it extends most favored treatment that accorded to foreign nationals in Ethiopia. The most favored foreign nationals in Ethiopia are FoEO. Ergo, the right to wage-earning employment accorded to FoEO be extended to Recognized refugees and asylum seekers on certain requirements and the subsequent procedural laws shall state those entitlements and requirements clearly. In this respect, the implementation of the 2019 refugee law needs harmonization with other relevant laws governing refugee rights. This thesis demonstrates how important it is to implement the right to wage-earning employment of refugees by harmonizing other existing laws. Thus, the aim of this study is to further identify and clarify the gaps and recommend solutions to implement the right to wage-earning employment of refugees without unreasonable restrictions.

CHAPTER ONE: BACKGROUND AND RATIONALE OF THE STUDY

1.1 Background of the study

Ethiopia is one of the signatories to the 1951 Convention Relating to the Status of Refugees. It has recently adopted the 2019 Refugee law in favor of refugees making it the most progressive in Africa.¹ This law introduces a number of new provisions that broaden the rights of refugees and facilitate refugees' enjoyment to rights afforded to other foreign nationals in the country.²

The new legislation move away from a traditional camp-based approach to the new out-of-camp approach, which will ensure the right to employment of refugees and an investment in essential services that benefit refugees.

Ethiopia did not allow refugees to work in its territory as indicated in a survey conducted in 2008.³ On the other hand, the government of Ethiopia granted work permits to foreign nationals when there is no qualified citizen available in the sector.⁴ The 1951 Convention Relating to the Status of Refugees, its 1967 Protocol and the 1969 Organization of African Unity Convention Governing the Specific Aspects of Refugee Problems in Africa, all do not impose obligations on state parties to give preferential treatment to refugees regarding access to work.⁵ Nonetheless, in certain situations, preferential treatment should be accorded to refugees regarding wage-earning employment⁶ when conditions under article 17(2)a-c of the 1951 Refugee Convention meet.

Ethiopia was one of the State Parties which entered reservations regarding wage-earning employment enshrined under Article 17(2) of the 1951 Refugee Convention.⁷ However, the Executive Committee of the High Commissioner on Refugees endorsed an agenda for

¹ UNHCR, 'Additional Provisions With in the Revised National Refugee Law in Ethiopia' (Operational Portal, 19 February 2019) <<https://data2.unhcr.org/en/documents/details/68014>> accessed 10 June 2020. Hereafter cited as (UNHCR Report 2019)

² Ibid

³ Gizachew Admassu, 'Refuge Law: General Observations on Ethiopian Refugee Proclamation No.409/2004' (Teaching material 2017) 292

⁴ Ibid

⁵ Kate Jastram and Marilyn Achiron, Refugee Protection: A Guide to International Refugee Law (Inter-Parliamentary Union 2001)100 <<http://archive.ipu.org/pdf/publications/refugeen.pdf>> accessed 12 June 2020

⁶ Ibid

⁷ Reservations and Declarations, Convention Relating to the Status of Refugees. Signed at Geneva on 28 July 1951. Hereafter cited as (Reservations and Declarations 1951 Convention)

protection, which requires that “member states should make considerable efforts to remove reservations made at the time of accession.”⁸

The Leaders’ Summit held in New York in September 2016, and in a meeting convened and co-hosted by the then Ethiopian Prime Minister, Hailemariam Dessalegn, Ethiopia made nine pledges to relax its reservations to the Refugee Convention.⁹ The pledges aimed at widening refugee rights, improving refugee-handling practices and strengthening support to them. Deputy Prime minister of Ethiopia, Demeke Mekonnen also introduced additional pledges at the First Global Refugee Forum held in Geneva from 16th – 18th December 2019.¹⁰ The new pledges include creating up to 90,000 socio-economic opportunities through agricultural and livestock value chains that benefit both refugees and host communities.¹¹ The new pledges also extended to providing quality and accredited skills training to 20,000 host and refugees on equitable basis taking into account the labor market demand and linkages with existing and new commitments in expanding socio-economic opportunities.¹²

Among the first nine pledges, some of them directly related to creating employment opportunity to refugees. The pledges include expanding ‘Out of Camp’ policy to benefit ten percent of the current refugee population in Ethiopia.¹³ The pledge extends to provide work permits to refugees and those with permanent residence ID within the bounds of domestic law.¹⁴ The pledge also intended to affirm coordination with international partners to potentially build industrial parks which 30% of the jobs for refugees.¹⁵

Chapter three of 1951 Refugee Convention provides the right to work and list out three types of gainful activities where refugees could be engaged. These include wage-earning employment, self-employment and liberal profession.

⁸ Christopher Kapangalwendo Mubanga, ‘Protecting Eritrean Refugees’ Access to Basic Human Rights in Ethiopia: An Analysis of Ethiopian Refugee Law’ (LLM-Dissertation, UNISA 2017)22 <<http://uir.unisa.ac.za/handle/10500/23205>> accessed 12 June 2020

⁹ ReDSS, ‘Local Integration Focus: Refugees in Ethiopia’ (Samuel Hall, February 2018)7 <<https://www.samuelhall.org/publications/redss-local-integration-focus-refugees-in-ethiopia>> accessed 11 June 2020

¹⁰ H.E Mr. Demeke Mekonnen, ‘Key note Speech’ (First Global Refugee Forum, Geneva, 17–18 December 2019) <<https://www.unhcr.org/5df8f8e426.pdf>> accessed 10 June 2020

¹¹ Ibid

¹² Ibid

¹³ Authority for Refugees and Returnee Affairs (ARRA), ‘Road map for the Implementation of the Ethiopian Government Pledges and the Practical Application of the CRRF in Ethiopia’ (August 2017)7 Hereafter cited as (ARRA Roadmap 2017)

¹⁴ Ibid

¹⁵ Ibid

The 1951 Refugee Convention provides Refugees with ‘the most favorable treatment’ compared to foreign nationals in similar circumstances.¹⁶ The Convention is silent about the acts that fall under wage-earning employment. However, we can still infer from other provisions of the Convention that it could be interpreted broadly covering all kinds of employment which do not fall under self-employment and liberal professions.¹⁷ Wage-earning employment includes working for the government offices, working in factory and manufacturing sector, working for state developmental enterprises such as postal services and state owned factories, farmlands, office work, sales, etc. and/or includes workers whose relationship is governed by Labor Proclamation No.1156/2019.¹⁸

The 1951 Refugee Convention does not extend wage-earning employment accorded to refugees be similar to that of nationals. The Convention rather provides the right accorded to refugees in relation to wage-earning activities should be most favorable compared to foreign nationals. The extension of such broad right in Ethiopia is a privilege which could be subjected to other applicable domestic laws like the Labor law and Civil Servants proclamation.

The other aspect of the right to work under the 1951 Convention is self-employment. A refugee, lawfully found in the territory of a hosting state, should be granted treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens, to engage in self-employment on his own account.¹⁹ Activities that constitute self-employment include activities like agriculture, industry, handicrafts and commerce.²⁰ This implies the sector is much open than others and it can create job opportunity for a vast number of refugees them-selves and even to the nationals as well.

The third aspect of the right to work under the 1951 Convention is Liberal profession.²¹ Such professions include lawyers, notaries, medical doctors, dentists, veterinarians, engineers, architects, accountants, interpreters etc. Most countries grant these rights to persons only satisfying certain criteria, for example with regard to age, sex, health, nationality, education, training, experience, financial solvency, and even length of residence within the country or in a

¹⁶ Convention Relating to the Status of Refugees(adopted 28 July1951, entered into force 22 April 1954)189 UNTS 137.Art.17(1). Hereafter cited as(1951 Convention)

¹⁷ Atle Grahl-Madsen,Commentary on the Refugee Convention 1951 Articles 2-11,13-37 (Division of International Protection of United Nations High Commissioner for Refugees, 1997)42 <<https://www.refworld.org/docid/4785ee9d2.html>> accessed 10 June 2020

¹⁸ Fasil Mulatu Gessesse,‘Recommendations for Reform of Ethiopia’s Refugee Legislative and Policy Framework in Light of International and Regional Standards’(World Bank Group,4 January 2017) 21

¹⁹ 1951 Convention,Art.18(1)

²⁰ Ibid

²¹ Id.,Art.19

particular place.²² There may also be strict rules for proving that one possesses the required qualification, e.g. by way of specified diplomas or certificates.²³ They all require special training in the arts or sciences, and their activities are usually closely regulated by national governments or professional bodies.²⁴

Ethiopia's pledge is not limited to mere expansion of the out of camp policy. Among the nine pledges, the second pledge allows refugees, both inside and outside camps, to 'access to employment' within bounds of domestic laws and the issuance of 'work permits to refugee graduates' in areas permitted for foreign workers.²⁵ This is pillar of the pledges and basically implies the government's intention to take legislative and administrative reforms in order to enable refugees to exercise their work rights and use refugee IDs as residence permits for purposes of issuing work permits in the best possible ways.²⁶

Subject to availability of external financial assistance and within the bounds of the national laws, the government of Ethiopia (GoE) pledges to make available 10,000 hectares of irrigable land to allow refugees and local communities to engage in crop production.²⁷ The pledge to 'self-reliance' and 'land access' aimed at expanding the size of this irrigable land from 1000 ha to 10,000 ha. and this would benefit up to 20,000 households or 100,000 persons.²⁸ This further requires new procedural laws and guidelines clearly stating rights and entitlements of refugees.²⁹

The government's pledge to create job set in line with the national industrialization agenda that also aimed provision of employment opportunities to refugees within the new industrial parks.³⁰ This plan targets job-creation through building additional industry parks in selected places in collaboration with international development partners. This would open job opportunities that could employ up to 100,000 persons, of which 30,000 would be dedicated to refugees granted work permits and 70,000 would be for nationals.³¹ This may also help the country assuring one

²² Grahl-Madsen(n 17)14

²³ Ibid

²⁴ Gessesse(n 18)22

²⁵ Tadesse Kassa Woldetsadik, Fasil Mulatu and Jettu Edosa, 'Ethiopia's Refugee Policy Overhaul: Implications on the Out-of-Camp Regime and Rights to Residence, Movement and Engagement in Gainful Employment' (19 June 2019) AAU Journal of Ethiopian Human Rights Law CHR,9 <<https://ssrn.com/abstract=3406620>> accessed 10 June 2020

²⁶ Ibid

²⁷ ARRA Roadmap 2017(n 13)11

²⁸ Woldetsadik, Mulatu and Edosa (n 25)9

²⁹ Ibid

³⁰ Ibid

³¹ ARRA Roadmap 2017(n 13)12

of its pledges to respect the right to gainful employment of the refugees as enshrined under the Convention and other international instruments.

Ethiopia had entered a reservation on article 17(2) of the 1951 Refugee Convention and declared that it only considers this provision as a recommendation and not as a legally binding stipulation.³² Irrespective of that, the country made pledges more than once to ease the reservation to some extent to allow refugees to work in its territory. Actually, the reservation does not mean by itself that the country treats refugees less favourably than aliens. It does mean the country has scarce resources and jobs even for its nationals so that it's better to protect the national labor market by doing so. Nonetheless, Ethiopia also declared it is not under obligation to exempt refugees from restrictive measures to protect the national labour market.³³ The country allows refugees to work only upon meeting certain requirements provided under article 17(2)(a-c) of the 1951 Convention.

