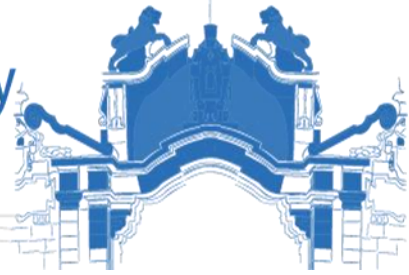




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**PROTECTION OF REFUGEE RIGHTS IN
ETHIOPIA:**

A critical appraisal of Proclamation No. 1110/2019

By

Abraham Tekelye Bekele

December 2022

**PROTECTION OF REFUGEE RIGHTS IN ETHIOPIA:
A CRITICAL APPRAISAL OF PROCLAMATION NO.
1110/2019**

Thesis Submitted in Partial Fulfillment of the Requirements for the Degree of Master of Laws (LLM) in Human Rights Law at the School of Law, Addis Ababa University.

BY

ABRAHAM TEKELYE

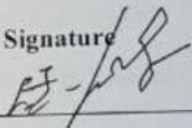
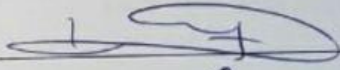
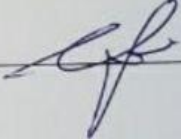
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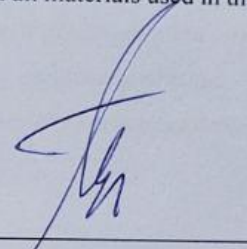
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DECLARATION

I, the undersigned, declare that the thesis entitled “**Protection of Refugee Rights in Ethiopia: A Critical Appraisal of Proclamation No. 1110/2019**” comprises my original work. In compliance with widely accepted practices, I have duly acknowledged and referenced all materials used in this work.



Signature

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Date: December 25, 2022

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List of Abbreviations

ARRA	Authority for Refugee and Returnee Affairs
CRRF	Comprehensive Refugee Response Framework
FDRE	Federal Democratic Republic of Ethiopia
GCR	Global Compact on Refugees
ICCPR	International Covenant on Cultural and Political Rights
ICESCR	International Covenant on Economic Social and Cultural Rights
OAU	Organization of African Unity
RSD	Refugee Status Determination
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNHCR	United Nations High Commissioner for Refugees

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Abstract

Ethiopia proclaimed its first refugee law in 2004 by incorporating international standards and setting limits where relevant. Although it has been part of the main refugee hosting countries of the world for quite some time, the treatment it accords for refugees has been questioned with encampment practices and limit to economic and social rights being at the center. The country since has been showing its dedication joining international initiatives and making pledges to achieve global goals of finding durable solutions to refugee problems and overall burden sharing. Proclamation No. 1110/2019 has been enacted as the new refugee law of the country, repealing the law of 2004, as a show of commitment to the pledges the country has made in the global compact for refugees. This study scrutinizes the objective of the new law vis-à-vis the changes it has made and realities of the country.

Chapter One - Introduction

1.1. Background

Ethiopia has been a host country to refugees fleeing their homes for a very long time. The country's slogan 'Ethiopia: A refugee welcoming nation' seems to reflect its open arm to those fleeing their homes in fear of persecution.¹ The most known historical recollection of the country welcoming refugees dates back to the 7th century Muslim refugees where King Nagashi extended protection to the fifteen people fleeing persecution from the Quraysh.² Ethiopia currently has a population of over 815,000 refugees and asylum seekers, and as of November 2021 it is the third largest refugee hosting country in Africa. The refugees and asylum seekers mainly originate from the neighboring countries of South Sudan, Somali, Eritrea, Sudan and Kenya with the population amount varying from around 383,000 for South Sudan to the lowest of around 4000 from Kenya. Others also come from countries such as Yemen, DRC, Syria, Burundi, Djibouti, Rwanda and others with relatively smaller numbers.³

With a growing number of refugees and asylum seekers the issue of protection has been a major concern for Ethiopia. The country is party to international and regional treaties addressing the issue of refugees such as the 1951 UN Convention Relating to the Status of Refugee and its 1967 protocol⁴, the 1969 OAU Convention relating to the Specific Aspects of Refugee Problems in Africa relating to refugee protection⁵ as well as other human rights treaties which serve as the

¹ Authority for Refugee and Returnee Affairs [herein after referred to as ARRA] website home page<<https://arra.et/>> (last accessed on March 24, 2022)

² Abdulmalik A. Ahmed (2017), *The 7th Century Unwritten Ethiopian Laws on the Protection of Refugees* in Yonas Birmeta(ed), *Refugee Protection in Ethiopia*, International Law Series, Addis Ababa University – School of Law. Vol 1. 23 – 29

³ UNHCR, *Factsheet for Ethiopia*, November 2021

⁴ UN General Assembly, *Convention Relating to the Status of Refugees*, 28 July 1951, United Nations, Treaty Series, vol. 189, p. 137 and UN General Assembly, *Protocol Relating to the Status of Refugees*, 31 January 1967, United Nations, Treaty Series, vol. 606, p. 267 (here in after referred to as the UN refugee convention)

⁵ Organization of African Unity, *Convention Governing the Specific Aspects of Refugee Problems in Africa*, 10 September 1969; [hereinafter OAU Refugee Convention]

basis for the protection of rights and liberties of everyone. The 1995 Ethiopian constitution, which is the supreme law of the land incorporates all international agreement signed into the domestic domain which makes this conventions and treaties integral parts to the laws of the land. Further to this the country has also enacted refugee proclamations and subsequent laws governing refugee protection.

The first refugee proclamation of Ethiopia was enacted in the year 2004⁶ and gave a good impression of the refugee protection framework of the country. With a good definitional element and a narration on the procedures and guidelines for asylum seekers and refugees the law served as the main legal document governing the issue of refugee protection in the country. However, with a growing number of refugees and expanding demand the proclamation was not flexible enough to accommodate the fast-paced changes required and was repealed by a Proclamation No. 1110/2019 in 2019⁷. Proclamation No. 1110/2019 envisaged for a more liberal and open approach for extending protection by incorporating the changes needed while maintaining the definitional and procedural guidelines of its predecessor. It is a proactive law which has aligned the country's interest with that off the international advancements in the fields of refugee response.

The new law comes at a time where the international community has put in place new measures to tackle the refugee crisis. Ethiopia as a forefront actor and a country most affected by the problem has been committed to finding a concerted solution. The country has co-hosted a refugee summit in 2016 where the international community reaffirmed their commitment to tackle refugee problems in a unified manner putting in place a new Global Compact on Refugees (herein after referred to as GCR). On its part Ethiopia has indorsed the new initiative and has made 9 pledges to improve its refugee protection measures. Hence the new law is not only an advancement of legal standard per se but also a show of commitment that the country is living up to the promises made to this international initiative.

⁶ Refugees Proclamation, *No.409/2004*, Federal Negarit Gazette, 25th Year No.38, Addis Ababa, 27 February 2019 [hereinafter the old proclamation]

⁷ *Refugees Proclamation, No.1110/2019*, Federal Negarit Gazette, 25th Year No.38, Addis Ababa, 27 February 2019 [hereinafter Proclamation No. 1110/2019]

1.2. Statement of the problem

Proclamation No. 1110/2019 comes at a time where the international refugee response has taken a major shift and international actors are showing solidarity through initiatives like the GCR. Ethiopia on its part has made remarkable support towards this concerted and unified response framework. Furthermore, as one of the largest host countries to many refugees Ethiopia has committed itself to improve its refugee protection and assist refugees for the betterment of their overall condition. Although the first moves in 2016 and following years was the initiation of policy documents and action plans to incorporate the country's striving commitments, it was then followed with the proclamation of a new law in 2019.

The preambular text of Proclamation No. 1110/2019 states that the aim of the proclamation is to improve refugee protection and to keep up with the 'overall' advancements in the sector. Furthermore, it also draws on the necessity of enacting a law based on international standards that set forth guidelines for 'better protection to refugees and promotes sustainable solutions'.⁸ The preamble of a legal document is an introduction which states the overall objects and purposes of the law hence in this context we can assume the above mentioned were the main aims which necessitated and led to the proclamation of the new law.⁹

From the overall objectives of Proclamation No. 1110/2019 and its purpose as setting a legal framework for the protection of refugees this paper will explore the content of Proclamation No. 1110/2019 in relation to international instruments and contemporary developments. The paper will also draw on the country's commitments to the international community and whether the legal framework set out in Proclamation No. 1110/2019 play a major role in their fulfilment. Moreover, it will try to give a thorough analysis of the changes contained within Proclamation No. 1110/2019 vis-à-vis the old one and assess whether there has been a significant change in the contents and the impact it may have on the protection of refugees. Most importantly as a critical assessment of the law the paper will try to highlight on the norms set out by Proclamation No. 1110/2019 and explore if it has achieved the overall betterment of refugee protection in the country.

⁸ Id preamble

⁹ Black's Law Dictionary 2nd Ed. – The Dictionary defines a preamble as “a clause at the beginning of a constitution or statute explanatory of the reasons for its enactment and the objects sought to be accomplished.”

1.3. Research Objectives

This research mainly aims at critically analyzing Proclamation No. 1110/2019 of Ethiopia to investigate the overall refugee protection framework and assess whether the country has put in place a viable legal outline that could achieve the overall purpose. It aims at

- Exploring the contents of Proclamation No. 1110/2019 in relation to principles and norms contained in international instruments and contemporary developments
- Examining the relation between the country's recent commitments to promote refugee protection and the enactment of Proclamation No. 1110/2019
- Identifying the major developments and changes of Proclamation No. 1110/2019 in comparison to the old one and analyzing whether Proclamation No. 1110/2019 serves as a tool for the overall promotion and betterment of refugee protection

1.4. Research questions

With the aims of exploring the overall objectives and developments of Proclamation No. 1110/2019 of 2019 this paper will try to address the following questions.

- How does Proclamation No. 1110/2019 embrace the principles and norms set out by international instruments?
- Does the enactment of Proclamation No. 1110/2019 have a direct relation to Ethiopia's commitment to the contemporary development for better refugee protection?
- What are the key advances for the protection of refugee rights in Proclamation No. 1110/2019 vis-à-vis the old law? And does Proclamation No. 1110/2019 serve as a instrument for the advancement of the protection and promotion of refugee rights in Ethiopia?

1.5. Scope of the study

The study will be limited to the critical assessment of the legal frameworks in place and the normative analysis of Proclamation No. 1110/2019 enacted in 2019. The substantive contents

and procedural safeguards within the proclamation will be critically analyzed. The study will also examine policy aspiration together with international commitment of the country in relation to refugee protection and how Proclamation No. 1110/2019 works towards advancing those commitments.

1.6. Research methodology

This study is a doctrinal research mainly aimed at the analysis of the legal framework in place to protect and promote refugee rights.¹⁰ In analyzing the normative framework it will employ both social and legal methods to draw on the trends of substantive and procedural safeguards of the law together with the social, economic and political factors to evade the vacuum that exists within the doctrinal realm.¹¹ The doctrinal research will follow an analytical path where already available facts and information will be critically evaluated.¹² Furthermore a qualitative approach has been employed for the collection and analysis of primary and secondary data.¹³

1.7. Limitation of the Study

The study will analyze the legal frameworks in relation to international standards and policy aspiration of the country vis-à-vis Proclamation No. 1110/2019 and will not give a comprehensive outlook on the practical aspects of refugee protection currently in place. Although primary and secondary data will be utilized where available to show current development and practices the short duration from the enactment of Proclamation No. 1110/2019 together with the major events in the past years such as the pandemic and the conflict in the Northern part of the country will make the assessment of its application impractical. Nonetheless, while engaging with the normative contents the study will try to construe practicality, in the widest sense, from already existing data and will also attempt to showcase everyday challenges and setbacks that may arise from application.

¹⁰ Salim Ibrahim Ali, Dr. Zuryati Muhammad Yusoff, Dr. Zainil Amin Ayub (2017), *Legal Research of Doctrinal and Non-Doctrinal*. International Journal of Trend in Research and Development. 493-495

¹¹ Ibid.