1.2 Statement of the Problem

The major problem while exercising a refugee's work right is the reservation that member states entered to the 1951 Refugee Convention. Most of the State Parties to the 1951 Refugee Convention entered reservations to Article 17(2). "The requirement that refugees lawfully staying in a country of refuge benefit from the equal right to employment as all other foreigners has attracted proportionately the highest number of reservations by states."³⁴ Some of the states were not willing to incorporate the full rights of refugees into their national laws that would enable them to get access to public education institutions, employment, and free movement as per the 1951 Refugee Convention.³⁵ This would hinder refugees from exercising their full right, particularly the right to employment as enshrined in the 1951 Refugee Convention.

The 2019 Refugee Proclamation sets out the right to work as a central point since it's basic to the right to life. The Proclamation leaves detailed implementation procedures for upcoming regulation and directives even though some issues remain unresolved. Article 26(1) of the refugee proclamation sets the standard of treatment for refugees and it extends most favored treatment that accorded to foreign nationals in Ethiopia. The most favored foreign nationals in Ethiopia are FoEO. The existing labor law does not provide the right to work for refugees unlike the refugee proclamation. One of the challenges for the implementation of the 2019 refugee proclamation is its incompatibility with other laws governing refugee affairs like Labor law and Civil Servants Law. Is there any possibility of extending the right to work of FoEO to Refugees

³² UNHCR, 'Convention Relating to the Status of Refugees', Geneva 28 July 1951, Ethiopia 8 <<https://www.unhcr.org/4d934f5f9.pdf>> accessed 11 June 2020

³³ Gessesse(n 18)23

³⁴ Mubanga(n 8)22

³⁵ Ibid

and Asylum Seekers? Could Refugee or Asylum Seeker be issued work permit without any preconditions like FoEO? Are Refugees and Asylum Seekers to be hired in Government offices according to Ethiopian Civil Servants Law? The draft regulation to the repealed 2004 Refugee Proclamation tried to provide limited possibility for the grant of work permit to ‘refugees that graduate from higher institutions’ who wish to engage in activities that allowed for aliens.³⁶

The 2004 Refugee proclamation do not clearly provide the right to work as a rule. The ambiguity attributed by the lack of clarity in the 2004 proclamation and its draft regulation open the door for the interpretation of other relevant laws. This indicates there is a need for a major policy and legal framework changes towards the right of refugees at the domestic level so that refugee work permits will be granted through clear principles.³⁷ This would be helpful in order to avoid the ambiguity in the legal regime of the country. The problem is that there is no implementation tools like regulation, directive and guidelines to the provisions stated under the 2019 refugee proclamation. Further more, it needs harmonization of other relevant laws applicable to refugee affairs to ensure implementation of the right to work smoothly.

1.3 Research Objectives

1.3.1 General objective

The general objectives of the thesis are:

1. To assess the 2019 Refugee Proclamation provisions that intends to open up wage-earning employment and it also endeavors to find out whether the 2019 proclamation intends to close the gaps under the repealed 2004 proclamation.
2. To further identify whether refugees right to work enshrined under the 2019 Refugee Proclamation align with that of the 1951 Refugee Convention, New York Declaration, and other policy direction of the country; and
3. To suggest legal remedies that to be incorporate under the draft refugee regulation and directive with regard to the right to employment.

1.3.2 Specific Objectives

Under the above general objectives, the thesis aims to achieve the following specific objectives: These include:

- a. To explore the reason for the enactment of 2019 refugee proclamation with regard to the right to work particularly wage-earning employment;

³⁶ Gessesse(n 18)23

³⁷ Ibid 24

- b. To analyze the relevant legal provisions that relate to the refugees right to wage-earning employment;

1.4 Research Questions

The central research question of the thesis is: what are the remedies intended to be addressed by the 2019 refugee proclamation with regard to the right to wage-earning employment of Refugees? In the process, the thesis seeks to address the following sub-questions:

1. What are Refugees Work rights enshrined under 2019 refugee Proclamation, which uphold the Ethiopian pledge made at the New York Summit and First Global Refugee Forum?
2. What should the draft regulation and directives incorporate to ensure the implementation of Ethiopian pledge as set out in the objectives of the 2017 Refugee Roadmap?
3. What does ‘most favorable treatment accorded to foreigners’ mean according to Article 26(1) of 2019 proclamation? Does it mean the right to employment accorded to FoEO extends to Refugees or Asylum seekers?

1.5 Significance of the Study

Ethiopian move to broaden the rights of Refugees in terms of creating employment opportunity got much appreciation. However, academic writings on the subject are not extensive especially with regard to the right to wage-earning employment for refugees. As the Proclamation is new it has raised questions with regard to job security of nationals thus the proclamation requires explanation and examinations with regard to areas, types of jobs open to refugees and mode and method of implementation.

To the best of my knowledge, very few scholars have focused with the gaps of the repealed 2004 Refugee proclamation in relation to the right to employment of refugees. However, the motive of this thesis is to identify whether the new 2019 Refugee proclamation is a means to fully ensure the right to wage-earning employment for Refugees. This thesis is different from any other previous works because it examines the issue for the first time in a comprehensive and detail manner. Therefore, I am hopeful that the thesis will have a significant contribution in addressing the issue in a proper manner and filling the existing void in the literature.

The thesis further serves as an important input for students, researchers and policy makers who are interested in the right to work of refugees.

1.6 Scope of the Study

The research only focuses on investigating whether, and the extent to which, the new 2019 Refugee Proclamation is a means to ensure the right to wage-earning employment for refugees. The study will focus on one of the aspects of the right to work; wage-earning employment for time and page limit set. It also attempts to discuss whether the 2019 refugee proclamation or the practices are in conformity with the 1951 refugee convention and the Ethiopian pledges made at 2016 New York Summit. If not it provides how it could be reconciled.

1.7 Methodology

This thesis mainly prepared based on a doctrinal research employing qualitative methods, analysis and review of existing literatures, decisions of courts, and reports of different organs from an evaluative point of view. The study also involves examining a variety of sources including review of relevant Conventions, laws, Protocols, Declarations, publications, Refugee reports issued by the United Nations (UN), African Union (AU), Government and non-governmental organizations and think tanks. In addition, different books, journals, published and unpublished articles, researches, conference papers, and internet sources are consulted in order to supply up to date information. Empirical outcomes of secondary data collected by United Nations Higher Commissioner for Refugees (UNHCR), Administration for Refugee and Returnees Affairs (ARRA), ReDSS(Regional Durable Solutions Secretariat), International Rescue Committee(IRC), and World Bank are systematically analyzed.

The method also includes closed interviews made with Six/6/ Regional Protection Coordinators at the Refugee Camps of ARRA. The interviews aimed at identifying the gaps and issues that hinder practical implementation of the Ethiopian pledges particularly work rights of refugees as enshrined in the 2019 refugee law. The thesis would assess the legal regime from the text of the law and the practice from the words of the professional protection officers and officials who participated in the formal and informal interviews. My Previous experiences as a Security Officer at National Intelligence and Security Service (NISS) will also give me the opportunity to look the problem from the insider point of view.

1.8 Literature Review

The adoption of national Refugee legislation that is based on international standards is a key to making protection more effective and providing a basis for seeking solutions to the plight of refugees.”³⁸ Most states are not willing to adopt domestic laws that ensure refugee’s right to work. Even most of them entered reservation that they see the right to wage earning

³⁸ Jastram and Achiron(n 5)16.

employment of refugees as a recommendation. Unless refugees allowed to work and support themselves and their families, their basic right, the right to life might be at risk.

Providing Refugees the right to employment is not a privilege. It would rather be respecting international treaty obligations on human rights. “Local economic integration strategies exist but remain informal, and under-explored.”³⁹ Refugees in Ethiopia have been excluded from wage-earning employment opportunities for a long time and the absence of formal economic opportunities has an impact on their psychosocial well-being.⁴⁰ Refugee students who have been enrolled in Ethiopian higher institutions are obliged to stay back in their camp even after graduation and they are prohibited from enjoying the right to employment and practise their skill and expertise as well as the knowledge they earned.⁴¹

The repealed 2004 proclamation was not that much protective as far as the right to work is concerned. The right to work was not provided as a rule⁴² and the categories of works that are open to refugees were not enshrined clearly. Even it did not allow the right to employment despite the fact that the 1951 Refugee Convention makes a distinction between categories of works open to refugees. It did not provide the modalities for implementation and the criteria to determine the class of refugees who qualify for such rights under each work category. Besides, it failed to state that issuance of work permit based on the availability of the work and fulfilment of certain criteria.

The 2019 Refugee Proclamation provides recognized Refugees and Asylum seekers the right to engage in wage-earning employment in the same circumstance as the most favorable treatment accorded to foreign nationals.⁴³ The treatment accorded to foreign nationals should be put in place to recognized refugees and asylum seekers as far as their right to wage-earning employment is concerned. The proclamation also equally provides Refugees who have sought asylum in Ethiopia arrived in the country with skills, and have acquired additional capacity since their arrival, that will enable them to become self-reliant, while contributing positively to the economy.⁴⁴

One of Ethiopia’s pledge following the New York Declaration on Refugees and Migrants was job creation. The expansion of a network of industrial parks in collaboration with development

³⁹ ReDSS(n 9)24

⁴⁰ Ibid

⁴¹ Ibid

⁴² Gessesse(n 18)34

⁴³ Refugee Proclamation, 2019, Art. 26(1), Proc. No. 1110, Neg. Gaz. Year 25, no. 38. Hereafter cited as (Refugee Proclamation 2019)

⁴⁴ UNHCR Report 2019(n 1)1

partners will provide 70% of new job opportunities to Ethiopians, with the remaining 30% reserved for refugees.⁴⁵ The government also increased the size of irrigable land previously provided to refugees. The 2019 Refugee Proclamation also ensures the allocation of irrigable land by the GoE for agriculture production as part of joint projects will benefit both Refugees and Ethiopian nationals.

Despite the fact that the right to wage-earning employment is enshrined in the 2019 Refugee Proclamation, some relevant laws prohibit refugees from being hired. Article 176(1) of the 2019 Labor Proclamation also imposes obligations on all foreign nationals including refugees to acquire specific work permit before they engage in any type of work in Ethiopia.⁴⁶

The 2019 refugee law though progressive in its content, it lacks details on some points. Article 26 of the 2019 refugee proclamation entails the right to employment of refugees in comparison to that of foreigners. It entails most favorable treatment that accorded to foreigners in Ethiopia should be extend to refugees pursuant to relevant laws. In other words, to identify the rights that accorded to refugees, the person need to know who are the most favored foreign nationals in Ethiopia and what treatment do they enjoy by referring to other relevant laws. The 2019 proclamation designed to be flexible enough to promote refugees' right to work. It follows an inclusive approach in granting work permit that enables refugees and asylum seekers to be engaged in different sectors and money generating activities.

On the other hand, in support of refugee hosting countries, and as indicated in the New York Declaration, States agreed to work towards the adoption of a Global Compact on Refugees (GCR) in 2018.⁴⁷ Representatives of some states asked the UN High Commissioner for Refugees to propose the draft text of the compact in his annual report to the General Assembly in 2018.⁴⁸ The Compact prepared based on the practical application of the CRRF in different refugee situations, outcomes of discussions, and a process of stocktaking that have taken place in 2017.⁴⁹

The Global Compact on Refugees includes the objectives and CRRF, which is agreed to by state parties to the Declaration. It also consist a complementary Program of Action, which will

⁴⁵ Ibid 2

⁴⁶ Labor Proclamation,2019,Art.176(1),Proc.No.1156,Neg.Gaz.Year 25,no.89. Hereafter cited as(Labor Proclamation 2019)

⁴⁷ UNHCR, 'Quick Guide on New York Declaration'(January 2018)7 <<https://www.unhcr.org/57e4f6504.pdf>> accessed 10 June 2020

⁴⁸ Ibid

⁴⁹ Ibid

provide detail activities that should be taken to operationalize CRRF.⁵⁰ The activities include:⁵¹ arrangements to share burdens and responsibilities through a Global Refugee Forum that convene every four years, national and regional arrangements for specific situations, and tools for funding, partnerships, and data gathering and sharing. The other activity is identifying areas in need of support, from reception and admission, to meeting needs and supporting communities, to solutions. GCR also puts arrangements for follow-up and review. This arrangements made basically through Global Refugee Forum that convene every four/4/ years and an annual high-level officials meeting held every two/2/ years between forums, and the High Commissioner's annual report to the General Assembly.⁵²

After two/2/ years of extensive consultations led by UNHCR, UN General Assembly affirmed the Global Compact on Refugees on 17 December 2018.⁵³ The Global Compact on Refugees (GCR) clearly affirms that affairs of refugees cannot be resolved permanently without collective responsibility and international cooperation of all stakeholders.⁵⁴ The GCR is a framework for a more predictable and equitable responsibility sharing, recognizing that a sustainable solution to refugee situations cannot be achieved without cooperation. It will benefit host communities by easing pressure on them through various mechanisms. It also provides a detailed outline for states, international organizations, and other stakeholders to ensure that host communities get the support they need and that refugees can lead productive lives. The governments will need to strike the right balance between jobs for the host communities in one side and the refugees in the other side, clearly outlining the underlying win-win strategy.

The key objectives of GCR includes: Easing pressures on host countries that, improving the self-reliance of refugees, expanding access to third-country solutions, supporting conditions in countries of origin for return in safety and dignity.⁵⁵

Despite the fact that there exists Global Compact on Refugees, states still resist to comply and protect the right to work of refugees. Ethiopia adopted flexible refugee proclamation that respects the right to work of refugees irrespective of the challenges that faced during the implementation process. Lack of procedural laws like regulation, directive and guideline harden the implementation and applicability of the law. Moreover, the resistance from some of the

⁵⁰ Global Compact on Refugees adopted on 17 December 2018(A/RES/73/151) New York. Hereafter cited as (Global Compact 2018)

⁵¹ UNHCR, 'The Global Compact on Refugees' (United Nations General Assembly, 17 December 2018) <<http://www.unhcr.org/the-global-compact-on-refugees.html>> accessed 11 June 2020

⁵² Ibid

⁵³ Ibid

⁵⁴ Ibid

⁵⁵ Global Compact 2018(n 50)

hosting communities' is the other basic challenge that we need to make awareness and provide them with sustainable solution.

1.9 Structure of the Study

The thesis organized into five chapters. The introductory chapter provides the background to the thesis outline its objectives, statement of the problem, methodology and the research questions. Chapter two examines the general legal frameworks & highlights the 1951 Refugee Convention, 1969 OAU Refugee Convention, and the New York Declaration in relation to the right to work. Under this chapter, the thesis discusses particularly the right to wage-earning employment for refugees. Chapter three focuses on the Ethiopian Pledges, CRRF and its implementation means with respect to wage-earning employment in Ethiopia. It shows the country needs further action to ensure rights of refugees. It also argues that the incorporation of pledges into detail regulation and directive would accelerate the implementation process. Chapter Four analyzes the prospects of the 2019 Refugee Proclamation with respect to the right to wage-earning employment. This Chapter divided into two broad sections. The first section examines the incorporation of the right to wage-earning employment under the Proclamation. The second section analyzes the relevant provisions of the Proclamation and the legal remedies intended to be addressed. It also suggests how the principles under the 2019 Refugee Proclamation should be incorporate into the draft regulation to ensure the right to wage-earning employment of refuge's in a full scale. Finally, the concluding Chapter closes the study with a summary of the key findings and some recommendations for reform.

CHAPTER TWO: REFUGEES RIGHT TO WAGE-EARNING EMPLOYMENT UNDER INTERNATIONAL INSTRUMENTS

Introduction

There are various international and regional human right instruments as well as national laws, which protect the right to work in general. The main international legal instruments on the right to work of Refugees includes the 1951 UN Refugee Convention, its 1967 Protocol, the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Universal Declaration of Human Rights (UDHR), and the 2016 New York Declaration on Refugees and Migrants. The Regional legal instruments on the right to work include the European Social Charter, the European Convention on the Legal Status of Migrant Workers, African Charter on Human and Peoples Rights.⁵⁶

The core of right to work is the freedom to gain a living by work freely chosen or accepted. Anybody should have the right to work and subsidize his or her life without discrimination. This right entails opening access to the labor market and allows refugees to engage in wage-earning and self-employment as well as liberal profession. This right expressed in most human right instruments as a universal entitlement, and should be guaranteed and protected on a non-discriminatory basis to all regardless of their status.⁵⁷

2.1 Refugee right to employment Under 1951 Refugee Convention

The 1951 Refugee Convention is the main international legal instrument on the protection of refugee right, setting out minimum standards for the treatment of refugees. Refugees' right to work includes the right to engage in wage-earning employment and self-employment, as provided under Chapter 3 of 1951 Refugee Convention.

Article 23 of the UDHR marks the right to work as a universal human right. However, the key international treaty that protects the right to work in a binding form is the ICESCR. Article 6 and 7 of this Covenant guarantee the right to work to everyone. Art 6 protects the right to work and denotes the obligations that state parties have to ensure enjoyment of the right. "State parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take

⁵⁶ Christopher Chope, 'Refugee and the Right To Work'(Parliamentary Assembly Council of Europe 2002)6 <<http://assembly.coe.int>> accessed 10 June 2020

⁵⁷ University of Michigan Law School, The Michigan Guidelines on the Right to Work, 16 March 2010, para.8 <<https://www.refworld.org/docid/4bbaf1242.html>> accessed 11 June 2020. Hereafter cited as (Michigan Guidelines)

appropriate steps to safeguard this right.”⁵⁸ Art.7 of the ICESCR, also ‘recognize the right of everyone to the enjoyment of just and favorable conditions of work.

The UN Committee for ICESCR monitors compliance of state parties to the ICESCR. This Committee has affirmed that regardless of their legal status and documentation, the right to work under the Covenant applies to everyone including non-nationals, such as refugees and asylum seekers.⁵⁹ The Committee further extends the right to work to a broader group in a way it extends to stateless persons, migrant workers and victims of international trafficking.⁶⁰ The very recent General Comment No. 23 (2016) to Art.7 of ICESCR mentions specifically Refugee workers, emphasizing that the term ‘everyone’ applies to this category of workers.⁶¹ Furthermore, the General Comment calls upon State Parties to note the particular difficulties facing Refugee workers, and to act appropriately to rectify the situation.⁶²

The General Comment No.20 (2009) to Art.2 para.2 of ICESCR is a basic underpinning interpretation that assures the right to work of refugees everywhere without any condition and discrimination. Even though, the practice varies from one state to the other depending on their national laws, the right to employment to every one even to non-nationals should be set as a principle in every state’s domestic laws without any discrimination.

The right to gainful employment makes the Refugee to fulfill his or her basic survival needs and contribute to the needs of the family, community and the country in which they reside. In other words, the right to employment in turn ensures the survival of a family as well. i.e access to work right directly related with the right to life. The right to work realized to a Refugee means, it serves as a base through which the Refugee may achieve a range of other civil, political, economic, social and cultural rights, fulfilling the human desire to feel useful, valued and productive.

⁵⁸ International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 19 December 1966) Art.6. Hereafter cited as (ICESCR)

⁵⁹ UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No.20: Non-Discrimination in Economic, Social and Cultural Rights (Art.2, para.2, of the International Covenant on Economic, Social and Cultural Rights), 2 July 2009, E/C.12/GC/20 <<https://www.refworld.org/docid/4a60961f2.html>> accessed 3 June 2020. Hereafter cited as (General Comment No.20)

⁶⁰ Ibid

⁶¹ UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No.23(2016) on the Right to Just and Favourable Conditions of Work (Article 7 of the International Covenant on Economic, Social and Cultural Rights), 7 April 2016, E/C.12/GC/23 <<https://www.refworld.org/docid/5550a0b14.html>> accessed 10 June 2020. Hereafter cited as (General Comment No.23)

⁶² Ibid

“U.S. delegate Louis Henkin stated during the drafting of the 1951 Refugee Convention, “Without the right to work, all other rights are meaningless.”⁶³ In his speech, Louis Henkin emphasized the right to gainful employment has to be recognized as essential and basic to the coming into effect of all other rights.⁶⁴ In other words, the right to gainful employment directly related to one of the mother of all other human rights, the right to life.

The 1951 Refugee Convention is a binding law warranting full application by signatories. However, it is not a guarantee of a job but rather a gateway through which Refugees may prove their value to a receiving country.⁶⁵ This may in turn help the Refugee’s to rebuild their lives and empower them to create durable solutions to their displacement. The right to work is a basic bridge and means that connects refugee’s economic rights to a hosting state.

As the South African Supreme Court of Appeal observed in 2004:

“The freedom to engage in productive work even where that is not required in order to survive is indeed a part of human dignity... for mankind is pre-eminently a social species with an instinct for meaningful association. Self-esteem and the sense of self-worth – the fulfillment of what it is to be human – is most often bound up with being accepted as socially useful.”⁶⁶

Article 18 of the 1951 Convention grants both Refugees and Asylum-seekers the right to self-employment; whereas Article 17 states the right to wage-earning employment extended to those lawfully staying in the country. The interpretation with respect to the applicability of wage-earning employment only to lawfully staying refugee’s, i.e. it excludes asylum seekers raised some controversy among schools in the field.⁶⁷ However, according to the United Nations Higher Commissioner for Refugees (UNHCR) interpretation ‘a lawful stay’ must include not only Refugees but also asylum seekers in a State where the asylum procedure is unduly prolonged.⁶⁸ Article 19 governs the recognition of certificates in the liberal professions. Once asylum seeker is in a territory of the host state for reasonable time and legally requesting asylum, it suffices to the requirement of lawful stay. However, some countries like Venezuelans, South Africa, Brazil, Italy, France, Canada, Spain, Greece, Egypt and Australia take long time to determine the status, which is not in line with the very purpose of the

⁶³ Anna Wirth and Cara Defilippis and Jessica Therkelsen, ‘Taking the Movement from Theory to Practice’ (Asylum Access, 5 May 2015) 2 <<https://asylumaccess.org/global-refugee-work-rights-report/>> accessed 10 June 2020

⁶⁴ Ibid

⁶⁵ Ibid 11

⁶⁶ Ibid 2

⁶⁷ Chope(n 56)6

⁶⁸ Ibid

International Covenant on Social, Economic and Cultural Rights (ICSECR) in particular and the 1951 Refugee convention in general.

In principle the 1951 Convention, impose obligation on the member states to permit asylum seekers and refugees the right to engage in wage-earning employment. The practice departs from the rule and this shows efforts that made to implement this right have been limited. Regardless of their status as recognized or not, most of refugee's as well as asylum seekers are barred from exercising their right to lawful employment.⁶⁹ The Refugee's right to work is protected under international legal instruments like the ICSECR which signed by 162 state parties, followed by the 1951 Refugee Convention ratified by 147 member states of the UN. Despite all this fact, the practice shows that most of Refugee's across the world denied access to safe and lawful employment.⁷⁰

2.1.1 Common barriers preventing the realization of the right to work of Refugee's

Only selected groups of countries have a fully functional national policy that upholds Refugee's right to work without restriction. There are different ways in which national laws, policies and practices fall short of international standards and norms. States fail to respect, protect and fulfill the human right in a number of ways.