¹² Kothari, C. R. (2004), *Research Methodology: Methods and Techniques*, Wishwa Prakashan, Second Revised Edition. New Delhi. pp. 4

¹³ Id pp 5

1.8. Literature review

Topics of refugee protection and refugee law has become a growing trend in academic discourse in Ethiopia. The issue having a multidisciplinary aspect have interested academicians in the fields of history, law and other social science particularly in relation to setting frameworks. Apart from scattered texts the Addis Ababa University - School of law in this regard has also published an international law series compendium specifically on refugee protection in Ethiopia in 2017. This study will take account of the major relevant literatures in this regard.

Efrem Tadesse and Haileselassie G/Mariam's article¹⁴ on the CRRF and developments related to its implementation in Ethiopia stand out as a major illustration of the country's move towards assimilation of its commitments and the subsequent initiation of Proclamation No. 1110/2019. The authors with their role in UNHCR and ARRA respectively give an insightful description of the process. Although not under authoritative capacities, what they discuss within this article illustrates the pragmatic arguments that could be raised in relation to the enactment of a new legal framework for refugee protection.

Another scholar Zelalem Mogessie makes a critical appraisal of the 2004 refugee proclamation and his article¹⁵ develops a substantial work for whoever is tasked with drawing inference from the 'old proclamation'. His article mainly aims at setting the boundaries of the normative terrain of the old proclamation. The article purports and paves way to arguments on the relevance of advances made by Proclamation No. 1110/2019, which is given much emphasis in the current study.

Minilik Assefa's thesis work submitted to the Addis Ababa University – School of law is one of the explicit documents directly written on Proclamation No. 1110/2019.¹⁶ Specific to the right to

¹⁴ Ephrem Tadesse and Haileselassie Gebemariam (2017), *Towards a Comprehensive Refugee Response Framework (CRRF): Recent Developments on Refugee Protection in Ethiopia* in Yonas Birmeta (ed), Refugee Protection in Ethiopia, International Law Series, Addis Ababa University – School of Law. Vol 1. 149-164.

¹⁵ Zelalem Mogessie (2017), *Delimiting the Normative Terrain of Refugee Protection: A Critical Appraisal of the Ethiopian Refugee Proclamation No. 409/2004* in Yonas Birmeta(ed), Refugee Protection in Ethiopia, International Law Series, Addis Ababa University – School of Law. Vol 1. 31-98 .

¹⁶ Minillik Assefa (2020), *Refugees' Right to Work in Ethiopia: Prospects and Challenges*, Addis Ababa University – School of Law, LLM thesis; Although different studies exist on the new advancement in refugee law many of them are based not on the law but the practice. Even those available have referred to the new law in its draft stages and not after its enactment as proclamation.

work of refugees this thesis work engages with the new refugee framework and analyzes the safeguards in greater detail. The article analyzes in good depth the substantive and procedural safeguards contained in Proclamation No. 1110/2019 and tries to measure them in relation to the right to work.

Another relevant research conducted by Alemu and Carver on the implementation of the CRRF in Ethiopia and its ongoing progress is also part of the relevant texts that add to the understanding of refugee protection in the country.¹⁷ Apart from showing the progress of the CRRF in Ethiopia this study as part of a comparative exercise from other countries sheds light on the advancement of the refugee sector in the country and its status of carrying out its commitments. The research maps out the progresses made and obstacles that are being faced. It is a multi-faceted research showing the overall intersectionality of the refugee framework and other fields.

With a view to detail out the most vexing and most debated issues in refugee protection an article published by three scholars in the fourth volume of the Ethiopian Journal of Human rights is found to be an analysis of the major policy discourses in the sector. Based mainly on the out of camp policy and the right to residence, and movement and engagement in gainful employment, Tadesse Kassa and others embark on the exercise of truly mapping out the standing of the Ethiopian legal framework, the substantive and procedural disparities, the implications of the country's international commitments. The article is pivotal not only in highlighting the major issues but also trying to delve into the procedural and implementation hurdles that are being faced within the refugee sector. The article sheds light on the ambiguity and vagueness of the law and practice in the refugee sector and the problem of interplay between the refugee framework with other laws and policies of the country.¹⁸ Although scholars in the field have been engaged in thematic discussion a holistic analysis of the refugee proclamation of 2019 have not been made. Hence building on previous works this study is expected to give a comprehensive outlook of the 2019 refugee proclamation and add to the refugee protection discourse.

¹⁷ Alemu Asfaw Nigusie and Carver, Freddie (2019), *The Comprehensive Refugee Response Framework: Progress in Ethiopia, Humanitarian Policy Group Working Paper*, Overseas Development Institute

¹⁸ Tadesse Kassa, Fasil Mulatu and Jaxxu Iddossa (2019), *Ethiopia's Refugee Policy Overhaul: Implications on the Out of Camp Policy Regime and Rights to Residence, Movement and Engagement in Gainful Employment*. Ethiopian Journal of Human Rights, Vol. IV (1) 124-161, [hereinafter Tadesse et al]

Chapter Two - Overview of Refugee Protection Frameworks

2.1. International and regional frameworks

Refugee protection has been an issue of global concern in the aftermath of the Second World War where mass movement of persons required a concerted response. The need for complex structure to handle the rights of the millions that were forcibly displaced by the war, according to Erica Feller who was once the Director of International Protection at the UNHCR, led to what is today known as the “international refugee protection regime”.¹⁹ The end of the second World War saw a move towards unified efforts for the protection of rights with the UN charter being signed in 1945.²⁰ Furthermore the UN came up with documents such as the Universal Declaration of Human Rights and subsequent human rights instruments which clearly reiterate that everyone is entitled to human rights and freedoms without any distinction.²¹

The issue of asylum and refugees was also among the first rights that were included in the UDHR, the first UN document outlining the universal rights and freedoms. The UDHR under Article 14 clearly stipulated the right of every person to “seek and enjoy asylum from persecution in countries other than his own”.²² This basis showed that not only people enjoyed equal rights and freedoms but that the equality extends to such enjoyments of seeking refuge. Article 14 as a basis for the emerging international refugee protection regime entailed two aspects. The first was giving the inviolable right to seek and enjoy asylum from persecution. While the second aspect was the clear demarcation line of what is not considered persecution and

¹⁹Feller, Erika, Turk, Volker and Nicholson, Frances (Eds) (2003), *Refugee Protection in International Law: UNHCR's Global Consultations on International Protection*, Cambridge University Press Preface

²⁰ United Nations, *Charter of the United Nations*, 24 October 1945, 1 UNTS XVI. The charter under its preamble tries to highlight the determination of the international community (peoples of the United Nations as termed by the document) “to reaffirm fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and to bring social progress and better standards”. emphasis added.

²¹ United Nations. (1948). *Universal Declaration of Human Rights*. (Here in after referred to as the UDHR) The UDHR under Article 2 outlines that “everyone is entitled to all rights and freedoms without distinction to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status”. Based on this all-subsequent human rights instruments have based their codification based on this notion to give rise to the different rights and freedoms that all human beings are entitled to.

²² Id. Art 14

on what grounds asylum couldn't be granted such as cases of prosecution against non-political crimes.²³ Nonetheless the UDHR was a foundational document for the rights and freedoms, and it wasn't until the 1951 convention relating to the status of refugees that the different terms were clearly articulated. Although the 1951 convention was a document directed towards a certain group of refugees in Europe and was aimed at addressing the post-World War II problems, today together with its 1967 protocol is considered the basis for the international refugee framework.²⁴

Apart from the international refugee frameworks at the global level currently there are different regional frameworks being put in place. These regional frameworks tend to be tailored for the specific context of each region they are applied to and have their own characteristics nonetheless most of them relate to the general standards set on the international level. To briefly see the different regional approaches the African union, the Americas, and the Arab states have chosen the route of treaty documents to govern the issues of refugees.²⁵ On the contrary we find a different approach in the European Union where there are a set of laws governing the protection of refugee right instead of having treaty documents.²⁶

²³ Ibid. The UDHR clearly outlines the right to asylum whenever there is persecution but still doesn't define the term persecution and what it may be comprised of. However, under sub article 2 of Article 14 the UDHR clearly outlines that the right to asylum "may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations" showing that persecution will not include such cases and instances.

²⁴ UN refugee convention n.4

²⁵ Organization of African Unity (OAU), *Convention Governing the Specific Aspects of Refugee Problems in Africa*, 10 September 1969, (hereinafter The OAU Refugee Convention); The OAU refugee convention is the regional convention put in place by the African Union to address refugee problems in the continent. *Regional Refugee Instruments & Related, Cartagena Declaration on Refugees, Colloquium on the International Protection of Refugees in Central America, Mexico and Panama*, 22 November 1984 (hereinafter The Cartagena Declaration); The Cartagena declaration is the document adopted by Colloquium on the International Protection of Refugees in Central America, Mexico and Panama for the purpose of setting standard for refugee protection in the region. League of Arab States, *Arab Convention on Regulating Status of Refugees in the Arab Countries*, 1994(hereinafter The Arab Refugee Convention)

²⁶ European Union, Migration and Home affairs website <https://home-affairs.ec.europa.eu/policies/migration-and-asylum/common-european-asylum-system_en> (last accessed on October 12, 2022). The European Union (EU) as opposed to other systems has a Common European Asylum System where a unified action is taken against refugee

All these frameworks have standard setting roles. And a discussion on refugee issues will be relevant if it emanates from the thorough appraisal of the norms and standards contained within these documents. For the purpose of this particular study the global framework set by the UN refugee convention and the African Union refugee convention are the two relevant standard setting documents which will be discussed here.

2.1.1. UN Refugee Convention

The UN refugee convention is the basis for the international refugee protection currently in place. The refugee convention contains the widely accepted modern principles and standard for the protection of refugees.²⁷ The UN refugee convention is considered both a “status and rights-based instrument” and grounded on the essential principles of non-discrimination, non-penalization and non-refoulment.²⁸ Non-discrimination is a way of ensuring the full enjoyment of the safeguards contained within the convention without any difference based on race, religion or country of origin confirming to the essence of human rights.²⁹ On the other hand non-penalization means that refugees must not sustain penalty for their actions in flight while in fear of persecution, hence giving them protection for illegal entry and stay in a country as long as they “present themselves to the authorities without delay and show good cause for their actions”.³⁰ Moreover one of the most noted principles is non-refoulment where expulsion or return of anyone to a place where their life is in danger and where they “would be threatened on account of their race, religion, nationality, membership of a particular social group or political opinion” is prohibited.³¹

problems through the European Union Agency for Asylum. The EU has a set of rules based on which its unified response is governed.

²⁷ United Nations High Commissioner for Refugees (UNHCR), *The 1951 Refugee Convention* <<https://www.unhcr.org/1951-refugee-convention>> (last accessed on October 12, 2022). The UNHCR the UN body serving as the guardian and lead implementer of refugee protection globally claims that the UN refugee convention currently has 149 member states making it widely accepted among the international community.

²⁸ UN refugee convention, n. 4, introductory note

²⁹ Id. Article 3

³⁰ Id. Article 31

³¹ Id. Article 33

The basis for any refugee framework emanates from the definitional element which is detailed out within the UN refugee convention.³² The definitional element outlines the requirements for defining a refugee followed by what is required to acquire such status up to the point where the person ceases to be referred to as a refugee.³³ The UN refugee convention by far has the greatest number of refugee rights and freedoms. Common to other human rights instruments the UN refugee convention lists out civil and political rights such as the rights to association, access to courts and freedom of movements³⁴ and economic, social and cultural rights such as the right to property, right to work, housing and education³⁵. These rights are supplemented by safeguards that are tailored to the status of the person; hence are framed in a way to grant refugees the widest possible protection. The refugee specific rights range from personal status³⁶, administrative assistance³⁷, identity papers and travel documents³⁸ to durable solutions such as naturalization³⁹.

The listings of the UN refugee convention try to set standards of treatment for the basic right and freedoms human beings have. Although the convention accentuates on its own core principles a close appraisal shows that the provisions within the UN refugee convention relate to the major human rights instruments. However, what we find within the UN refugee convention is a

³² Id. Article 1 of 1951 UN refugee convention together with Article 1 of the 1967 UN refugee protocol

³³ Ibid. The UN refugee convention defines a refugee under Article 1(A)

“as a person owing to well founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.”