Common barriers preventing realization of the right to work of refugee's include:⁷¹

1. There is no legal right to work. Most of States do not have national legislations that extend the right to employment to non-nationals like refugees, asylum seekers, aliens.
2. Discrimination and xenophobia are also among barriers. Some governments make a distinction between nationals and non-nationals with respect to the right to work. Refugees are discriminated and even seen as a threat to the labor market of the nationals. For instance, in Ethiopia, the people particularly refugee hosting communities did not take a part in discussions made during the drafting process of the proclamation. This reflected by lack of awareness about the law which amount to resistance of the applicability of the proclamation. In Gambella, hosting communities even killed some staffs of the refugee agency, ARRA while they were on duty.⁷² As the people living around refugee camps are those who may be affected, they

⁶⁹ Wirth,Defilippis and Therkelsen(n 63)2

⁷⁰ Ibid 22

⁷¹ Ibid

⁷² Interview conducted with ARRA Protection Division Head,Wondwossen Yigzaw,4 December 2019

would have invited, participated and consented to the rights particularly relating to job since the labor market will highly be influenced. The government's pledge to avail irrigable land to refugees become one of conflicting areas between refugees and hosting communities since the land by itself is scarce resources. There was a move to provide refugees with irrigable land near Dollo Ado and Gambella though there is resistance from the communities.⁷³

3. Bureaucratic barriers (prolonged legal status determination process, rigorous procedure, exorbitant fees, complex paperwork/permitting, delay in employment).
4. Limited access to vocational training and education.

Refugees deserve the right to employment and states have to be equipped with legal regimes that enable them to exercise such rights. In light of the UN Committee for ICESCR interpretation of Article 6 of the covenant, state parties are duty bound to respect, protect and comply the work rights of refugees not below minimum core.

Art 17 para.2 of the 1951 Refugee Convention imposes restrictions on non-citizens for the protection of the national labor market. However, this restriction is not applicable on refugee's who fulfill the requirements of one of the following three conditions:⁷⁴ First, if the individual lived for three years in the hosting state,⁷⁵ or, second, if the individual is married to national of the hosting state⁷⁶; or, third, if the spouses have children who possess the nationality of the hosting state.⁷⁷ If one of the above conditions fulfilled, individuals have the right to freely enjoy work rights in a country of residence.

2.1.2 Legal Principles Ensuring Refugee Work Rights Enshrined Under the 1951 Refuge Convention and ICESCR

The basic legal principles ensuring Refugee work rights enshrined under the 1951 Refuge Convention and ICESCR include:

- ✚ Establishment of Refugees as autonomous persons entitled to dignity and rights in exile under the 1951 Refugee Convention and its 1967 Protocol.

⁷³ Ibid

⁷⁴ 1951 Convention, Art.17(2)

⁷⁵ Ibid, Art.17(2)a

⁷⁶ Id.,Art.17(2)b

⁷⁷ Id, Art.17(2)c

- ✚ Almost 85% of signatory State Parties to the 1951 Convention have agreed to extend the right to engage in wage-earning employment to Refugees, without Reservation to the provision of the Convention.
- ✚ Refugees who are lawfully staying in a country of asylum have equal and identical access to gainful employment with that accorded to foreign nationals.
- ✚ According to the 1951 Refugee Convention, Refugees lawfully in a country of refuge have a right to self-employment on terms no less favorable than those given to aliens generally.⁷⁸
- ✚ The 1951 Refugee Convention also waives restrictions imposed on the employment of foreigners for the protection of a national labor market for some group of individuals fulfilling certain conditions. The restrictions do not apply to refugees, who lived in host state for three years and above, as well as it extends to refugees whose spouse or a child is a national of a hosting state.⁷⁹
- ✚ The 1951 Convention imposes obligation on Member States to take action to assimilate the rights of all refugees with regard to wage-earning employment.⁸⁰
- ✚ The 1951 Refugee Convention exempt Refugees from any preconditions or requirements to obtain work permits or permission to start a business in case by their nature a refugee is incapable of fulfilling.⁸¹

2.1.3 Challenges and Limitations to the 1951 Refugee Convention Right to Work

The 1951 Refugee Convention is truly universal instrument setting out the baseline principles on which the international protection of refugees has been built.⁸² A political economy status of the hosting countries to some extent determines their capacity to open their labor market to aliens.⁸³ Some of emerging economies and most of least developed countries are very reluctant to open their labor market to refugees to ensure the right to employment.⁸⁴ Most states put restrictions by way of reservation to the provisions of the convention that guarantees the right to

⁷⁸ Ibid, Art.18

⁷⁹ 1951 Convention, Art.17(2)

⁸⁰ Ibid, Art.17(3)

⁸¹ Id., Art.6

⁸² Adrienne Millbank, 'The Problem with the 1951 Refugee Convention'(2000)Department of the Parliamentary Library Research Paper No.5 2000–01,18 <<https://www.aph.gov.au/binaries/library/pubs/rp/2000-01/01rp05.pdf>> accessed 11 June 2020

⁸³ Roger Zetter & Héloïse Ruauadel, 'Refugees' Right to Work and Access to Labor Markets–An Assessment' (2016)The KNOMAD Working Paper and Study Series,4 <<https://www.knomad.org/publication/refugees-right-to-work-and-access-labor-markets-assessment-part>> accessed 10 June 2020

⁸⁴ Ibid 5

work of refugees. Restrictions on the right to work emanates from the fear that it will distort labor markets by reducing the number of jobs available to citizens.

The Refugee population accounts a very small percentage in countries that made reservations to Articles 17–19 of the 1951 Refugee Convention, and in non-signatory states that restrict refugee’s right to gainful employment.⁸⁵ Some of governments do not consider refugee’s as a contributors to the national economy. The Politicians rather often use refugee’s right to work as election campaign tool and some of them see refugees as economic opportunity takers than economic contributors to hosting states.

Some 75 States out of 145 States Parties to the 1951 Convention complies refugees right to gainful employment by way of accession to provisions from Articles 17–19.⁸⁶ Accontarario speaking, almost the other half of state parties to the 1951 Convention reserved to those articles. The other 48 state parties are non-signatory to the convention, almost greater number of them restrict refugees right to gainful employment.⁸⁷ In other words, number of states that impose restrictions to the right to work is much greater than those not imposing the same.

Refugee rights under the Convention expand incrementally, depending on the nature and duration of time a refugee’s stay in a hosting state.⁸⁸ The refugee’s level of attachment to the host state and access to some of the rights depends on duration of stay in the host state. “Thus, some rights would not be attainable until a certain period of time is met.”⁸⁹

According to Chapter III of the 1951 Convention, Refugees work rights categorized into three employment types. These include the right to Wage earning employment, the right to self-employment and the right to exercise Liberal Profession. The right to self-employment granted to the refugee that is lawfully in the country of asylum while the right to wage-earning employment granted to a refugee that is lawfully staying in the hosting country or obtained refugee status in the hosting country.⁹⁰ The right to work that grant to an individual who has refugee status is the maximum access available to a foreigner.⁹¹

⁸⁵ Ibid

⁸⁶ Reservations and Declarations 1951 Convention(n 7)

⁸⁷ Zetter and Ruaudel(n 83)5

⁸⁸ 1951 Convention,Art.17(1)

⁸⁹ Hathaway, J, *The Rights of Refugees Under International Law*(Cambridge University Press 2005)154.

⁹⁰ 1951 Convention,Art.17 cum.18

⁹¹ Ibid

ICESCR has gaps for that it allows developing countries to determine the extent to which they will guarantee the work rights to non-nationals depending on their economy and resources.⁹² In other words, the Covenant leaves to member states the extent to which they open up their labor market to non-nationals including refugees and asylum seekers. This has led to criticism of the Covenant against the work right of refugees. Moreover, the interpretation set by the UN Committee on ICSECR also allows State Parties in certain circumstances can limit covenant rights on the ground of resources.⁹³ States do not have similar resources and their capacity depends on their level of development. Despite the fact that states are allowed to invoke lack of sufficient resource to grant work rights, they are prohibited from treating refugees below the minimum standard even for lack of resources as interpreted by the UN Committee. The UN Committee on ICESCR has defined a “‘Minimum Core’ of rights, defined as the minimum requirements to live a dignified life.”⁹⁴ Therefore, State parties to the covenant are duty bound to ensure these minimums at all times.

States shall put in place economic and technical cooperation to take deliberate, concrete and targeted actions towards ensuring work rights to refugees. They shall individually and through international assistance to the maximum of its available resources” undergo towards progressively achieving the full realization of the Covenant rights.⁹⁵ States shall also refrain from interfering directly or indirectly with the enjoyment of such rights of refugees under the Covenant.

While the rights under ICCPR are subject to immediate and full realization by the State Party, the rights under ICESCR are subject to progressive realization such that neither nationals nor non-nationals can necessarily expect to benefit fully from these rights.⁹⁶ Foreigners should not be prohibited from enjoying the minimum core of rights under ICESCR.

States treatment to aliens is uncertain as far as one of economic rights particularly the right to work is concerned because Art.2 (3) of ICESCR allows to states for the possibility of differing treatment with regard to non-nationals. However, states should provide Refugees with the most generous treatment possible to ensure work rights and accelerate their integration to the local people as well. Unlike other aliens, these people should be treated as a group who left their

⁹² ICESCR, Art.2, para.3

⁹³ General Comment No.20 Para.30

⁹⁴ Ibid

⁹⁵ International Rescue Committee, ‘Overview of Right to Work for Refugees Syria Crisis Response: Lebanon & Jordan’ (From Harm To Home, 1 January 2016)2 <<https://www.rescue.org/report/policy-brief-overview-right-to-work-refugees-syria-crisis-response-lebanon-and-jordan>> accessed 10 June 2020

⁹⁶ Rosa da Costa, ‘Rights of Refugees in the Context of Integration: Legal Standards and Recommendations’ (2006) Legal and Protection Policy Research Series POLAS/2006/02, 20-21

country involuntarily and can no longer seek the protection of that State.⁹⁷ That is why they should be given the full maximum protection in a manner it ensures theirs and their families livelihoods.⁹⁸

2.1 The Right to Employment under 1969 OAU Refugee Convention

The 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa raised some confusion primarily because it does not explicitly provide employment rights for refugees.⁹⁹

At the time of elaborating the 1969 OAU Refugee Convention, a central pre-occupation in the refugee reality in Africa was the quality of life for refugees, or, rather, their dismal state.¹⁰⁰ One of the drafts to the 1969 OAU Convention had detail provisions relating to wage-earning and self-employment as well as liberal professions. After a long debate on the necessity and contents of the provisions, they were dropped out because of the “the concern to ensure full harmony with the principles of the 1951 Convention.”¹⁰¹

The 1969 OAU Convention is silent about the right to work of refugees. The economic rights of refugees were not included in the convention though discussions and debates conducted at the formation level. Refugees must have access to work to earn money to afford food for themselves and their family living. They need a fundamental policy change that has to be brought through the facility and legal reform.¹⁰²

Most of refugees flees from Africa because of conflicts. Developed countries particularly Europe and America decided to block this refugee movement and wanted to help poor countries hosting refugees enable them cop-up with the situations. They even mainly intended to resettle African refugees in their countries or some other countries in Africa. European even think of resettling African refugees back home or settling them in other African countries that’s why they pledge to fund refugee projects. Efforts have been also made to resettle African refugees in other African countries thereby provide them with education and work opportunities to sustain