This is then followed by exclusion and cessation clauses of/from refugee status (Article 1(C)) which are determined throughout the process of status determination.

³⁴ Id. Article 15, 16 and 26 respectively

³⁵ Id. Articles 13 and 14, 17, 18 and 19, 21 and 22 respectively

³⁶ Id. Article 12

³⁷ Id. Article 25

³⁸ Id. Article 27 and 28 respectively

³⁹ Id. Article 34

standard of treatment set for the purpose of giving equal protection for non-citizens.⁴⁰ Furthermore, the convention tries to protect persons fleeing from persecution at their most vulnerable state which need an exceptional standard.⁴¹

2.1.2. The OAU refugee convention

The OAU refugee convention came into being in 1969 to address the large-scale movement of persons due to post-colonial era conflicts.⁴² The OAU refugee convention from its preambular text sets off by giving recognition to the UN convention as the “basic and universal standard setting instrument for treatment of refugees”.⁴³ Furthermore, it calls for the member states to accede to the UN refugee convention giving the impression that it doesn’t detail out similar standards but rather lay foundations for further solving specific problems of refugees in Africa.⁴⁴

The OAU refugee convention has 15 Articles and only outlines those instances of refugee protection which are specific to the African context. It tries to broaden the definition of refugees from that of the UN refugee convention where “persons fleeing external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his/her country of origin or nationality” are included.⁴⁵ Further to this the OAU refugee convention stipulates that the process of granting asylum must be “in a spirit of African solidarity and international cooperation” by lessening the burden where possible and shouldn’t be regarded as an unfriendly act.⁴⁶ This particular line derives from the “material, political and social costs” that may arise from granting asylum on member states which may otherwise act to

⁴⁰ James C. Hathaway (2005), *The Rights of Refugees under International Law*, Cambridge University Press. p. 125 and 194

⁴¹ Id. p.228

⁴² Nicholson, Frances and Kumin, Judith (2017), *A Guide to International Refugee Protection and Building State Asylum Systems, Handbook for Parliamentarians N° 27, 2017*, Inter-Parliamentary Union and UNHCR, p. 19

⁴³ OAU refugee convention n. 5, Preamble

⁴⁴ Ibid.

⁴⁵ Id. Article 1

⁴⁶ Id. Article 2

the contrary for reasons of capacity hence it is a tailored provision protecting asylum seeker and subjecting member states to stringent guidelines to grant asylum.⁴⁷

The OAU refugee convention not only specify actions for member states but also how refugees must act. Subversive activities are clearly prohibited for refugees under both UN and OAU refugee conventions however the OAU refugee convention furthers the prohibition by requiring signatory states to take measures to “prohibit refugees within their territories from attacking any member state of the OAU”.⁴⁸ Furthermore another addition within the OAU refugee convention is on travel documents where refugees get a second asylum in another African country, at which point the first country of asylum is not required to insure return to its territory when issuing travel papers.⁴⁹ Furthermore the OAU refugee convention clear out its role as a regional complement of the UN convention rather that a standalone full dictate of refugee protection guideline.⁵⁰

2.2. National Refugee protection frameworks

In legal hierarchy, in Ethiopia the Federal Democratic Republic of Ethiopia constitution is considered the supreme law of the land.⁵¹ It lays out the foundation on which other laws and standards are enacted and implemented. Even though the constitution has a list of rights and entitlements it doesn't specifically provide for refugee protection. Furthermore, although the constitution clearly stipulates that the basis of human and democratic rights is not limited to citizens but all peoples⁵² extending the rights and entitlements to refugees, some provisions are exclusively left for citizens.⁵³

⁴⁷Emmanuel Opoku Awuku (1995), *Refugee Movements in Africa and the OAU Convention on Refugees*, Journal of African Law, Vol. 39 (1), 79-86. p. 83

⁴⁸ OAU refugee convention n. 5, Article 3

⁴⁹ Id. Article 6

⁵⁰ Id. Article 8

⁵¹ Federal Democratic Republic of Ethiopia, Constitution, Proclamation No. 1 of 1995. (Hereinafter FDRE constitution) Article 9(1)

⁵² Id. Article 10(2)

⁵³ The terms used by some of the articles such as the right to vote (see article 38 of FDRE constitution n. 51) and the right to property (see article 40 of FDRE constitution n. 51) make these rights exclusive to Ethiopian citizens.

The FDRE constitution also stipulates that international agreements ratified by Ethiopia are integral parts of the laws of the country, which makes them part of the national framework.⁵⁴ Ethiopia is state party to the UN refugee convention⁵⁵ and OAU refugee convention⁵⁶. Furthermore, Ethiopia has also ratified major international and regional human rights instruments applicable to all persons including refugees.⁵⁷ In addition the safeguard within the national refugee protection framework goes further to subsequent proclamations, regulations and policy documents. The constitution gives explicit power to the house of peoples representatives to enact laws on “the rights of refugees and of asylum”.⁵⁸ Further to this enactment of other subsidiary laws, policy and strategy documents to ensure proper implementation is also envisaged by the

⁵⁴ Id. Article 9(4); There have been various debates on this particular sub article and the status of these instruments within the national framework but non-have denied there inclusion; hence in this study the author will like to take the stand that no requirement is set by the FDRE constitution against the inclusion in the national frameworks and therefore can be deemed to be forming part of it. See also Zelalem Mogessie n. 15 p. 39

⁵⁵ United Nations, Treaty Series, vol. 189, < <https://www.unhcr.org/protection/convention/5d9ed32b4/>> (last accessed on October 13, 2022) p.8; Ethiopia has acceded to the UN refugee convention in 1969 by making reservation to Article 8, 9, 17(2) and 22(1). These provisions on not imposing exceptional measure based on nationality, imposition of provisional measures in times of grave and exceptional circumstances, restriction on wage earning employment and access to education in a manner less favorable than aliens were all accepted as mere suggestion instead of binding legal obligations.

⁵⁶ African Union, List of Countries which have signed, ratified/acceded to the OAU Convention Governing the Specific Aspects of Refugee Problems in Africa,< <https://au.int/en/treaties/oau-convention-governing-specific-aspects-refugee-problems-africa> > (last accessed on October 13,2022); Ethiopia has ratified the OAU refugee convention in 1973.

⁵⁷ Ethiopia is a party to 7 of the 9 core human rights treaties. These include International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), Convention on the Rights of the Child (CRC), and Convention on the Rights of Persons with Disabilities (CRPD).[See UN, Core International Human Rights Instruments and their monitoring bodies < <https://www.ohchr.org/en/core-international-human-rights-instruments-and-their-monitoring-bodies> > (last accessed on October 13,2022); Ethiopia has also ratified regional human rights instruments such as the African Charter on Human and Peoples’ Rights (AfCHPR) < <https://www.achpr.org/legalinstruments/detail?id=49> > (last accessed on October 13 2022)

⁵⁸ FDRE constitution n.51; Article 55(2)(e)

constitution.⁵⁹ All these laws will have considerable impact on the protection of refugee rights in Ethiopia. In this section the study will briefly look into the evolution of the major laws on refugees, without digging into the actual contents which will be covered in the third chapter.

2.2.1. National laws relevant to refugee protection

Refugee protection in Ethiopia didn't have its own framework until the first refugee proclamation was enacted in 2004.⁶⁰ The proclamation came as a way of translating the country's obligation emanating from international and regional treaty documents and to have a tool for the effective implementation of the principles and standards contained in them.⁶¹ The proclamation was passed after a lengthy process driven by criticism on the "precarious situation that refugees faced" due to lack of substantive and procedural safeguards.⁶² The legislation process involved stakeholders like the United Nations High Commissioner for Human rights.⁶³

After 15 years of service the first refugee proclamation was repealed with a Proclamation No. 1110/2019 in 2019.⁶⁴ Proclamation No. 1110/2019 came at a time where there is a shift in response to refugee problems globally. These factors together with the rising need for a better protection framework for the growing number of persons in need of protection accelerated the enactment of the new law.⁶⁵ As a critical appraisal of this newly enacted law this study will dive deep into the contents and the changes made by Proclamation No. 1110/2019 and its standing towards better protection while also exploring its status in the overall protection framework.

Apart from these two laws enacted explicitly for the protection of refugee rights, other proclamations on citizenship, labor, land etc. together with subsequent instruments such as regulations, directives, circulars and strategic documents have also been relevant to implement the overall protection and promotion of refugee rights. Although it is not the interest of this paper to investigate the application of these other instruments for the protection of refugee rights, a reference will be made to them where relevant.

⁵⁹ Id. Article 77(1), (6) and (13)

⁶⁰ Zelalem Mogessie n.15 p.45-46

⁶¹ Proclamation No. 409/2004 n. 6, Preamble

⁶² Zelalem Mogessie n.15 p. 46

⁶³ Ibid.

⁶⁴ Proclamation No. 1110/2019 n.7

⁶⁵ Ephrem and Hailesellase n.14 p.161

Chapter Three - International Shift in response to the refugee crisis and Ethiopia

3.1. Global Compact on refugees

The Global Compact on Refugees, a new and concerted approach to the response to refugee problems, was adopted in 2018.⁶⁶ The process was initiated in 2016 by a leaders summit on refugee in New York hosted by the United States and co-hosted by others including Ethiopia.⁶⁷ The GCR was based on the “fundamental principles of humanity and international solidarity”.⁶⁸ Furthermore, the initiative aimed at “operationalizing the principles of burden and responsibility sharing to better protect and assist refugees and support host countries and communities”.⁶⁹ The GCR came as a way of consolidating the various efforts made throughout the years towards protection of refugees.⁷⁰

The GCR has four main objectives for which refugee response should be based on including “easing pressures on host countries, enhancing refugee self-reliance, expanding access to third country solutions, and supporting conditions in countries of origin for return in safety and dignity”.⁷¹ According to the GCR booklet all this purposes were to be fulfilled by facilitating a “more equitable, sustained and predictable contribution of states and relevant stakeholders”, which by implication gave active role to all parties for the prevention and tackling of the refugee problem.⁷² Furthermore, the GCR is a critical initiative in that it not only aims at the protection

⁶⁶ United Nations (2018), *The Global Compact on Refugees* (hereinafter the GCR)

⁶⁷ UN summit for Refugees and Migrants 2016 < <https://refugeesmigrants.un.org/summit> > (last accessed on October 17, 2022)

⁶⁸ GCR n.66, p.2

⁶⁹ Ibid.

⁷⁰ Id. p. 2-3 and Volker Türk (2018), *The Promise and Potential of the Global Compact on refugees*, *International Journal of Refugee Law*, Vol 30(4), 575–583; The GCR booklet outlines the different frameworks starting from the UN refugee convention and regional refugee documents to other UN instruments on the response to refugee problems and their interplay to come to one consolidated approach. As a key guiding principle the booklet emphasizes on the complementarity of the different developments in refugee protection and the need to enhance “national ownership and leadership” through the GCR for a concerted and successful implementation of refugee protection. The GCR drew lesson from ongoing trend in law, policy and operational practice.

⁷¹ Id. p. 4

⁷² Ibid.

of refugee rights but in working towards addressing the problems that are making people flee their countries.⁷³

3.2. Roll-out of the Comprehensive Refugee Response Framework and Ethiopia's pledges

Building on the GCR, the New York declaration had already envisioned an actionable response framework for the implementation of the new initiative which was referred to as the Comprehensive Refugee Response Framework (hereinafter the CRRF).⁷⁴ The CRRF mapped out a way to enhance international response and set forth the outline for cooperation for achieving the four objectives set out by the GCR.⁷⁵ The four objectives of the GCR were given meaning and converted to actionable arrangements with due regard to real time response structures. The subsequent motion was translating the CRRF into national structure and synchronizing the efforts of the different stakeholders which called for the matching of commitments with trend and practice.⁷⁶

The CRRF implementation followed different approaches where refugee hosting nations undertook works to improving the lives of refugees and those in the developed world extending support in the form of aid to support those countries hosting large numbers of refugees. For countries like Ethiopia, who is one of the largest refugee hosting nations in the world, implementation of the CRRF entailed the improvement of the response mechanisms and the protection of refugee rights. As a fore runner in this process Ethiopia had already made nine pledges at the New York summit pertaining to the improvement refugee response.⁷⁷ These pledges were clustered into six thematic groupings including the themes of out of camp, education, work and livelihood, documentation, social and basic services and local integration.

⁷³ Ibid. Due to this the initiative is also viewed as prevention mechanism involving country of origins. And aims to uphold rule of law and principles of peace building, security, and sustainable development in the effort of properly governing migratory trends including the move by refugees.

⁷⁴ UNHCR, From Commitment to Action - Highlights of Progress Towards Comprehensive Refugee Responses since the Adoption of the New York Declaration. < <https://www.unhcr.org/5b8d1ad34> > (last accessed on October 17, 2022)

⁷⁵ Ibid.

⁷⁶ Ibid.

⁷⁷ ARRA (2017), *Roadmap for the implementation of the Federal Democratic Republic of Ethiopia Government Pledges and for the practical application of the CRRF* (hereinafter the CRRF roadmap), p.6

The following table shows the thematic grouping with their corresponding pledges as stipulated by the CRRF roadmap.⁷⁸

Table 1. Ethiopia’s nine pledges grouped into six thematic areas⁷⁹

Thematic Grouping	Pledges
Out-of-Camp Pledge	<ul style="list-style-type: none"> • Expansion of the out-of-camp policy to benefit 10% of the current total refugee population
Education Pledge	<ul style="list-style-type: none"> • Increase enrolment in primary secondary and tertiary education to all qualified refugees without discrimination and within the available resources
Work and Livelihood Pledges	<ul style="list-style-type: none"> • Provision of work permits to refugees and to those with permanent residence ID, within the bounds of domestic law • Provision of work permits to refugees in the areas permitted for foreign workers, by giving priority to qualified refugees • Making available irrigable land to allow 100,000 people (among them refugees and local communities) to engage in crop production • Building industrial parks where a percentage of jobs will be committed to refugees
Documentation Pledge	<ul style="list-style-type: none"> • Provision of other benefits such as issuance of birth certificates to refugee children born in Ethiopia, possibility of opening bank accounts, and obtaining driving licenses
Social and Basic Services Pledge	<ul style="list-style-type: none"> • Enhance the provision of basic and essential social services
Local Integration Pledge	<ul style="list-style-type: none"> • Allowing for local integration for those protracted refugees who have lived for 20 years or more in Ethiopia

The CRRF implementation in Ethiopia took a highly motivated route with a much-needed harmonization with the country’s already existing policy and strategy documents. The CRRF roadmap tried to sync the pledges made by Ethiopia with the Second Growth and Transformation

⁷⁸ Id. p. 7

⁷⁹Ibid.

Plan (GTP II) which was under implementation at the time. The CRRF roadmap identified three focus areas from the GTP II which aligned with the pledges. The pledges on out-of-camp policy, local integration and the two on issuance of work permit were considered aligned with the advancement of the GTP II focus on ensuring good governance and building developmental political economy. Three of the pledges on provision of social and basic services, on education and documentation were further considered to be aligned with the GTP II focus on human development and technology capacity development, specifically addressing the issues of education and health sector development. The remaining two pledges on irrigable land and industrial parks matched with the focus area on the economic development sector plan where agriculture and rural transformation and manufacturing industries are the main areas the government have aimed on improving under GTP II.⁸⁰

Alignment of Ethiopia's refugee pledges to major national policies meant that the implementation will have formal grounding. Moreover, the CRRF roadmap identified six intervention areas for the proper implementation of this pledges including legal and policy reform, assessment and analysis, capacity building and technical support, development-oriented intervention, emergency response and governance structure. However, there was still a need to condense these pledges down to an actionable work plan, one that outlines the country's implementation goals from the current status up to the desired point with measurement tools. The CRRF roadmap has two annexes in this regard where the first annex "provides a detailed description of the various activities and interventions" and the second annex "presents the governance structure designed for the realization of the pledges and for the practical application of the CRRF in the country". Although a discussion on the two annexes and implementation status against the planned activities would have shed light on the execution of the roadmap this study will only dive into the first intervention area on legal and policy reform envisaged for the proper implementation of the pledges.⁸¹

3.3. Adoption of a Proclamation No. 1110/2019

The first intervention envisaged for the operationalization of the pledges made by Ethiopia was the legal and policy reform. The CRRF roadmap notes that the lead institution ARRA was already working with UNHCR and other government institutions and stakeholders for the

⁸⁰ Ibid.

⁸¹ Id. p. 8

incorporation of the pledges into the legal framework.⁸² Ephrem and Hailesellasie note that although the revision was started before the New York summit the draft was later revised to reflect on the pledges made by Ethiopia.⁸³ Noting the overall process Ephrem and Hailesellasie emphasize that the initiative was to complement Proclamation No. 409/2004 with a regulation extending the application of the law to include the new pledges, however they say there was a shift from this approach after “identifying the strengths and gaps of the old proclamation and examining comparative refugee law jurisprudence and best practices of selected refugee hosting countries”.⁸⁴ The authors emphasized that consultations with relevant stakeholders exposed that Ethiopia’s reservation to the UN refugee convention were being misconstrued, procedural and substantive safeguards within the refugee status determination procedures proved inadequate and provisions setting out the rights of refugees and asylum seekers lacked clarity.⁸⁵ They state that consultations with representatives from the Federal Attorney General, Main Department of Immigration and Nationality Affairs, Ministry of Federal and Pastoralist Affairs, Justice and Legal Research Institute, AAU School of Law, ARRA and UNHCR together with bilateral consultations with other key stakeholders such as Ministry of Labour and Social Affairs, Investment commission, and Revenue and Customs Authority exposed the need to revise the existing proclamation rather than supporting it with a regulation.⁸⁶

Further to the above developments the drafting process of Proclamation No. 1110/2019 also included an experience sharing visit to Uganda to take best practices into consideration. Although it is not clear to what extent this visit had an impact on the drafting process the team of experts from ARRA and the UNHCR visited camps and reviewed relevant policy and legal documents. The visit according to the joint mission report revealed that a “relaxed regulatory environment and inclusion of wide range of rights in refugee laws enabled refugees and asylum-seekers in Uganda to live a productive and dignified life without putting significant pressure on

⁸² Ibid.

⁸³ Ephrem and Hailesellasie n.14 p.159-161.

⁸⁴ Id. p. 156

⁸⁵ Ibid.

⁸⁶ Id.

the hosting capacity of the country.”⁸⁷ Finally a Proclamation No. 1110/2019 was enacted on February 27, 2019.

Chapter Four - Refugee protection under Proclamation No. 1110/2019

4.1. Proclamation No. 1110/2019 as a tool for fulfilling Ethiopia’s commitment

Whenever a change in social, economic or political objectives occur the function of the law to assist the realization of those changes is often analyzed.⁸⁸ Furthermore, the law is adjusted to fit the newly emerging objectives.⁸⁹ It is evident from the discussion on the drafting of Proclamation No. 1110/2019 discussed in the previous chapter that Proclamation No. 1110/2019 was aligned to the pledges made by Ethiopia in the New York refugee summit. UNHCR in its progress update of the implementation of the pledges notes that the inclusion of “progressive provisions” within the new law shows the active move of Ethiopia towards making the implementation of the pledges a reality.⁹⁰ The UNHCR report transcribes the move made by the proclamation on different areas as follows

“Most notably, Proclamation No. 1110/2019 includes progressive provisions relating to the freedom of movement and right to work for refugees. It also provides for an extended understanding of family; a broader definition of identification documents; enhancing access/expansion of Prima facie recognition to include refugees originating from outside Africa; Refugee Status Determination (RSD) principles and procedures aligned with international standards. With regard to access to social services, the Proclamation elaborates on refugees’ rights to education; access to available health services within Ethiopia; access to justice; driver’s qualification certification; travel documents and

⁸⁷ Study Visit to Uganda: ARRA, *UNHCR-Ethiopia Joint Mission Report*, 22-27 January 2017 (unpublished) in Ephrem and Hailesellasie n.14, footnote 35 Ephrem and Hailesellasie also note that it was interesting to observe a country of 35 million people being able to host more than a million refugees. Whether this is an observation by the authors or statement taken from the above-mentioned study was unclear. However, the author of this study shares the amazement of such an interplay.

⁸⁸ David A. Funk (1972), *Major Functions of Law in Modern Society*, Case Western Reserve Law Review, Vol 23(2) 257 - 306 pp. 278 - 293

⁸⁹ pp. 298

⁹⁰ UNHCR (2020), *Ethiopia 2019: Summary Pledge Progress Report* (hereinafter UNHCR 2020 report) p.14

identity papers; access to banking, financial and telecommunication services; as well as special protection to persons with specific needs.”⁹¹

From the interpretation of the UNHCR report it seems all thematic areas of the pledges have been addressed in Proclamation No. 1110/2019. However, there is more to the law than setting standards; the law must give way to easy application, and it must work well with other norm setting instruments within such framework.⁹² The UNHCR report also noted on the developments made towards issuing directives to enhance implementation on areas of movement and residence of refugees outside of camps, refugees right to work, and grievances and appeals hearing for refugees and returnees, which makes the application of this rights more possible with tailored procedural safeguards.⁹³ Furthermore, the report draws on the move towards drafting National Comprehensive Response strategy and other guiding documents for proper implementation.⁹⁴ Although the strategic documents are currently in the initial stages they might have a complementarity role to supplement Proclamation No. 1110/2019 for the proper implementation of the substantive and procedural safeguards laid out by the law.

4.2. Changes and advancements in Proclamation No. 1110/2019

As a derivative from an existing legal document Proclamation No. 1110/2019 tends to have change and advancements. The parallel reading of the old and new proclamation, from the onset doesn't display the actual changes and advancements as similar structuring have been employed

⁹¹ Ibid.

⁹² Sadri Salikhovich Kuzakbirdiev (2022), *Implementation of law as a factor of ensuring the legal security of modern society*, Euro-Asian Law Congress 2021, SHS Web of Conferences 134, 00095; The forms of implementations for legal norms must be established *prima facie*; otherwise, the lack of forms of implementation will surely poses a certain threat to the state of legal protection on the subjects. Form of implementation is not an end on its own but a major determinant to ensure effectiveness. Sadri in the above article clearly notes that “*Establishing the forms of implementation of the norms of law is not an end in itself. It has both scientific, theoretical and practical significance. Determining the form of implementation of each type of legal norms makes it possible to identify the features of the implementation of their prescriptions, admissibility or inadmissibility of behavior and activities of subjects during their implementation, as well as the legal consequences for their implementation and non-implementation.*”

⁹³ UNHCR 2020 report, n. 90, p.14

⁹⁴ Ibid.

for both laws. Nonetheless, by observing the contents and lists one can observe there is an increase of set-out rules within the new refugee law. For instance, the old proclamation only had 27 articles in total while the new one has a total of 47 articles. Even more intriguing is the Part four of both laws on the rights and obligations of asylum seekers and recognized refugees which is condensed into 4 Articles from 20 – 23 in the old proclamation as opposed to 21 Articles from 22 to 42 in the new one. Although this looks like a considerable change, it doesn't show the change in content and the role of the new law in protecting the rights of refugees. The study in the following sections will try to critically analyze the different aspects of Proclamation No. 1110/2019.

4.2.1. Definitions

The definitional element of refugees listed under Article 5 of Proclamation No. 1110/2019 stems from the two refugee instruments Ethiopia is a party too. Both definitions from the UN refugee convention⁹⁵ and the OAU refugee convention⁹⁶ have been incorporated to specify the refugee criteria. Although this approach is similar to the old proclamation, the old one only extended the criteria of the OAU refugee convention only to those refugees emanating from Africa while this has been extended to all refugees in the new law.⁹⁷ In addition the new law also recognizes refugee status for events happening after a person leaves his/her country.⁹⁸

Further to this there is a differentiation of terms made between refugees, recognized refugees and asylum seekers in both old and new proclamation. The reading of the text of Proclamation No. 1110/2019 confirms that an asylum seeker is a person in the early stages of recognition for refugee status and is awaiting a final decision, however it is unclear of the distinction between

⁹⁵ Proclamation No. 1110/2019 n.7 Article 5(a). The proclamation defines a refugee as

“a person owing to a well founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion is outside his country of nationality and is unable or owing to such fear, is unwilling, to avail himself of the protection of that country.”