⁹⁷ Ibid

⁹⁸ Ibid

⁹⁹ Marina Sharpe, ‘The Employment Rights of Refugees in Africa Under the 1969 African Refugee Convention’ (Asylum Access, 19 December 2011) <<https://rtwasylumaccess.wordpress.com/2011/12/19/the-employment-rights-of-refugees-in-africa-under-the-1969-african-refugee-convention/>> accessed 10 June 2020

¹⁰⁰ Okoth-Obbo G. ‘Thirty years on: A legal review of the 1969 OAU Refugee Convention Governing the Specific Aspects of Refugees Problems in Africa’ (2001) 81, Vol. 20, No. 1, RSQ 79, 138

¹⁰¹ Ibid

¹⁰² Ibid 104

their life.¹⁰³ To achieve this purpose, Bureau for Placement, Education and Resettlement (BPEAR) was organized within the Secretariat of OAU and the initiatives were mandated under the aegis of the concept of burden-sharing.¹⁰⁴

Almost all African countries hosting refugees are poor and their resource is hardly sufficient to cover even the basic needs of their own people.¹⁰⁵ The 1967 Conference on Legal, Economic and Social Aspects of African Refugee Problems outlined in detail the general guidelines of the standards that might be elaborated within the African context with the idea that these should be considered in the elaboration of the Convention.¹⁰⁶ Some scholars argue that in states that have ratified both the 1951 Convention and the 1969 African refugee conventions: “The African refugee would then be able to enjoy the specific and well-defined rights relating to gainful employment, freedom of movement, rights relating to economic pursuit such as, labor legislation, and other benefits related to employment.”¹⁰⁷

The 1969 OAU Convention expressly recognizes the legal status and validity of the 1951 Refugee Convention and even it further provokes OAU Member States to accede to the 1951 Convention. This clearly shows that the 1969 OAU Convention does not preclude the application by its Member States of the additional provisions of the 1951 Convention relating to such matters as gainful employment, welfare, housing, public education.¹⁰⁸

The 1967 Conference was unsuccessful in terms of finding legal basis for the economic rights of refugees. However, following it, another conference conducted in Arusha in a motive to prepare roadmaps to find out the basis for the rights of refugees. The economic rights of refugees raised debates among governments at a political and rhetorical level though it could not yield expected legal solution. “Increasing recourse by governments to encampment of refugees as the policy of choice above all else simply serves to imbed the refugees deeper into dependency upon relief assistance.”¹⁰⁹

“The expansion of socio-economic opportunities for refugees and host communities under the CRRF will respond to important challenges facing refugees by promoting respect for refugees’

¹⁰³ Ibid 93

¹⁰⁴ Ibid

¹⁰⁵ J O Moses Okello, ‘The 1969 OAU Convention and the Continuing Challenge for the African Union’ (2014) FMR48, 70-73

¹⁰⁶ Obbo (n 100) 104

¹⁰⁷ Marina Sharpe, ‘The 1969 African Refugee Convention: Innovations, Misconceptions, and Omissions’ (2012)

58 McGill Law Journal 95, 127 <<https://ssrn.com/abstract=2855919>> accessed 15 June 2020

¹⁰⁸ Ibid 140

¹⁰⁹ Obbo (n 100) 104

work rights, the CRRF fosters refugees' self-sufficiency.¹¹⁰ Refugee laws and/or policies of some AU Member States are not in line with the Global Compact on Refugees (GCR) and this would hinder expanding socio-economic opportunities for refugees.¹¹¹ Besides, some AU member states have also entered reservations to the 1951 UN and 1969 OAU Refugee Conventions in respect of rights such as education, employment and freedom of movement.¹¹² Unlike the 1951 Convention, the treatments and standards for Refugee handling were not properly set out in the 1969 OAU Refugee Convention. As a regional instrument, the 1969 Convention should have included one of basic rights of Refugees, the right to gainful employment, which is a foundation for other rights including the right to life.

2.2 The Right to Employment under 2016 New York Declaration on Refugees and Migrants

At the New York Summit, all the 193 Member States of the UN voted in favor of the New York Declaration for Refugees and Migrants (Resolution 71/1) and unanimously adopted it. UN Member states reached on a mutual consensus to establish a general framework that governing refugee and migrant's movement across the world. It was a historic opportunity to come up with a comprehensive blueprint for a better international response to the problems of refugees and migrants.¹¹³

On 20 September 2016, on the sidelines of the General Assembly, President of the US Barak Hussien Obama co-hosted the leaders' summit on Refugees, with Canada, Ethiopia, Germany, Jordan, Mexico and Sweden, that appealed the governments to pledge significant new commitments on refugees.¹¹⁴ The UN Secretary-General attended this summit and the consultation intended to increase global responsibility for refugees.¹¹⁵ During the meeting, representatives of 47 States committed to legal and policy changes to enhance refugees' right to education, employment and social services.

In the New York Declaration, the General Assembly set out the key elements of a Comprehensive Refugee Response Framework (CRRF) that designed not only to ease pressures

¹¹⁰ Tsion Tadesse Abebe and Allehone Abebe and Marina Sharpe, 'The 1969 OAU Refugee Convention at 50' (Africa Portal, 22 Oct 2019) <https://www.africaportal.org/publications/1969-oau-refugee-convention-50/> accessed 15 June 2020

¹¹¹ Ibid 12

¹¹² Ibid 13

¹¹³ Amnesty International, 'UN: Narrow National Self-Interest Must Not Scupper Ban Ki-Moon's Initiative to End Refugee Crisis' (25 July 2016) <https://www.amnesty.org/en/latest/news/2016/07/un-narrow-national-self-interest-must-not-scupper-ban-ki-moons-initiative-to-end-refugee-crisis/> accessed 11 June 2020

¹¹⁴ UN, 'United Nations Summit for Refugees and Migrants 2016' (19 September 2016) <https://refugeesmi.grants.un.org/summit> accessed 11 June 2020 Hereafter cited as (UN Summit on Refugees 2016)

¹¹⁵ Ibid

on countries hosting large numbers of refugees but also to enhance refugee self-reliance.¹¹⁶ Moreover, these elements also aimed to expand refugee's access to third-country solutions, and support conditions in countries of origin for return in safety and dignity.¹¹⁷

The key elements of CRRF include:¹¹⁸ a) rapid and well supported reception and admissions; b) support for immediate protection, health and education); c) assistance for institutions and communities receiving refugees; and finally d) wider opportunities for solutions. New York Declaration includes commitments of governments intended to fully respect and protect the human rights of all refugees and migrants as rights-holders, regardless of their status.¹¹⁹

The New York Declaration contains bold commitments among others includes:¹²⁰

1. Consider and strengthen the economic and social contributions made by refugees and migrants to development of the hosting states.
2. Whenever there is a large movement of refugees or a protracted refugee situation in their territory, the States also agreed to implement CRR based on a new framework that clearly sets out mandate of member states, civil society partners and the UN System
3. Expand the opportunities for refugees to relocate to other countries through labor mobility or education schemes.

Besides, the New York Declaration laydown the foundation for collective action by states to improve the situation of refugees and migrants. "It sets out a process for the development of two 'global compacts', the one on refugees and the other for safe, orderly and regular migration."¹²¹

Moreover, the Declaration also gives the mandate to UNHCR to coordinate the states and other international organizations to achieve its commitments. The Declaration reads, "We invite UNHCR to engage with States and consult with all relevant stakeholders with a view to evaluating the detailed practical application of the CRRF and assessing the scope for refinement and further development."¹²²

¹¹⁶ UNHCR, 'Bringing the New York Declaration to Life' (January 2018) <<https://www.unhcr.org/593e5ce27.pdf>> accessed 11 June 2020

¹¹⁷ Ibid

¹¹⁸ UNHCR, 'Comprehensive Refugee Response Framework: Delivering more comprehensive and predictable responses for refugees' (2016) <<https://www.unhcr.org/comprehensive-refugee-response-framework-crrf.html>> accessed 11 June 2020. Hereafter cited as (UNHCR CRRF Report)

¹¹⁹ Office of the High Commissioner for Human Rights, 'New York Declaration' (2016) <<https://www.ohchr.org/EN/Issues/Migration/Pages/NewYorkDeclaration.aspx>> accessed 11 June 2020

¹²⁰ Ibid

¹²¹ UN Summit on Refugees 2016(n 114)

¹²² New York Declaration for Refugees and Migrants, A/RES/71/1, Annex 1, para. 18 (19 September 2016)

The pledges made at the New York summit contributed to the revision of the old 2004-refugee proclamation and the adoption of the new 2019 refugee law. The new law incorporated the principles and entitlements that relating to the right to work as enshrined in the New York Declaration in general and the Global Compact in particular.

CHAPTER THREE: THE RIGHT TO WAGE-EARNING EMPLOYMENT UNDER ETHIOPIAN REFUGEE LAW

3.1 Introduction

Ethiopia renounces its reservations to the 1951 Refugee Convention through adopting the 2019 refugee proclamation and move towards ensuring the improvement of rights and service delivery to refugees. Even though we did not formally withdraw our reservation to Art 17(2) of the 1951 Convention, we adopted the new law that ensures refugees rights from working and moving freely, limiting their ability to earning decent wages.¹²³

Ethiopia has a long-standing history of hosting refugee and the people as well as the government welcome asylum seekers for long time. The country keep open all doors, receive and as much as possible respect and protect the human rights of refugees. In 2004, the country adopted national legislation based on the 1951 Refugee Convention to which Ethiopia is a party. However, the 2004 Refugee Proclamation falls short of for basic protections relating to the right to work particularly the right to wage-earning employment of refugees and on other issues. This and other reasons necessitated repealing the old 2004 Refugee Proclamation and the parliament adopted new refugee law on 17 January 2019, making it one of the most progressive refugee policies in Africa.

The following chapter will briefly show the details of pledges made by Ethiopian government and its implementation tools particularly with regard to the right to gainful employment in general and the right to wage-earning employment in particular.

3.2 Ethiopia's Pledges towards Widening Employment Opportunity for Refugees

“The Ethiopia Refugee Operation continues to seek innovative, cost-effective and sustainable ways to deliver basic needs and essential services, including life-saving activities.”¹²⁴ A Comprehensive Protection and Solutions Strategy has been developed for registered refugees in the country and its objectives focus on the expansion of existing community facilities and gainful employment as part of the broad refugee response.¹²⁵ The Strategic Objectives of the country are adapted to suit to the specific situations and needs of refugees. Among others, the strategic objectives include strengthening access to labor opportunities and supporting the

¹²³ ReDSS(n 9)7

¹²⁴ UNHCR, ‘Ethiopia Country Refugee Response Plan’(Operational Portal, 29 January 2019)5 <<https://data2.unhcr.org/en/documents/details/67744>> accessed 11 June 2020

¹²⁵ Ibid

implementation of pledges in line with CRRF to expand access to rights, services, and self-reliance opportunities in the longer-term.¹²⁶

“Ethiopia’s commitments under the global compact on refugees – offered within the framework of the New York Declaration and Leaders’ Summit – entails two undertakings.”¹²⁷ The first undertaking is clarification of the promises. Some of the promises were not clear so that need clarification and detail guidelines in line with the 1951 Convention and other relevant laws. The second includes the promises that need establishment of an implementation roadmap directing the program of actions required in the particular setting of each of the interventions – which, in time, expected to be subsumed under the CRRF.