⁹⁶ Ibid Article 5(c)

⁹⁷ Ephrem and Hailleselassie n. 14 p. 162. Ephrem and Hailleselassie are under the impression that the extension of the refugee criteria to all regardless of their origin will benefit Yemeni and Syrian refugees who have been affected by generalized violence in recent years; who would otherwise not qualify for individual status determination based on the UN refugee convention criteria's.

⁹⁸ Proclamation No. 1110/2019 n.6 Article 6; the recognition of refugee status ‘*Sur place*’

refugees and recognized refugees.⁹⁹ The law states that refugees are those who fulfill the refugee criteria¹⁰⁰ while recognized refugees are persons recognized as fulfilling such criteria set out by the law¹⁰¹; and it is unclear of what the law aims to differentiate. Ephrem and Hailleselassie note that the difference between the three is that recognized refugees and asylum seekers are status showing terms as a person moves in the status determination process while refugee is a term referring to persons fulfilling the criteria under the law.¹⁰² What is not clear is why there is a need to use two terms for refugees as a person cannot be identified as one until his case is determined. A reading of the refugee laws of the countries used as reference by the drafters such as Kenya, Uganda and South Africa with the exception of Zambia all show that either the terms were used as similar terms or one of them were omitted.¹⁰³ Even the refugee law of Zambia which has the same differentiation with Proclamation No. 1110/2019 doesn't have a clear interpretation of the need to use two terms, nonetheless it tends to have consistency in usage throughout its text as opposed to Proclamation No. 1110/2019.¹⁰⁴ Inconsistency and ambiguity of

⁹⁹ Proclamation No. 1110/2019 n.7; Article 2(8)

¹⁰⁰ Id. Article 2(7)

¹⁰¹ Id. Article 2(10)

¹⁰² Ephrem and Hailleselassie n. 14 p. 162.

¹⁰³ Ibid. p 156; Ephrem and Hailleselassie note that Kenya, Uganda, Zambia and South Africa were selected for reference in the drafting process based on similar socio-economic and refugee hosting context. Refugee Act of Kenya, No.13 of 2006; Kenyan law no differentiation of usage and only defined the term refugee Article 3; The Refugee act of Uganda, 2006; Ugandan law defined the terms together as one – under Article 2 it reads “refugee or recognized refugee means”; Refugee Act of South Africa, 1998; The refugee act of South Africa defines the term refugees under Article 1(XV) and it states that “refugee means any person who has been granted asylum” – referring to the status of the person.

¹⁰⁴ The Refugee Act of Zambia, 2017 and Proclamation No. 1110/2019 n.6; The refugee act of Zambia under Article 2 shows a similar approach to Proclamation No. 1110/2019. However, it seems to be consistent in usage throughout the document where ‘recognized refugees’ is the default term used. For instance, Zambian refugee act uses terms such as “a person shall cease to be a **recognized refugee**” Article 20(1) or “an authorized officer may arrest and detain **a recognized refugee** whose expulsion has been ordered” Article 22(1) while Proclamation No. 1110/2019 uses terms such as “any person shall cease to be considered as **refugee**” Article 9(1) and “**a refugee** whose expulsion has been ordered under Article 12 may be temporarily arrested” Article 13. Both of these texts taken from the laws of the two countries use different wording for the same situations while referring to the status of the persons; and Proclamation No. 1110/2019 lacks clarity as to why it employs such an approach. Furthermore, in its own Proclamation No. 1110/2019 lacks consistency where both refugees and recognized refugees are used in the

terms creates room for misinterpretation and endanger the protection of rights of these groups of people; anyone from law enforcement officers to officers of public institutions may be faced with a problem when determining how a person is identified which will raise two questions when dealing with the issue. The first one is understanding what Article 2(7) of Proclamation No. 1110/2019 means by a person fulfilling “the criteria”, should officers determine for themselves if a person fulfills a criteria or not; and the second one will be on Article 2(9) on the recognition element for fulfilling the criteria of a refugee and where the line is drawn for having the status to be identified as a recognized refugee. Overall, it is not clear of what the law wants to achieve with the differentiation, but it is a concern that any misinterpretation by anyone may compromise the proper implementation and enjoyment of rights and liberties set out in Proclamation No. 1110/2019.

Under definitional elements Proclamation No. 1110/2019 gives a thorough definition of what a family is. Although family members were defined in the old law to include spouses and unmarried children under the age of 18 years old, the new law under Article 2(9) extends the definitional elements to include the measure of dependency and how relations are perceived by the person’s country of origin to ascertain whether someone would be considered as a member of the family or not. This according to scholars will benefit African refugees which have close family ties and dependency beyond the nucleus.¹⁰⁵

4.2.2. Procedural Safeguards

The procedural issues for the protection of refugees are initiated with refugee status determination (RSD). Once the criteria, the perimeters for identifying refugees are set, the procedures of RSD for ascertaining whether an asylum seeker qualifies or fits into the criteria is set in motion.¹⁰⁶ The UNHCR identifies seven standards that must be conformed to regarding

same article to refer to the same group of people- Article 12 on expulsion under sub article 1 reads “a **recognized refugee** shall not be expelled except on grounds...” while under sub article 3 it states that “Any expulsion order shall be communicated in writing to the **refugee....**”

¹⁰⁵ Ephrem and Hailleselassie n. 14 p. 161.

¹⁰⁶ UNHCR (2009), Conclusions Adopted by the Executive Committee on the International Protection of Refugees: 1975-2009(conclusions 1-109), Office of the United Nations High Commissioner for Refugees, Division of International Protection Services

RSD and Proclamation No. 1110/2019 also tries to align itself with these basic recommendations.¹⁰⁷ The UNHCR basic recommendations to be fulfilled for RSD are the following:

- A. Competent officials to whom applicants present themselves must have knowledge of relevant legal standards. Although Proclamation No. 1110/2019 states that asylum seekers may present themselves to the nearest “agency office or branch office; or police station”¹⁰⁸ there is no mention of the knowledge of these authorities. Although assessment of knowledge needs a thorough investigation of the training procedures of the officers of the above-mentioned bodies Proclamation No. 1110/2019 doesn’t put a requirement for first line application receivers. Nonetheless Proclamation No. 1110/2019 seems to clearly address the issue within the course of status determination after applications are lodged where personnel conducting the interview is required to have “adequate knowledge of Ethiopian and international refugee laws, is competent to take into account the particular circumstance of asylum seekers and is selected based on the applicants preference of a particular sex”.¹⁰⁹ Although all these terms for safeguarding the rights of applicants during interviews are standards exceeding the basic requirements, they don’t cover the initial stages of application lodging. Asylum seekers are not aware of what legal status is and often don’t seek to acquire any status; this is further aggravated when they are faced with law enforcement officers requiring them to present proper identification papers or detain them for not complying. In some instances, these persons are subject to several detentions due to lack of identification and are not directed towards RSD applications in any way because police officers lack awareness.¹¹⁰

¹⁰⁷ Id: pp 9 Conclusion No. 8 (XXVIII) Determination of Refugee Status (1977)

¹⁰⁸ Proclamation No. 1110/2019 n.7; Article 15 (1)

¹⁰⁹ Id. Article 16(2)(d)

¹¹⁰ Interview with anonymous Police Officer facilitating the Temporary ID issuance for refugees in Addis Ababa dated August 2, 2022; The officer commented saying “this people don’t have identity cards which has made law enforcement very problematic. Due to the current conflict in the northern part of the country many people have fled from the northern part but don’t have proper identification. According to our assessment most people are refugees that don’t have identity cards and they are being registered at woredas and being given documents. However, there was no comment on the role of the relevant agencies for RSD or refugee protection.” From the observation of the researcher although some Yemeni refugees could be seen most people are northern people however it was hard to

- B. Applicant must get detailed information on the procedures to be followed. Although Proclamation No. 1110/2019 puts forth the procedures to be followed by the respective authorities such as the police - forwarding applications to the agency¹¹¹ and the applicant filling out relevant forms issued by the agency¹¹² it is not clearly stated in the law of how the applicant will get the information required at this stage. Proclamation No. 1110/2019 provides for the provision of “relevant information, in a language he understands on the procedures of RSD and the rights and obligations of refugees and asylum seekers” however this is provided during the process of reviewing the application hence there is still a gap during the initial stage of accepting documents.¹¹³
- C. The designation of a clearly identified authority to handle the issue of refugees is identified as a major requirement. The new law clearly identifies the Agency for Refugees and Returnee Affairs as the lead government body handling the issue of status determination.¹¹⁴
- D. Necessary facilities for lodging and processing of application including access to interpreter must be provided. The new law in this regard provides access to interpreter but when this access is provided is unclear from the reading of the text. Article 16(2)(b) reads an applicant has the right to have “qualified interpreter during all the stages of hearing” which can be understood to cover the time for which the applicant’s case is being determined by the agency. However, if a person is in need of an interpreter, this should also cover the time when he comes in contact with the authorities and during filling his application which doesn’t seem to be covered by the law. Furthermore, the UNHCR guideline also suggests that applicants must be given the opportunity “to contact a representative of UNHCR”; in this regard although the new law opens space for UNHCR to participate as an observer it doesn’t put forward mechanisms for direct

determine whether they were refugees or Internally Displaced People coming from conflict affected areas of northern Ethiopia. Although the researcher attempted to approach some people, they were reluctant to share any information.

¹¹¹ Proclamation No. 1110/2019 n.7; Article 15(3)

¹¹² Id. Article 15(6)

¹¹³ Id. Article 16(2)(d)

¹¹⁴ Id. Article 16(1)

contact between the applicant and a representative of UNHCR.¹¹⁵ Apart from this Proclamation No. 1110/2019 is found to be a progressive law in allowing applicants to choose the sex of the interpreter based on their preference.¹¹⁶

- E. Recognition as refugee must be notified and documentation certifying status must be provided. The new law states that the refugee has the right to be notified in writing of the outcome of the RSD process.¹¹⁷ Furthermore under Article 32 it stipulates that identity paper affirming a person's status must be issued. Hence, we find that this requirement is fully included within the new law.
- F. Applicants whose applications are rejected must be given proper procedural safeguards with a chance to appeal to a higher authority within a reasonable period of time. In this regard the new law stipulates that an asylum seeker aggrieved by the decision on his application may appeal to an appeal hearing council within 60 days from the date he received the decision.¹¹⁸ Besides this, the council is also obligated to guarantee that the “appellant was given reasonable time to present his case”. Regarding the appeals made regarding RSD the law gives the primary and final appeal hearing powers to the appeal hearing council with a second appeal possible to the federal Supreme Court only if the appellant claims that there is an error of law.¹¹⁹
- G. Applicant must be allowed to remain in the country until he exhausts all available options. In this regard the new law clearly grants this to all persons undergoing RSD.¹²⁰ Furthermore, the new law also grants extra time after the exhaustion of all legal procedures for recognition for persons to “seek legal admission to another country”.¹²¹ Although the law stipulates for a grant of reasonable period for people with rejected applications to seek legal admission to another country it is unclear of what will happen if these group of people doesn't secure legal admission to another country.

¹¹⁵ Id. Article 16(2)(f)

¹¹⁶ Id. Article 16(2)(c)

¹¹⁷ Id. Article 16(3)

¹¹⁸ Id. Article 16(4)

¹¹⁹ Id. Article 19(5)

¹²⁰ Id. Article 23(1)

¹²¹ Id Article 23(3)

The substantive and procedural safeguards within the RSD process as outlined above seem to incorporate the internationally accepted standards.¹²² However, they fall short when it comes to safeguarding the rights starting from initial stages when refugees first present themselves to the relevant authorities. Although, the law provides for different places like ARRA offices and police stations as places of first reception giving more access for asylum seekers to lodge applications it doesn't provide for full access of facilities from the initial stage; this in turn might threaten the enjoyment of the safeguards set out by the law. Most asylum seekers are not made to understand the process and are therefore forced to become fugitives of the law without any proper documentation.¹²³

4.2.3. Rights and Obligations

As far as rights and obligations go Proclamation No. 1110/2019 has made a major advance and a significant change from its predecessor. Proclamation No. 409/2004 only had two articles on rights and obligations each corresponding to what is given to asylum seekers and recognized refugees. However, Proclamation No. 1110/2019 took out this separation and listed out the details of these rights and obligation at the same time specifying the entitlements within the articles. This approach enables the law to confer rights and obligations to both recognized refugees and asylum seekers without categorization and leaving either of the two groups out. Thus, the approach followed by the new law may be seen as progressive and better at promoting the rights and obligations of refugees and asylum seekers.¹²⁴

The listings of rights and obligations contained in the new law are somewhat similar to those incorporated in the UN refugee convention. Nevertheless, the proclamation while listing out these entitlements subjects them to a unique standard of treatment and modality of

¹²² Unlike its predecessor Proclamation No. 1110/2019 has incorporated principles such as the best interest of the child. See Id. Article 16(2)(e)

¹²³ Interview n.110.

¹²⁴ Zelalem Mogessie n.15; p.89-92; This assertion however might be seen differently by those who advocated for the approach followed by the old law. Some authors like Zelalem have the impression that a categorization of separating the rights and obligations of asylum seekers and recognized refugees in the old law was a 'strong feature' which is more advanced than the UN refugee convention and the OAU refugee convention. Based on the spirit of this assertion maybe extending rights and obligations to both refugees and asylum seekers alike might not be welcomed by some scholars however it is the best approach to promote refugee entitlements.

implementation which links them to other legislations and policy considerations. Therefore, it is relevant to discuss the interplay between the rights and obligations listed by Proclamation No. 1110/2019 and other laws of the country to understand their role in promoting the rights of refugees. Although the UN refugee convention follows different categorization as juridical status - chapter two, gainful employment - chapter three, welfare - chapter four and administrative measures - chapter five to deal with rights and obligation, for the purpose of outlining the rights and obligations contained in Proclamation No. 1110/2019 this study will try to categorize them into six as the following.¹²⁵

4.2.3.1. The Right to Stay in Ethiopia

This right listed under Article 23 of Proclamation No. 1110/2019 comes as a way to reaffirm the protection against forceful repatriation listed under Article 11 and 12. However, the latter group of Articles on Non-forceful repatriation and expulsion deal with the legal principle of ‘*non refoulement*’ while the former outlines what safeguards are enjoyed during a person’s stay in the country. It further outlines up to when this right is protected where his application for refuge is

¹²⁵ UN (1951), Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons: Summary Record of the Thirty-fourth Meeting, UN General Assembly; and UN (1951), Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons: Summary Record of the Thirty-fifth Meeting, UN General Assembly; The close reading of the above *travaux preparatua* documents shows that there was a huge debate on terminology for the heading of articles. However, there is no mention of how the chapters were divided. Looking into the discussion by the thirty fourth meeting on Article 5 now titled ‘Rights granted apart from this Convention’ shows that the drafters were careful not to misinterpret the inclusions within the UN refugee convention substituting other rights protected by other documents. Therefore, going for another categorization different from the UN refugee convention might seem to collide with the initial efforts made to separate the set of rights. Nonetheless this study will try to group the rights based on basic human rights categorizations to enable a more comprehensive understanding and give way to further analyze the protection and promotion of such rights vis-à-vis human rights categorization that came after the drafting of the UN refugee convention. The way these rights have been grouped in the following section also raises another supposition that the classification within the UN refugee convention might have been similar if the contemporary categorization of human rights preceded its drafting. However, this needs its own list of debate which is beyond the scope of the discussion here. Nonetheless although rights and obligations are grouped as one in Proclamation No. 1110/2019, the categorization made here will enable the better appraisal of how the specific entitlements are understood.

under review and how it will cease to exist where he has exhausted all remedies available and is required to leave the country.

4.2.3.2. Civil and Political Rights

The categorization as civil and political rights in this section doesn't explore the inclusions within Proclamation No. 1110/2019 from a general human rights perspective as that would go beyond the scope of this paper. Nevertheless, this section tries to link refugee rights with the general conceptions to create a clearer understanding. Even where specific rights are not listed within the ICCPR or in such categorization, the attainment of the rights is found to be fundamentally related to the enjoyment of basic rights contained under it which makes them indivisible. Accordingly, the following set of refugee rights contained within Proclamation No. 1110/2019 can be related to these rights.

A. Right to Association

With regards to the right to association recognized refugees and asylum seekers are given the right to participate in non-political and non-profit making associations and trade unions.¹²⁶ For this the law sets a standard of treatment where recognized refugees and asylum seekers are conferred the most favorable treatment as given to foreign national.¹²⁷ This entitlement is similar to that of the UN refugee convention while Proclamation No. 1110/2019 clearly extends the right to both recognized refugees and asylum seekers alike.¹²⁸

To appreciate this entitlement an understanding of what the right to association in Ethiopia entails becomes significant. Starting from Article 31 of the FDRE constitution to subsequent legislation on formation of associations and joining of trade unions are consulted to portray a clear picture of the right given to refugees; including those contained within civil society organizations proclamation on formation of non-profit organizations and labor proclamations on

¹²⁶ Proclamation No. 1110/2019 n.7; Article 27

¹²⁷ *ibid*

¹²⁸ UN refugee convention n. 4; Article 15

formation of trade unions and employers' associations.¹²⁹ While the standard of treatment similar to the most favorable treatment as given to foreign national might not be relevant for the latter case to join trade unions and employers' associations once they attain the right to employ or be employed, for the former case it may determine on what type of societies that the refugee might form or join from the onset.

B. Freedom of Movement

As a general rule Proclamation No. 1110/2019 entitles recognized refugees and asylum seekers to move freely within the national territory and choose their residence in accordance with the laws applicable to foreign nationals in the same circumstances.¹³⁰ However Proclamation No. 1110/2019 further stipulates that the agency may arrange places or areas within which refugees and asylum seekers may live.¹³¹ This stipulation of the law is not clear on whether the law tries to arrange living areas such as camps i.e. retaining encampment practice as noted by many about the old law or restrict residence of refugees in certain localities; nonetheless this may be a way of hindering the right given to freely choose residence in the first place.¹³² Although the standard of treatment for the right to movement is set in par with foreign nationals similar to the UN refugee convention, the designation of arranged residential areas leads to a lesser standards.

C. Right to access to justice

The right to access to justice is one of the rights included in the new refugee law. Under Article 30 Proclamation No. 1110/2019 stipulates that every recognized refugee and asylum seeker posses this right similar to national which is similar with the standards set by the UN refugee

¹²⁹ Organizations of Civil Societies Proclamation, No.1113/2019, Federal Negarit Gazette, 25th Year No.33, Addis Ababa, 7 March 2019 and Labour Proclamation, No.1156/2019, Federal Negarit Gazette, 25th Year No.89, Addis Ababa, 5 September 2019

¹³⁰ Proclamation No. 1110/2019 n.7; Article 28(1); This is a direct replica of the entitlement contained within the UN refugee convention. UN refugee convention n. 4; Article 26

¹³¹ Id. Proclamation No. 1110/2019; Article 28(1)

¹³² Eva Binkert, Merlin Flaig et al, (2021), Local governments and the sustainable integration of refugees in Ethiopia, Discussion Paper 21/2021, German Development Institute, p. 27 – 31. In this recent research it was found that the freedom of movement and choice of residence was fundamental for the enjoyment of other basic rights. Informant of the study argue that there is still a systematic encampment of refugees.

convention. Proclamation No. 1110/2019 is progressive in wording as it includes the right to bring a justiciable matter to any “competent body with judicial power” as opposed to the reference of courts in the UN refugee convention. However, the UN refugee convention under Article 16(2) puts a major inclusion to the enjoyment of this right where it refers to legal assistance and exemption from litigation fees (*cautio judicatum solvi*), although Proclamation No. 1110/2019 tries to incorporate such standard its realization is up to such safeguards being available to nationals.

Ghetnet, a human rights lawyer, identifies inaccessibility, unavailability and affordability as one of the major barriers to access to justice in Ethiopia. He notes that the problem of proper legal aid services at different levels affect the right to access legal services. Though he tries to show figures of how low the number of beneficiaries are, no mention of refugees as vulnerable or disadvantage groups are mentioned by him. Although one scholarly work cannot be representative this can show there is more needed from the law than just referring to other domestic frameworks since the inclusion of refugees in other framework needs its own legal grounding, and such holistic references will not serve the purpose of protecting their rights.¹³³

On the right to access to justice Proclamation No. 1110/2019 does nothing than restating the inclusion within the UN refugee convention. It reiterates what the UN refugee convention reads, while affirming the same right accorded to all human beings under Article 37 of the FDRE proclamation. Furthermore, Proclamation No. 1110/2019 as a subsequent law fails short in directing right bearers to the proper institution to enhance accessibility, to specify who facilitates the availability of legal services and the right to get proper information to protect their rights.

D. Vital events registration

Vital events registration is being seen as a major factor for the overall tracking of the progress of the contemporary world. Vital events registration becomes pivotal for statistics of current events according to the United Nations Statistics Division (UNSD) as it includes “the collection of statistics on vital events in a lifetime of a person as well as relevant characteristics of the events

¹³³ Ghetnet Metiku Woldegiorgis (2015), Access to Justice and Legal Aid in Ethiopia, Human Rights, Public Policy and Law Blog, Abyssinia Law accessed through <<https://abyssinialaw.com/blog/access-to-justice-and-legal-aid-in-ethiopia>> on December 6, 2022. and Federal Advocacy Service Licensing and Administration, Proclamation No. 1249/2021, Federal Negarit Gazette, 27th Year No.42, Addis Ababa, 5 August 2021

themselves and of the person and persons concerned”.¹³⁴ This makes vital events registration a fundamental right as it secures individuals to be part of the numbers in a particular population. Safeguards and entitlements are conferred onto recognized refugees and asylum seekers based on their registration and belongingness to the group of persons, which makes vital events registration at the core of refugee rights and Proclamation No. 1110/2019 gives this basic right under Article 36. It includes the registration and issuance of certification of vital events similar to nationals.¹³⁵

E. Identity papers, driver’s qualifications license and travel documents

Although documentation starts with vital events registration, the exercise of rights and entitlements will require the acquisition of civil status documents. Under Proclamation No. 1110/2019 Article 32 both recognized refugees and asylum seekers are given the right to get identity documents and travel documents. This approach is different from Proclamation No. 409/2004 where these rights were reserved to recognized refugees only.¹³⁶

With regards to identity papers and travel documents Proclamation No. 1110/2019 seems to follow a different approach from that of the UN refugee convention. The UN refugee convention under Article 27 stipulates that identity papers and travel documents are a substitute to one another and having a travel document is enough to identify oneself, While Proclamation No. 1110/2019 makes identity papers mandatory to both asylum seekers and recognized refugees and refers to them as documents stating a person’s status.¹³⁷ However the two laws converge on the purpose of travel documents, referring to it as a document to travel outside of one’s territory.¹³⁸ Furthermore both instruments imply that travel documents are entitlements given by the will of the host country.¹³⁹ On the other hand the UN refugee convention puts reasons for exclusion from this right while no limitation is detailed out by Proclamation No. 1110/2019 however there

¹³⁴ Mills, Samuel, Carla Abouzahr, Jane Kim, Bahie M. Rassekh, and Deborah Sarpong, (2017) Civil Registration and Vital Statistics (CRVS) for Monitoring the Sustainable Development Goals (SDGs). The World Bank

¹³⁵ Proclamation No. 1110/2019 n.7; Article 36

¹³⁶ Proclamation No. 409/2004 n.6; Article 21(1)

¹³⁷ Proclamation No. 1110/2019 n.7; Article 32(1)

¹³⁸ Id; Article 32(2) and UN refugee convention n. 4; Article 28

¹³⁹ Ibid.

is a clause indicating that stipulation from international instruments may be used in determining “preparation, validity and issuance of refugee travel documents” which can be viewed as an all-encompassing phrase.¹⁴⁰

One other inclusion under documentation is the right of asylum seekers and recognized refugees to get drivers’ qualification certification license.¹⁴¹ This right is offered in two alternatives one for those who have international or foreign driving license to apply for an equivalent qualification certificate while the second one is for asylum seekers and refugees to apply for an Ethiopian driver’s qualification license using their refugee identification documents.¹⁴² This right to issue driver’s qualification certificate to refugees is not one that is found within the UN refugee convention and can be considered a new development which contributes to further other rights such as freedom of movement and the right to work if the areas of work are permitted as it will be discussed in the next section.