Later on, in coordination with other international and local stake-holding organizations, the Roadmap adopted by the one of the relevant organ of the government, which established to coordinate and oversee refugee affairs, the Authority for Refugees and Returnee Affairs (ARRA).¹²⁸ The Roadmap clearly puts details of the promises and particulars of the commitments undertaken; it also further set out timeline for the implementation of the commitments and even identified the potential sources of funding for its implementation.¹²⁹

The pledge relating to the right to wage-earning employment remains as one of basic thing to widen up employment opportunities for refugees. This pledge allows deployment of refugees on industry parks to enable them to get access to work thereby help development plan of the country. This commitment requires huge amount of money to build industry parks in some selected sites. However, as indicated in the pledge, World Bank, donor countries, and other international development organizations would participate as partners of this job-creation project. The pledge implementation vows the international development partners to build additional industry parks in coordination with the GoE to enable them generate job opportunities that could employ up to 100,000 persons, of which 30,000 would be dedicated to refugees granted work permits.¹³⁰

The commitment and assurances relating to job-creation need legislative and procedural measures. The 2019 Refugee Proclamation is waiting for subsequent regulation, directive and procedures in order to implement refugees’ rights. The Comprehensive legal and procedural guidelines that would enable refugees to exploit their every single entitlements and deliverables are not yet issued.

¹²⁶ Ibid 12-13

¹²⁷ ARRA Roadmap 2017(n 13)

¹²⁸ Woldetsadik, Mulatu and Edosa(n 25)8

¹²⁹ Ibid

¹³⁰ Ibid

The endorsement of the national strategy on CRRF and adoption of guidelines to the 2019 Refugee Proclamation would be helpful in the implementation of Refugees rights. In my opinion, the adoption of CRRF into the legal regime like regulation and directives would further guarantee the implementation of the rights of refugees. The details should as much as possible show the entitlements of refugees and the responsible organs of the government to carry it out.

Though there have been measures taken by the GoE so far to protect and implement refugee rights as indicated in the pledge, uncertainties also remain. The uncertainties are in relation to whether the revised law is fully corresponds with the rights of refugees under international instruments and how it fit to smooth implementation of the objectives enshrined under the roadmap itself.

We need further dig into the relevant provisions of the 2019 Refugee Proclamation to see whether this law clearly widens the right to employment. I will briefly discuss this in the next Chapter.

Some of the pledges of the Ethiopia Government aimed at opening job access to refugees to enable them exercise their right to employment in a legal manner. The GoE Pledges with respect to work rights can be grouped together according to the following thematic areas:¹³¹

- Work and job creation
 - ❖ Granting work permits to refugees and to those with permanent residence ID, within the bounds of domestic law.¹³²
 - ❖ Granting work permits to refugees in the areas permitted for foreign workers, by giving priority to qualified refugees. Qualified refugees in a sense that priority would be given to those refugees who has a certification for certain positions.
 - ❖ Making available 10,000 ha of irrigable land to allow 100,000 people including refugees to engage in crop cultivation and production.¹³³
 - ❖ Building industrial parks where some percentage share of jobs will be committed to refugees. In this aspect, it is agreed with development partners that 70% of the employment opportunity will be for local community and the remaining 30% would be for refugees.¹³⁴

¹³¹ ReDSS(n 9)7

¹³² Ibid

¹³³ ARRA Roadmap 2017(n 13)7

¹³⁴ Ibid

The implementation of pledges would aggressively improve the standard of living and strengthen the protection of refugee's right to employment. The pledges that accompanied by the CRRF are targeted at fully enhancing and improving refugee's protection in a standardized way.¹³⁵

Although refugees are allowed to have the right to engage in gainful activity inside and outside the camps, there is no clear procedural guideline in Ethiopia. Local economic integration strategies include four types of exchanges.¹³⁶ The first interaction is local NGO's and UN agencies hire refugees as incentive workers. This is not formal employment and the money paid for it, is not a salary rather it is a little amount of money paid in consideration of not the position but help refugees livelihood. The second kind of interaction mechanism leaves refugees with the right to sale their rations at the local markets. The other interaction is the engagement of refugees in small business activities supported by livelihoods programming, like NGOs. The last kind of interaction is, refugees hired for daily wages by local employers. They informally work as laborers for local employers through informal agreements. Refugees also make trade exchanges with the host communities within and outside the camps.

3.3 The Comprehensive Refugee Response Framework and its implementation in Ethiopia

The CRRF is the focal point for Ethiopian government's new refugee policy. Its implementation comprises four key elements:¹³⁷ (a) the implementation of nine pledges, (b) strengthening the legal and policy framework, (c) supporting host populations, and (d) strengthening coordination mechanisms.

As outlined in the New York Declaration, UNHCR provided with the mandate to engage with States and relevant stakeholders to evaluate the detailed application of the CRRF and assess the scope for refinement and further development.¹³⁸ Following this, in consultation with states and international organizations, UNHCR has initiated comprehensive refugee responses (CRRs) in thirteen countries.¹³⁹ In Africa, seven countries including Djibouti, Ethiopia, Kenya, Rwanda, Somalia, Uganda and Zambia are implementing CRRF. The UN convinced that member states should be supported in terms of resources to fully implement the CRRF. The Comprehensive

¹³⁵ Ibid 24

¹³⁶ Interview conducted with ARRA Gambela Office Protection Head, Mezgebework Gebremariam,10 December 2019

¹³⁷ Ethiopian Investment Commission, 'Draft Environmental and Social Systems Assessment: Economic Opportunities Program'(World Bank Group 23 March 2018) World Bank/AFCE3FY18,48 Hereafter cited as (Ethiopian Jobs Compact 2018)

¹³⁸ UNHCR CRRF Report(n 118)

¹³⁹ Ibid

Responses applied in full partnership with relevant national and local authorities, UN entities, NGO partners, the private sector, and other stakeholders.¹⁴⁰

The Ethiopian government formally launched the CRRF at the end of 2017. By doing so the government paved the way for effective implementation of the pledges made at the New York leaders' Summit. The GoE started taking measures in the form of legislative initiatives prior than the adoption of New York Declaration and the pledges made at leaders' summit in New York. Consultations were taken place between different development partners and respective responsible organs of the government. On 21 July 2016 ARRA and UNHCR convened the first meeting initiating to prepare Draft Regulation to complement the then 2004 Refugee Proclamation.¹⁴¹

The consultations identified the strengths, gaps as well as weaknesses of the 2004 Refugee Proclamation and further analyzed the legal regimes and experiences of other refugee hosting countries, and finally discussed on how to draft Regulation and directives to complement the 2004 Proclamation.¹⁴²

The aim of aggressively conducted consultations was to prepare Comprehensive and Progressive implementation tools like Regulation and directives for the 2004 Proclamation. It also targeted to draft Refugee Regulation that endows a wide variety of rights and opportunities to refugees and asylum seekers in Ethiopia.¹⁴³

The consultations further indicated the lack of clarity of provisions setting out the rights of refugees and asylum seekers in the 2004 Refugee Proclamation.¹⁴⁴ The engagements recommended the formation of detailed legislation clearly stating work rights and responsibilities of refugees and asylum seekers as a basic step to accelerate the implementation of the rights in a standardized way.¹⁴⁵

A draft "Roadmap for the Implementation of the Pledges" was set out and stakeholders including government and non-governmental organizations participated in a meeting organized by ARRA on a conference conducted on 20th February 2017.¹⁴⁶ The Draft Roadmap enriched

¹⁴⁰ Ibid

¹⁴¹ Yonas Birmeta, 'Refugee Protection in Ethiopia'(2017)Vol.1,AAU ILS,156

¹⁴² Ibid 158

¹⁴³ Ibid

¹⁴⁴ ARRA, ARRA-UNHCR Consultations: Regulations to the 2004 Refugee Proclamation: Comparative Practices in Selected African Countries and Way Forward, Addis Ababa, 21 July 2016(Unpublished)

¹⁴⁵ Ibid

¹⁴⁶ ARRA Roadmap 2017(n 13)8

through various engagements taking into account the legal and practical challenges that come across while exercising the rights as enshrined in the 1951 convention. “The Roadmap clearly states the application of the CRRF in Ethiopia should be through the implementation of the Pledges in line with the objectives pursued by the international community in the New York Declaration.”¹⁴⁷

The Roadmap also lists out the tasks that need to be accomplished to make the pledges practical.¹⁴⁸ The list of activities includes legal and policy reforms, assessment and analysis, capacity building and technical support, development oriented interventions, emergency response and governance structure.¹⁴⁹

Despite the fact that there were detail comprehensive commitments to implement the pledges, the progress to prepare easing legal instruments is slow. In terms of organization of the content and task force, the roadmap had undergone a big step. ARRA, the government’s entity for implementing policies related to refugees and returnees, is in charge of implementing the CRRF.

To accelerate and facilitate the implementation process, the Roadmap establish a Steering Committee under the Office of the Prime Minister. The Committee is chaired by ARRA, the Ministry of Finance and Economic Cooperation(MoFEC), and UNHCR, and a development advisor from the donors is expected to provide technical expertise directly to the co-chairs.¹⁵⁰ Annexed to the Roadmap are the detailed descriptions of activities under each thematic area along with the time line and key partners as well as the CRRF Governance Structure.¹⁵¹

¹⁴⁷ Ibid

¹⁴⁸ ARRA Roadmap 2017(n 13)7

¹⁴⁹ Birmeta(n 141)158

¹⁵⁰ International Rescue Committee, ‘New Responses to the Refugee Crisis: Promises and Challenges in Ethiopia’(November2018)11 <<https://www.rescue.org/sites/default/files/document/3285/ethiopicasestudy.pdf>>accessed 11 June 2020

¹⁵¹ Ibid

CHAPTER FOUR: PROSPECTS OF THE NEW ETHIOPIAN REFUGEE LEGAL FRAMEWORK IN UPHOLDING THE REFUGEES RIGHT TO WAGE-EARNING EMPLOYMENT

4.1 Introduction

Ethiopia seeks to grant work permits and access to irrigable land for crop cultivation through pledges that serve as a vehicle for implementing the CRRF. The country has undergone a remarkable step to provide a higher percentage of jobs within industrial parks to refugees; and other essential social services. However, the country lacks a legal regime that ensures the implementation of the CRRF without undue constraints.

The 2019 Refugee Proclamation helps out refugees to become independent, better protected and has greater solution to tackle their problems. Irrespective of lack of resources, the fulfillment of commitments will be depending on the burden-sharing principle between UN Member States. This Chapter will show that the prospects of the 2019 refugee law particularly relating to the right to wage-earning employment are a big step forward and promising. It also demonstrates the proclamation need supporting regulation and directive that harmonized with other relevant laws for immediate implementation.