4.2.3.3. Economic, Social and Cultural rights

Another categorization of refugee rights contained in Proclamation No. 1110/2019 is under the economic, social and cultural rights grouping. These rights are often considered as progressive rights where countries are expected to work towards their attainment to the maximum of their abilities.¹⁴³ Refugees being vulnerable people usually fleeing from worse situations will make them fall under persons in need of extended assistance. Although their inclusion in a legislation on its own shows a major commitment for their protection there is a need to include appropriate

¹⁴⁰ Proclamation No. 1110/2019 n.7; Article 32(3)

¹⁴¹ Id. Article 31

¹⁴² Id Article 31. Proclamation No. 1110/2019 follows a different approach from the one observed until now for licensing here where a detail of the alternatives are outlined in the article while at the same time making further reference to the applicable law. Furthermore, Proclamation No. 1110/2019 makes no reference to a different set of standards for refugees as the current relevant law makes no distinction based on status except for the residence of the requester as stated under Article 14(2)(b) of the proclamation on licensing. Driver’s Qualification Certification License Proclamation No. 1074/2018, Federal Negarit Gazette, 24th Year No.27, Addis Ababa, 14 February 2018

¹⁴³ International Covenant on Economic, Social and Cultural Rights (ICESCR) n.57; Article 2(1)

measure in the law for their full realization.¹⁴⁴ Accordingly, the following set of refugee rights contained within Proclamation No. 1110/2019 can be listed under this category.

A. Access to Education

Proclamation No. 1110/2019 under Article 24 outlines access to education to be granted to refugees and asylum seekers. Similar to the UN refugee convention Proclamation No. 1110/2019 states that “same treatment shall be accorded as Ethiopian Nationals for accessing pre-primary and primary education”.¹⁴⁵ This shows that Ethiopia has disregarded the reservation it made on Article 22(1) when acceding to the UN refugee convention.¹⁴⁶ Proclamation No. 1110/2019 then brings in the approach of the ICESCR of granting rights based on availability of resources and stipulates that access where resources are available must be granted for “secondary education; higher education; technical and vocational education and training and adult and non-formal education”.¹⁴⁷ Similar to the UN refugee convention the refugee proclamation then goes on to dwell on the access to educations other than primary education for refugees to receive “the most favorable treatment accorded to foreign nationals, particularly regarding access to the institutions, recognition of previous certifications and qualification and the exemption from fees

¹⁴⁴ Committee on Economic, Social and Cultural Rights (CESCR) General Comment No. 3: The Nature of States Parties’ Obligations (Art. 2, Para. 1, of the Covenant) Adopted at the Fifth Session of the CESCR, on 14 December 1990. Par 3-9; The general comment of the committee stipulates inclusions within legislations must be seen in light of their appropriateness to ensure the protection and promotion of the right. It further outlines that even though a timeline of “progressive realization” different from civil and political rights which require immediate realization is adopted, the obligation to “devise strategies and programs for the promotion of economic, social and cultural rights, is in no way eliminated as a result of resource constraints”.

¹⁴⁵ Proclamation No. 1110/2019 n.7; Article 24(1) and UN refugee convention n. 4; Article 22(1). The UN refugee convention uses the term elementary education while Proclamation No. 1110/2019 specifies the type of education.

¹⁴⁶ United Nations, Treaty Series, vol. 189 n.55 and Proclamation No. 409/2004 n.5; Article 21(3)

¹⁴⁷ Id. Proclamation No. 1110/2019 n.7; Article 24(2). This addition of Proclamation No. 1110/2019 is not only different in bring the availability of resources but also in listing out the different types of education that refugees can access. The inclusion of access to trainings may even implicate that Proclamation No. 1110/2019 is trying to incorporate the social security measures listed under Article 24(1)(a) of the UN refugee convention where it states that country’s must accord similar treatment as nationals for apprenticeship and trainings. However, the sub article has no standard of treatment other that availability of resource.

and availability of scholarships”.¹⁴⁸ Nonetheless the third sub article is lacking in that it replicates the inclusion of the UN refugee convention without clearly outlining how access might be granted.¹⁴⁹

B. Access to Health Services

Access to available health services is given to all recognized refugees and asylum seekers under Article 25 of Proclamation No. 1110/2019. This is a progressive action taken by Proclamation No. 1110/2019 as we don’t find any similar inclusion of an article specifically dealing with health services within the UN refugee convention except related to social services.¹⁵⁰ Proclamation No. 1110/2019 doesn’t seem to specify a standard of treatment for health services rather specify that ‘what is available’ shall be accessible to recognized refugees and asylum seekers. However what amounts to availability or to which services refugees might be entitled is not clear.¹⁵¹

C. The Right to work

The right to work of refugees comes in different forms as a way of enabling their self-subsistence. Although Ethiopia had made a reservation to wage earning employment and even explicitly made reference to the strict standards that recognized refugees will be subjected to while exercising their right in Proclamation No. 409/2004, it has employed a different approach

¹⁴⁸ Id. Proclamation No. 1110/2019; Article 24(3)

¹⁴⁹ Ibid. There is an ambiguity in the way the text of this sub article is drafted where a phrasing of “may receive” is used as opposed to “shall receive” as used in the first sub article both having similar connotation. Furthermore, this third sub article has inconsistencies between the Amharic and English versions where the Amharic uses the “shall receive” phrasing with the need of reference to other relevant laws while the English omits this phrase in its entirety.

¹⁵⁰ Health services in the UN refugee convention are only included as Social Security measures under Article 24(1)(b) which tries to list out the specific types of situation which may need health services. Although a list may help clear out ambiguity of what should be covered or not, it may also limit access if certain services are grouped in another category by the laws of that country hence a holistic approach as adopted by Proclamation No. 1110/2019 might be better.

¹⁵¹ FDRE constitution n.51; Article 41(3) The FDRE constitution stipulates that access to publicly funded social services is a right to Ethiopian Citizens. Hence without a standard of treatment to refugees whether they are entitled to access publicly funded social services similar to Ethiopian nationals or whether there will be another form of health services to be made available to refugees is unclear.

in Proclamation No. 1110/2019.¹⁵² As a rule Proclamation No. 1110/2019 gives both recognized refugees and asylum seekers the right to be accorded the most favorable treatment as foreign nationals to engage in wage earning employment¹⁵³ and engage in agriculture, industry, small and micro enterprises, handicrafts and commerce¹⁵⁴. Proclamation No. 1110/2019 accords most favorable treatment as given to foreign nationals to practice their profession only to recognized refugees who have academic credentials on areas that are permitted to foreign national.¹⁵⁵ Regarding the standard of most favorable treatment as given to foreign nationals Minilik says that we should be constantly looking into foreigners with the most favored treatment and give similar entitlement to refugees.¹⁵⁶ He claim to date Djiboutian nationals are the most favored foreigners and refugees should not be given lesser rights.¹⁵⁷ In any case Proclamation No. 1110/2019 is found to grant lesser rights as opposed to the commitments made by the government. The pledges made in 2016 shows that for the issue of work permit, where the area is permitted for foreigners, priority must be given to refugees before any foreigner, hence the most favored treatment given to foreigners in itself jeopardizes the priority.¹⁵⁸

Equal treatment is given to recognized refugees and asylum seekers to engage in rural and urban projects which are “jointly designed by the Ethiopian government and international community to benefit refugees and Ethiopian nationals” similar to Ethiopian nationals engaged in the same projects.¹⁵⁹ These projects as discussed above come as a way of easing host country pressure.¹⁶⁰

¹⁵² United Nations, Treaty Series, vol. 189 n.55 and Proclamation No. 409/2004 n.6; Article 21(3)

¹⁵³ Proclamation No. 1110/2019 n.7; Article 26(1). This is different from Proclamation No. 409/2004 in that the standards are matched to a more favorable treatment in the new one as opposed to similar treatment. Moreover, although the old refugee law only gives the right to recognized refugees the new refugee law extends the right to recognized refugees and asylum seekers alike; Proclamation No. 409/2004 n.5; Article 21(3)

¹⁵⁴ Id. Article 26(2).

¹⁵⁵ Id. Article 26(3).

¹⁵⁶ Minilik n.16; p 35 - 39

¹⁵⁷ Ibid. Minilik even claims that subsequent legislations by the agency fall short of ensuring this safeguard which needs a thorough appraisal and this assertion if true would contradict with the protection ensured by Proclamation No. 1110/2019.

¹⁵⁸ Ibid. and CRRF n.77; p. 7 Pledge No.4

¹⁵⁹ Proclamation No. 1110/2019 n.6; Article 26(4)

¹⁶⁰ GCR n. 66 and Volker Türk n. 70

Here the law seems to make use of the international support geared towards refugees to equally benefit its own citizens.¹⁶¹ With a disregard to its reservation to Article 17(2) Proclamation No. 1110/2019 has also exempted recognized refugees and asylum seekers from restrictive measures imposed on foreign nationals to protect the national labor market where recognized refugees and asylum seekers are either married to a national of Ethiopia or have a child possessing nationality.¹⁶²

D. Right to acquisition and transfer of Property

Proclamation No. 1110/2019 as a rule gives recognized refugees and asylum seekers the most favorable treatment accorded to foreign nationals regarding acquisition of movable and immovable property. Furthermore, they are matched with Ethiopian nationals regarding patent, copyright and neighboring rights, trademarks, industrial design, and other similar rights.¹⁶³ Additionally, there is an inclusion by Proclamation No. 1110/2019 for exemption from import and export tax when asylum seekers enter the country and where recognized refugees and asylum seekers leave the country respectively, which is progressive in that the international standard only requires the facilitation for transfer of assets and where charges are in question to give similar treatment as nationals.¹⁶⁴

¹⁶¹ CRRF n.77; p. 12; Here there seems to be a change in approach in Proclamation No. 1110/2019 as opposed to preceding policy directions. The road map to operationalize the CRRF which precedes the proclamation outlines a similar approach to utilize the support secured from international actors for industrial projects to the benefit of both refugees and Ethiopian nationals but in a ratio of 30% to refugees and 70% to nationals as opposed to 50/50 share in Proclamation No. 1110/2019. The current practice seems to follow suit from the proclamation and reports for the sector show similar treatments being given to refugees and host communities alike. See UNHCR (2020) n.90; p.10

¹⁶² Proclamation No. 1110/2019 n.7; Article 26(3)

¹⁶³ Id. Article 29. Although Proclamation No. 1110/2019 gives similar standards of treatment for movable and immovable property and artistic rights and industrial property similar to the UN refugee convention it avoids the differentiation made between the two as the Ethiopian legal framework deals with them together. See UN refugee convention n. 4; Article 13 and 14 and FDRE constitution n. 51; Article 40

¹⁶⁴ UN refugee convention n. 4; Article 29 and 30

E. Access to banking and financial services

The right to access financial services is also one of the progressive entitlements given to recognized refugees and asylum seekers by Proclamation No. 1110/2019.¹⁶⁵ Although not a safeguard included in the UN refugee convention the UNHCR office in Jordan claims that it is a crucial right to ensure refugee self-reliance as affirmed by the GCR.¹⁶⁶ Although no standard of treatment is put in place recognized refugees and asylum seekers can use financial and banking services using their identity documents according to relevant laws.

F. Access to telecommunication services

According to Article 19 of the UDHR everyone has the right to “hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers”, and in the contemporary world the right to access telecommunication service can be deemed as one way of exercising this basic human right. The UNHCR has been advocating this right and how it can impact the gamut of refugee rights and eventually enhance refugee self-reliance. Although UNHCR advocates for different aspects like affordability, accessibility etc. the granting of access by Proclamation No. 1110/2019 can be seen as a major progress in this regard.¹⁶⁷

G. Rationing

The UN refugee convention specifies that in the case of short supply and when there exists a rationing this must be extended to refugees similarly with that of nationals. The same approach is taken by Article 35 of Proclamation No. 1110/2019. And this same right is extended to recognized refugees and asylum seekers.¹⁶⁸

¹⁶⁵ Proclamation No. 1110/2019 n.7; Article 33

¹⁶⁶ UNHCR (2019), *Refugees Access to Financial Services*, UNHCR: Jordan
<<https://data.unhcr.org/en/documents/download/68256>> (last accessed on December 14, 2022)

¹⁶⁷ UNHCR (2016), *Connecting Refugees: How Internet and Mobile Connectivity can Improve Refugee Well-Being and Transform Humanitarian Action* and Proclamation No. 1110/2019 n.6; Article 34

¹⁶⁸ Proclamation No. 1110/2019 n.7; Article 35 and UN refugee convention n. 4; Article 20

4.2.3.4. Vulnerable Groups

We find no mention of the term ‘vulnerable groups’ within the UN refugee convention. However, there are stipulations related to “minimum age of employment, women’s work and the work of young persons” showing that women and children require special protection.¹⁶⁹ Proclamation No. 1110/2019 under Article 38 obligates the Agency to ensure that special measures are taken to protect recognized refugee and asylum seeker women and children. While the law states the former are to be protected from gender-based violence the latter are to be protected from abuse, neglect, exploitation and trafficking. Here it can be argued that women are not only subject to gender-based violence but also trafficking, abuse, and exploitation similar to children and this divide of special measures may be questioned.¹⁷⁰ Other than the two groups Proclamation No. 1110/2019 just states there might be other groups with specific needs which is a different approach from the old proclamation which list women, children, the elderly and handicap people with these specific needs.¹⁷¹

4.2.3.5. Obligations

The UN refugee convention after definitions starts of by stating that refugees owe obligation to their host countries and should confirm to the laws and regulations.¹⁷² Proclamation No. 1110/2019 follows suit and puts forth stipulation on what obligations must be fulfilled by refugees. The first obligation is to cooperate and avail all information required by the Agency and respect the laws in force within Ethiopia.¹⁷³ Followed by the duty to respect the cultures of the people and refrain from practices that contradict with public morality.¹⁷⁴ Another unique addition to obligations is on the “duty to protect the environment”, this emanates from the trend

¹⁶⁹ Id. UN refugee convention; Article 24(1)(a)

¹⁷⁰ UN office on Drugs and Crime (UNODC) (2020), *UNODC & Ethiopia Join Forces to End Trafficking in Persons and Smuggling of Migrants*. < <https://www.unodc.org/unodc/frontpage/2020/November/unodc-and-ethiopia-join-forces-to-end-trafficking-in-persons-and-smuggling-of-migrants.html>> (last accessed on December 14, 2022); Reports show that in Ethiopia men women and children are trafficked and exploited.

¹⁷¹ Proclamation No. 1110/2019 n.7; Article 38(3) and Old refugee convention n. 6; Article 22

¹⁷² UN refugee convention n. 4; Article 2

¹⁷³ Proclamation No. 1110/2019 n.7; Article 39(1)

¹⁷⁴ Id. Article 39(2)

that Ethiopia is catching up with environmental protection and the rights it has granted to refugees.¹⁷⁵ Most of the green economy adaptation plan on environment protection are related to strengthening urban and rural environments and provision of social services which now have become entitlements that refugees enjoy from, hence the obligation in this regard seems to look ahead and subject refugees to join the national endeavors, while exercising their rights, to protect the environment at large.¹⁷⁶

4.2.3.6. Durable Solutions

The need for a sustainable solution is claimed by many as the ultimatum for refugee protection as people can't and shouldn't remain in flight.¹⁷⁷ Scholars like Zelalem claim that one aspect of durable solutions for refugees, voluntary repatriation, was the only one recognized by Proclamation No. 409/2004.¹⁷⁸ By far Proclamation No. 1110/2019 has seen a shift in incorporating different forms of durable solutions from voluntary repatriation and local integration up to naturalization.¹⁷⁹ Here the level of safeguard for the three forms of solutions the law provides against what can be considered 'durable' is made below.

Voluntary repatriation has been a solution opted for in both the old and new proclamation. However there is a major difference in the spirits of the inclusions in that in the old law the wording wanted to emphasize that refugees make the decision to repatriate on "their own will" and this decision will apply to their whole family, hence it emphasized the consequences while the new law tries to assist the refugees in this hard journey to make "free and informed choice to repatriate" and even collaborate with UNHCR for their safe and dignified return.¹⁸⁰ Hence we see a more liberal inclusion within what looks like a similar safeguard.

Local integration is defined under Article 2(12) as a means to facilitate refugees a broader integration by granting permanent residence permits to those who have lived for a protracted period. Furthermore Article 41 also states that the country will facilitate the local integration of

¹⁷⁵ Id. Article 39(3)

¹⁷⁶ FDRE (2019), *Ethiopia's Climate Resilient Green Economy National Adaptation Plan*

¹⁷⁷ Zelalem n.15; pp.96

¹⁷⁸ Ibid.

¹⁷⁹ Proclamation No. 1110/2019 n.7; Articles 40, 41, and 42.

¹⁸⁰ Id. Article 40 vis-à-vis Proclamation No. 409/2004 n.5; Article 23

recognized individuals or groups ‘who have lived in Ethiopia for a protracted period’.¹⁸¹ Considering the permanent residence permit as a means to attain self-reliance as defined by UNHCR we can consider local integration as an entitlement however this is only guaranteed for those refugees who have lived in the country for a ‘protracted period’ and how long that period is has not been specified which makes the inclusion unclear.¹⁸² Furthermore Article 2(12) clearly says it is a measure put in place until “refugees fully attain durable solutions to their problem” which gives the impression that local integration is a temporary fix and excludes it from being a durable solutions on its own.

Article 42 states that refugees and asylum seekers are entitled to naturalization if they fulfill the necessary requirements provided for by nationality laws of the country.¹⁸³ The possibility of naturalization of a refugee is further stipulated under Article 9(d) on the cessation of refugee status. The proclamation clearly notes that cessation might happen on the grounds of acquisition of the Ethiopian nationality which will eventually change the status of the individual.¹⁸⁴ The Ethiopian nationality proclamation defines a foreigner as a ‘person who is not an Ethiopian national’ under Article 2(1) putting refugees in this box and moves on to list down the conditions to be fulfilled by a foreigner to acquire Ethiopian Nationality under Article 5 which include sufficient source of income, years of residence etc. This approach considered vis-à-vis the Nationality Proclamation seems that the naturalization of refugees might happen with only four years of residence which doesn’t seem to be practical.¹⁸⁵ However, there is no mention of standard of treatment on how refugees are to be considered within Proclamation No. 1110/2019. Moreover, matching of refugees to foreigners with the current mass influx and ever-increasing refugee population doesn’t seem practical for extending the Ethiopian citizenship. Hence naturalization of refugees needs more legal basis and a tailored substantive and procedural stipulation to incorporate refugee needs.

¹⁸¹ Id. Article 41

¹⁸² UNHCR, *Local Integration, Global Consultations on International Protection*, EC/GC/02/6, 25 April 2002.

¹⁸³ Id Article 42. and Nationality Proclamation No. 378/2003, *Negarit Gazette*, 23rd December 2003 [herein after the Nationality proclamation].

¹⁸⁴ Proclamation No. 1110/2019 n.7; Article 9(d)

¹⁸⁵ Nationality proclamation Article 5(2)

Chapter Five - Conclusion and Recommendation

5.1. Conclusion

It is evident from the observation of Proclamation No. 1110/2019 that Ethiopia has been trying to uphold its motto as a refugee welcoming nation. The attempts of the country to be a champion in the promotion and protection of the rights of refugees is also commendable. Ethiopia has proven that being in the forefront of addressing the refugee issue needs a concerted effort and everyone must join hands to share the burden. However, observing the global compact and development since its inception in 2016 many issues still remain unresolved and unclear. Whether due to phenomena's like COVID-19 or a variance in ownership of the initiative it still seems the pressure remains with host countries. Legal documents like Proclamation No. 1110/2019 continuously prove that host countries like Ethiopia are opening up their frameworks to incorporate the issue of refugees and better integrate the protection and promotion of their rights. Nonetheless, whether this has been matched by the obligation to share burden by third parties is yet to be determined.

The inclusion of rights and obligation within proclamation No. 1110/2019 is praiseworthy with detailed and elaborate wording. The rights and obligations are found to comply with international refugee standards and are also stand out when measured against basic human rights standards. Nonetheless the inclusions measured against the enjoyment and application to protection of refugee rights can still be improved. These safeguards are also coupled with an ambiguous enforcement which poses the question of applicability of the law albeit this may need further investigation and deeper analysis than the one made in this study.

Progressive inclusions in the areas of economic, social, and cultural rights together with a wider range of provision and services make the proclamation No. 1110/2019 an advanced law fitting contemporary protection frameworks. Nonetheless in some areas the wordings are found to be more of policy objectives rather than legal frameworks dealing with specifics such as involvement ratios of refugees to nationals for work etc. This type of wording may deem relevant both for ensuring refugee rights and also control the amount of burden on a host country but still whether these should have been incorporated in a legal document at a higher level such as a proclamation will need further debate.

All in all proclamation No. 1110/2019 stands out as an up-to-date document for the protection and promotion of refugee rights. It confirms to international standards and has incorporated the advancements being made in the sector, itself being a response to incorporate commitments of the new global compact initiative. Nevertheless, its implementation and proper observance will lie on further regulations and directives which can simplify its translation to situations on the ground. As a recent law with only 3 years of service at the writing of this study further research is required in the coming years to observe its practicability and impact.

5.2. Recommendations

There is a need to further study the nexus between inclusion of guarantees to refugees and level of burden sharing envisaged under the global compact. As proclamation No. 1110/2019 serves the purpose of fulfilling the countries commitment to the global compact of refugees, it must be clearly determined that undue pressure is not being shouldered by the country.

The legal safeguards of the proclamation doesn't follow a universal approach for standards of treatment in all cases. Standards set within the national legal frameworks starting from the FDRE Constitution must be aligned if the safeguards under proclamation no. 1110/2019 are to be ensured.

Proper reference to other laws and inclusion of refugee rights in the other legal instruments is a basic necessity for the advancement of refugee rights. The refugee proclamation cannot be a standalone instrument to protect refugee right although there is reference to other laws where relevant, reference is still ambiguous and most of the referred laws don't give a comprehensive outlook for the enjoyment of the rights by refugees. For instance, in the case of work permit the inconsistency for the different economic activities sometimes matching refugees to nationals while in other cases using unclear standards as most favored foreign national must be clearly stipulated having reference to the parallel laws governing the issue.

Safeguards such as naturalization envisaged under the new refugee proclamation have no details of implementation hence are mere recognitions which cannot be realized therefore need further interpretation. A subsequent legislation or inclusion in other legislation of determining citizenship procedures must be put in place.

Adoption of a response strategy for Ethiopia is not an addition but a necessity. Legal principles and policy directions are mandatory supplements to one another for proper and efficient implementation. The legal conception within the new refugee proclamation needs a political and economic commitment from the government for the proper implementation which makes the need for a comprehensive policy document a major requirement. The inclusion of such allocations and assurances within the new law may show the level of commitment but are restrictive for future enjoyments of rights by this group of peoples and must be taken out from the law.

The provision of clear information on the application process for refugees must start from the initial stages of RSD. This can be in different forms from incorporating the issue of refugees in training manuals of police officers to distributing leaflets in different languages to police stations. Furthermore, having focal persons at the respective police stations to communicate this information and making interpreters available should be part of the safeguard. This must be incorporated in the proclamation extending the already stipulated entitlement during RSD interviews.

Entitlements such as freedom of movement and choosing residence freely must not be mere recognitions to fulfill international obligations. Therefore, stipulations limiting enjoyment of such safeguards must be fully removed to enable enjoyment of such rights. If necessary legal texts should incorporate such alternatives by giving the lead institution a facilitating role rather than leaving the enjoyment of the right on the will of such institutions by putting in phrases such as ‘may arrange’ which become enablers to limit rights.

Differentiation between women and children on special measures such as protection against gender-based violence, trafficking, abuse and exploitation should reflect the current realities of the country. Both women and children as vulnerable groups are subject to all of the above hence the protection against all should be extended to both groups. A reformulation or clear inclusion of both groups in the articles dealing with special measures is required to protect these vulnerable groups from all injustice.

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