4.2 The Implication of 2019 Refugee Proclamation on Wage-Earning Employment

The 2019 Refugee law is reflective of the nine pledges made in 2016 under the New York declaration, CRRF and the Inter-governmental Authority on Development (IGAD) Declaration on Durable Solutions, specifically addressing refugees from Somalia.¹⁵²

During the 2016 UN Summit on Refugees and Migrants in New York, the Prime Minister of Ethiopia undertook nine pledges to further improve rights, protection and service delivery to refugees in the country.¹⁵³

The conventional practice in Ethiopia shows open-door policy that has been re-affirmed through the pledges aimed at strengthening the due-care accorded to the refugees.¹⁵⁴ However, the

¹⁵² Mehari Taddele Maru, 'IN DEPTH:Unpacking Ethiopia's Revised Refugee Law'(Africaportal, 13 Feb 2019) <<https://www.africaportal.org/features/depth-unpacking-ethiopias-revised-refugee-law/>>accessed 10 June 2020

¹⁵³ Ibid

¹⁵⁴ Gessesse(n 18)4

implementation of the pledges has now called for further legislative reforms in line with Ethiopia's international commitments and based on national interest and priorities.¹⁵⁵

The decision to allow refugees and asylum seekers to engage in wage earning employment praised by UNHCR.¹⁵⁶ On the other hand, the particular provision refrains from affording the same working rights as Ethiopian nationals.¹⁵⁷ Actually, the provision was not supposed to extend the same standard of treatment to that of nationals. Instead, the provision enshrines that refugees will have the right to engage in wage-earning employment under the same circumstance as the most favorable treatment accorded to foreign nationals.¹⁵⁸

After an intensive diplomacy, the long awaited 2019 refugee law introduced to confer legal standing to the CRRF and other pledges Ethiopia made to the UN, EU and other development partners.¹⁵⁹ The implementation of the pledges and agreements made with partners need repealing the 2004 Refugee Proclamation that did not provide the right to gainful employment and local integration of refugees as a major durable solution.¹⁶⁰

4.3 The 2019 Refugee Proclamation as a Tool to Implement Ethiopian Pledges

Ethiopia's 2019 Refugee Proclamation is been acknowledged positively by the international organizations including UNHCR for it allows refugees to obtain work permits, drivers' license, access to education, national financial services, such as banking and others.¹⁶¹

Just weeks, after the UN General Assembly summit adopted the Global Compact on Refugees, on 17 December 2018, the Ethiopian parliament enacted the new 2019 Refugee Proclamation.¹⁶² This Proclamation focuses on ensuring refugees work rights to be self-reliant and contribute to local economies in a way that benefits their hosts. The drafting process of the new legislation was led by ARRA while the UN refugee agency, UNHCR and other stakeholders participated in the process of formation. The process involved evaluation of the old 2004 proclamation and

¹⁵⁵ Ibid

¹⁵⁶ UNHCR Report 2019(n 1)

¹⁵⁷ Ibid

¹⁵⁸ Refugee Proclamation 2019, Art. 26 (1).

¹⁵⁹ Maru(n 152)

¹⁶⁰ Ibid

¹⁶¹ UNHCR, 'UNHCR Welcomes Ethiopia Law Granting More Rights to Refugees' (18 January 2019) <https://www.unhcr.org/news/press/2019/1/5c41b1784/unhcr-welcomes-ethiopia-law-granting-rights-refugee_s.html> accessed 11 June 2020. Hereafter cited as (UNHCR Press 2019)

¹⁶² Ibid

identified the gaps that hinder refugees from exercising their right to wage-earning employment, freedom of movement, access to education, and integration.¹⁶³

The following section will briefly discuss the right to wage-earning employment as one of gainful work rights allowed under the Ethiopian 2019 Refugee Proclamation.

4.3.1 The Right to Wage-Earning Employment

According to Art.17(1) of 1951 Convention, the right to engage in wage-earning employment applies to refugees lawfully staying in the country of residence. Lawfully staying in strict sense implies a refugee's level of attachment to the hosting state.¹⁶⁴ Lawfully staying interpreted in different countries in different context, and the Michigan guidelines clearly explain status amounting to lawful stay.¹⁶⁵

When we read Art.17(1) cum. article 6 of the 1951 Convention, it gives us a full picture with respect to refugee's lawfully staying should be accorded the right to engage in wage-earning employment without any precondition.¹⁶⁶ This refugee has also a right to be eligible to work permit without any requirements even when they are unable to meet those requirements due to the hardship that resulted from their forced displacement.¹⁶⁷

According to Art.21(3) of the repealed 2004 refugee proclamation, there is a restriction imposed on the right to engage in wage-earning employment in Ethiopia. The refugee rights particularly relating to wage-earning employment were not better explained in stronger terms in the Convention as well as the 2004 proclamation. Putting the minimum threshold in comparison to other foreign nationals does not seem fair because the latter displaced for other reason than refugees.

According to the 2019 refugee proclamation, recognized refugees as well as asylum-seekers shall have the right to engage in wage earning employment in the same circumstance as the most favorable treatment accorded to foreign nationals pursuant to relevant laws.¹⁶⁸ The activities under wage-earning employment include waitress, chefs, working garages, medical staff, and etc. In this respect, the government set to offer jobs to refugees in the Dire Dawa Industrial Park.¹⁶⁹ Access to jobs not only limited to industrial parks but also extends to projects

¹⁶³ Ibid

¹⁶⁴ Wirth,Defilippis and Therkelsen(n 63)12

¹⁶⁵ Michigan Guidelines(n 57) para.8

¹⁶⁶ Wirth,Defilippis and Therkelsen(n 63)13

¹⁶⁷ Ibid

¹⁶⁸ Refugee Proclamation 2019,Art.26(1)

¹⁶⁹ Maru(n 152)

in rural or urban setting including but not limited to agriculture, environment, industry, and small and micro enterprises.¹⁷⁰

The treatment accorded to refugees and asylum seekers decided based on the reference to other laws governing aliens. To identify the ‘most favorable treatment accorded to foreigners in Ethiopia’, we need to refer other scattered laws governing foreigners’ affairs in Ethiopia.¹⁷¹ We also need to identify who are the most favored foreign nationals in Ethiopia. It also needs identifying which law offers the most favorable treatment to foreigners to extend that to refugees and asylum seekers. The most favored foreign nationals in Ethiopia are FoEO. Whether recognized refugees and asylum seekers enjoy the same rights to that of FoEO in Ethiopia is also not clear.¹⁷² The Ministry of Labor and Social Affairs did not issue regulation to align its law to the new 2019 proclamation.

When we look into other relevant laws, we found out Proclamation no. 270/2002 that governs providing FoEO with certain rights be exercised in their 'country of origin. One of the reasons necessitated to repeal 2004 proclamation was that Foreign Nationals of Ethiopian origin could contribute to the development of the country of their origin if the legal restrictions pertaining to the enjoyment of certain rights and privileges are lifted.¹⁷³

FoEO individually or in a group have broad rights and protection in the areas of access to labor market and professional license as well as the right to engage in commercial and investment activities.¹⁷⁴ They also allowed having access to jobs in both private and government sectors without work permits and the law tries to treat them almost with privilege equivalent to that of citizens.¹⁷⁵ FoEO are foreigners because they do have another countries passport and in comparison, refugees and asylum seekers are marginalized groups who fled fear of persecution or mass disaster. In both cases, we need to be fair enough, feel humanity and above all see the standard of treatment accorded to refugees is in comparison to FoEO as prescribed by law

Art.26(10) of 2019 Refugee Proclamation imposes restrictions to some areas of jobs to recognized asylum seekers and refugees. These restricted job areas include National Defense, Security, Foreign Affairs and other similar political establishments. These job areas are also

¹⁷⁰ Ibid

¹⁷¹ Interview conducted with ARRA Senior Protection Officer, Sentayehu Kassu, 6 February 2020.

¹⁷² Ibid

¹⁷³ Proclamation Providing Foreign Nationals of Ethiopian Origin with Certain Rights to be Exercised in Their Country of Origin, 2002, Art.5, Proc.No.270, Neg.Gaz. Year 8, no.17. Hereafter cited as (FoEO Proclamation 2002)

¹⁷⁴ FoEO Proclamation 2002, Art.5

¹⁷⁵ Ibid

restricted for FoEO too and provided as exceptions to the rule.¹⁷⁶ Some writers also argue that since there's similarity in areas restricted to both refugees and FoEO, it is safe to conclude that asylum seekers and refugees will enjoy same treatment of wage-earning employment that accorded to Foreigners of Ethiopian Origin.¹⁷⁷

In my opinion, even though FoEO's has attachment to their land in a different way and renounce their citizenship for different cases; the rights accorded to them with respect to wage-earning employment shall be extended to refugees and asylum seekers. In my understanding, we do not have foreigners other than FoEO which given most favored treatment in Ethiopia as per Art 5 of the 2002 FoEO proclamation. In case of employment in joint projects that carried out collectively by the Ethiopian government and international development partners', refugees only expected to fulfill recruitment criteria of the employer but no work permit is required in this projects..¹⁷⁸

According to Art. 15 of Federal Civil Servants Proclamation the right to engage in wage-earning employment in government sector is only reserved to Ethiopian nationals.¹⁷⁹ Technically, it excludes foreigners, refugees and asylum seekers from having job access in government sectors. Thus, refugees and asylum seekers cannot enjoy the right to wage-earning employment in government sector unless treated equally to FoEO.¹⁸⁰ The exception is foreign nationals may get access to job at government sector when there is no professional in the area of expertise in the country.¹⁸¹

The 2019 Labor Proclamation is also not in a position to cop-up with the current refugee law. It grants work permit to foreigners (refugees) on certain requirements and the grant is subject to termination up on expiry of time, renewal in every year and even revoked if the refugee is not required for work.¹⁸²

The right to wage-earning employment is not immediately accessible in Ethiopia. It requires certain criteria for enjoyment of the right. The rights of refugees with respect to wage-earning employment intertwined with that of foreigners and it requires complete understanding of the rights of foreigners under national laws in Ethiopia.

¹⁷⁶ Id.,Art.6

¹⁷⁷ Maru(n 152)

¹⁷⁸ Ibid

¹⁷⁹ Federal Civil Servants Proclamation 2017, Art.15

¹⁸⁰ Interview conducted with ARRA Senior Protection Officer, Sentayehu Kassu,6 February 2020.

¹⁸¹ Federal Civil Servants Proclamation 2017, Art.21(2)

¹⁸² Labor Proclamation 2019, Art.176(1,2&3)

The country is also committed to arrange ‘internships and apprentice opportunities’, ‘improve access to business, finance and start-up capital’, and ‘access to markets’ as indicated in the Roadmap. Currently, Refugees provided with irrigable land in Somali regional state, around Dollo ado area. Even though there’s resistance from the local community, the scheme would benefit both the refugees and hosting community.¹⁸³ The country is willing to make available additional 10,000ha of irrigable land to expand and ensure self-reliance of refugees as well as hosting communities.¹⁸⁴ The provision of irrigable land to refugees and asylum seekers depends on the availability of ‘external financial assistance’ and further needs development of legal regime that governs possession of land by them.¹⁸⁵

The overall agenda is intended to realize self-reliance of refugees by exploiting the right to wage-earning employment to the maximum possible attainable. However, such agendas are provided under the discretionary policies and administrative instruments which have no more value than paper value unless supported by relevant legislation. Thus, the most important issue to ease permanently the limitations to wage-earning employment and to fill refugee’s expectation is enactment of detailed regulation and directive that meet the objectives as outlined under the Roadmap.

4.4 Ethiopia’s Jobs Compact as a means to implement Wage-Earning Employment

Following Uganda, Ethiopia hosts the second largest refugees in Africa by hosting over 900,000 refugees¹⁸⁶ from over 20 countries, with the majority from South Sudan (422,240), Somalia (253,889), Eritrea(173,879), and Sudan(44,620)¹⁸⁷ as well as smaller numbers of refugees from Yemen and Syria.¹⁸⁸ In Ethiopia in 6 regional states, there are 26 refugee camps.¹⁸⁹ These camps located in Somali Regional State receive refugees from Somalia; Tigray and Afar Camps receive refugees from Eritrean, and Gambella, Benishangul Gumuz, and Oromia Region Camps receive refugees from Sudan and South Sudan).¹⁹⁰

¹⁸³ Interview conducted with ARRA, Dolo Ado Office Protection Head, Mehadi Mohamed Yesuf, 11 December 2019.

¹⁸⁴ Ibid

¹⁸⁵ ARRA Roadmap 2017(n 13)9

¹⁸⁶ UNHCR Press 2019(n 161)

¹⁸⁷ Wondwosen Tamrat, ‘A new Refugee Law–Implications for Higher Education’(University World News Africa Edition, 23 August 2019) <<https://www.universityworldnews.com/post.php?story=20190819132407160>> accessed 11 June 2020

¹⁸⁸ Interview conducted with ARRA Protection Division Head, Wondwossen Yigzaw, 4 December 2019

¹⁸⁹ Ibid

¹⁹⁰ Ibid

In Ethiopia, urban-registered refugee population is close to 23,000 people and this includes refugees transferred from the camps to cities for medical and protection reasons, refugees like the Yemeni with no designated camps.¹⁹¹ University students on sponsorship programs and beneficiaries of the out-of-camp living scheme also fall under this urban-registered refugee category. According to available data Eritreans constitute 80% of the urban refugee population, followed by Yemenis(8.3%), Somalis (4.7%), South Sudanese (2.3%) and the remaining (5.4%) from the Great Lakes region.¹⁹²

The GoE is working to expand its industrialization agenda thereby create jobs for Ethiopians and refugees, through the Jobs Compact Program as a part of improving the rights and services of refugees in line with CRRF, the pledges and the roadmap.¹⁹³

The GoE and other development partners asked the World Bank Group to support the effort to implement the jobs compact program in order to create job opportunities for both refugees and host communities.¹⁹⁴ Since early 2017, the World Bank is working closely with the different bodies of the government of Ethiopia, including the Ethiopian Investment Commission (EIC), MoFEC, UNHCR, other donors including the Department For International Development (DFID), the EU, and the European Investment Bank and NGOs to develop an economic opportunities project known as Jobs Compact.¹⁹⁵ “The Economic and Social Systems Assessment (ESSA) is part of the World Bank process in working with the GoE to prepare a program.”¹⁹⁶

The Compact aims to generate 100,000 jobs out of which 30,000 jobs reserved to refugees through \$500 million in concessional funding.¹⁹⁷ Industrial parks are at the core of the government’s industrialization policy and related employment strategy, while opportunities may also arise from employment in small and medium enterprises (SMEs).¹⁹⁸ The Jobs Compact includes commitments like providing work permits and certain basic and essential services to refugees.¹⁹⁹

85% of the global refugee population is hosted by low- and middle-income countries, many of which are also struggling to transform their economies and create sufficient jobs to keep up with

¹⁹¹ Tamrat(n 187)

¹⁹² Ibid

¹⁹³ Ethiopian Jobs Compact 2018(n 137)47

¹⁹⁴ Ibid 1

¹⁹⁵ International Rescue Committee(n 150)10

¹⁹⁶ Ethiopian Jobs Compact 2018(n 137)1

¹⁹⁷ International Rescue Committee(n 150)11

¹⁹⁸ Ethiopian Jobs Compact 2018(n 137)21

¹⁹⁹ International Rescue Committee(n 150)11

demographic challenges.²⁰⁰ Jobs compact or Economic Opportunities Programs (EOP) is a new policy model designed to address these two issues simultaneously.²⁰¹

The implementation of the Jobs Compact Program was supposed to be launched in 2019 and continued for next six years to 2025.²⁰² The Jobs Compact program will be implementing with the ambition of transforming the country's economic development to lower-middle-income status through industrialization by 2025.²⁰³

It is clear that the existing international human rights legal framework provides sufficient legal grounds for protecting refugees in Africa.²⁰⁴ What is lacking is the commitments from African governments strictly adhere to these instruments and to ensure their implementation both in law and in practice.²⁰⁵

Most of States parties to the 1951 Refugee Convention do not have legislations that enable refugees to work in conditions no less favorable than nationals.²⁰⁶ It is also controversial that whether developing States incur the full range of Covenant obligations towards aliens. Article 2(3) of the ICESCR also backs developing countries, with due regard to human rights and their national economy, may determine to what extent they would guarantee the economic rights of non-nationals. The 1951 Geneva Convention and its 1967 Protocol are the basic legal instruments that protect refugees' right to wage-earning employment. Irrespective of their membership to the Convention, States obligations may also arise from international human rights law and customary international law. Mere ratification of the 1951 Convention does not suffice, and States expected to fully grant, implement and ensure the right to wage-earning employment under International Human Rights Laws and Customary International Law.

²⁰⁰ Veronique Barbelet, Jessica Hagen-Zanker, Eva Ludi, Freddie Carver, Dirk Willem te Velde, 'How to Ensure Ethiopia's 'Jobs Compact' Works For Refugees' (Odi, 17 December 2018) <<https://www.odi.org/blogs/10716-how-ensure-ethiopia-s-jobs-compact-works-refugees>> accessed 10 June 2020

²⁰¹ Ibid

²⁰² Ibid 12

²⁰³ Ethiopian Jobs Compact 2018(n 137)10

²⁰⁴ Zachary A. Lomo, 'The Struggle for Protection of the Rights of Refugees and IDPs in Africa: Making the Existing International Legal Regime Work' (2000) 16 Vol. 18, *Berkeley Journal of International Law*, 268-284

²⁰⁵ Ibid.

²⁰⁶ Achilles Skordas, 'The Obligations of States towards Refugees under International Law: Some Reflections on the Situation of Lebanon' (NRC 2016) 10

CHAPTER FIVE: CONCLUSION AND RECOMMENDATIONS

5.1 Conclusion

Ethiopia pledged to ensure the right to work particularly wage-earning employment and prepared the Roadmap for its implementation that resulted in enactment of the 2019 refugee law. The Roadmap further set out the objectives that finally yield Jobs Compact Program that will be operational and create employment opportunity for refugees in industry parks.

The 2019 Refugee law of Ethiopia is highly liberal and substantive in its content, for this reason it may be regarded as model legislation for other countries. The repealed 2004 refugee Proclamation had focused on the protection of refugees, while the new 2019 proclamation aims to offer durable solutions. These durable solutions intended to support self-reliance activities and reduce dependency on government and other aid organizations. A set of reforms and interventions introduced to allow refugees to benefit from job opportunities within and out of industrial parks without putting undue strain on host communities. The current obstacle to make these rights of refugees practical is lack of procedural laws that are compatible with the new 2019 Refugee Proclamation.

Ethiopia is a country where jobs are very critical for survival. The new refugee proclamation shows a novel and clear move towards ensuring the right to wage-earning employment for refugees. The same move would have clearly incorporated in the labor policy of the country too. The implementation of the 2019 proclamation is delayed for lack of detail regulation and directive that harmonized with other relevant laws. Harmonization of the 2019 Refugee Proclamation with other relevant laws would facilitate implementation of the right to wage-earning employment at full scale.

The Ministry of Labor and Social Affairs (MoLSA) and other related government bodies working on employment rights of foreigners (refugees) have old laws that are incompatible with the new refugee proclamation. This restricts a very right of refugee as a protected category of people. Thus, it is believed to revisit and revise such laws to make them comply or make their regulations compatible with the revised refugee law. The subsequent regulations and directives of the labor law too shall clearly incorporate provisions that ease work permit grant process by avoiding unreasonable requirements

‘The most favorable treatment accorded to Foreigners pursuant to other relevant laws’ is not clearly defined in the 2019 refugee proclamation. It is also not clear whether the work permit granted to FoEO as per FoEO law be extend to refugees and asylum seekers without any precondition. For some convincing reasons indicated in this thesis, it seems the work permit is

not extended to refugees and asylum seekers without certain criteria's. However, it can be inferred that the treatment should be as much as possible better than that accorded to other foreigners in Ethiopia and it can be known or decided on case-by-case basis.

Providing the legal framework to take up employment opportunities inside and outside industry parks, provision of skill development trainings, developing employer and employment matching capability, and monitoring mechanisms would be helpful to ensure refugee rights are protected. However, there is also a risk that refugees may end up trapped in a situation which is worse than camps, where their dependency transferred from UN agency to new employer if there is mismanagement of the situation. This means once refugees moved from Camps to industry parks, they shall be provided with permanent jobs otherwise, they fend jobless and even they will lose chance of getting permanent shelter and food within the camp.

5.2 Recommendations

- In light of what has been examined in this thesis, I would like to offer the following recommendations towards ensuring the right to employment of refugees. Enactment of a regulation on the new refugee proclamation is very essential because it can make ambiguities clear to move forward. The upcoming regulation shall clearly show the entitlements and ease conditions to provide the refugees with job. We need detailed directive and procedure guidelines on employment of refugees in joint projects inside and out of industrial parks as per the objectives set out in the roadmap. The government should put in place as soon as possible implementation tools like Regulation and directive in order to accelerate easy enforcement of the right to wage-earning employment of refugees.
- The Labor law, Investment proclamation, Business Licensing and other relevant laws should be revisited and their respective regulations shall be set in a manner they comply and compatible with the 2019 Refugee law to ensure refugees right to wage-earning employment as indicated in the countries international commitments and partnership agreements. The labor law shall ease the conditions in which the refugees could exercise their right to work. Its regulation shall also be amended in a way it allow refugees themselves to get work permit by themselves instead of issuing it based on the request by their employer. Business licensing and investment laws shall incorporate conditions under which refugees can involve in business activities and contribute to the growth of the economy.
- 'The most favorable treatment accorded to foreigners pursuant to relevant laws' shall be clearly defined in the upcoming Refugee regulation and its subsequent directive. The standard of treatment accorded to foreigners of Ethiopian origin shall be extended to refugees and asylum seekers. The grant of work permit shall be without any undue

requirement and this has to be considered in the details of the upcoming regulation and directive.

- The on-going preparation of Draft Refuge Regulation should be designed in a flexible and clear way to promote refugees' right to work and include, clear principles and their respective implementation mechanisms as well. The principles and guidelines that allow the right to employment should be set out to in a full pledged and clear way
- The regulation and its implementation shall balance the needs of both refugees and hosting communities for new jobs created in industrial parks. The relevant government body shall carefully manage job applications by making selection criteria fair and transparent. In case of joint projects, Job opportunities and conditions shall be equal for both refugee and host populations, and other quota shall comply with the agreements made between the country and international development partners.
- In case of joint projects, GoE should facilitate export market integration between industrial parks and European Union countries in return for providing employment quotas and work permits for refugees in these sectors.
- The government shall make the revised 2019 Refugee proclamation and the jobs compact easily accessible to refugees and asylum seekers in order to make decisions on their rights based on full knowledge.
- The GoE and development partners shall entertain all the pledges on refugees and partnership commitments as an interlinked package. Besides, all relevant bodies of the government including bodies in charge of refugees either it be regional or federal, and industrial parks and stake holders should come together to set out a clearer common vision. Otherwise, the cooperation between the government and international development partners will be fragmented and amounts to missing the chances presented for both refugees and hosting communities.
- After all, the provision of jobs alongside implementation of other government pledges like providing refugees access to education, may accelerate local integration. The detail incorporation of CRRF would help self-reliant and confident in their rights. However, these all things highly require in advance policymakers to develop a more coherent approach to the different strands of reform.
- The relevant government body should survey the refugees and asylum seekers' qualifications, skills and needs in order to make the Ethiopian job compact effective. This would help the government inform categories and types of works to be open for refugees. Consequently, this would ease to identify the interventions needed to support and put in place real economic opportunities for refugees.

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