



**PRIMA FACIE RECOGNITION OF REFUGEES  
STATUS IN ETHIOPIA: Implications on Protected Rights  
and the Appraisal of the History, Legal Basis and Experience of  
Eritrean Refugees**

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**PRIMA FACIE RECOGNITION OF REFUGEES STATUS  
IN ETHIOPIA:** Implications on Protected Rights and the Appraisal  
of the History, Legal Basis and Experience of Eritrean Refugees

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## **DECLARATION**

I, the undersigned, declared that the thesis entitled “Prima Facie Recognition of Refugee Status in Ethiopia: Implications on Protected Rights and the Appraisal of the History, Legal Basis and Experience of Eritrean Refugees” comprises my original work. In compliance with widely accepted practices, I have duly acknowledged and referenced all materials used in this work.

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## **List of Abbreviations**

ACHPR – African Charter on Human and Peoples Right

ARRA – Agency for Refugee and Returnees Affair

COI – Country of Origin Information

DRC – Democratic Republic of Congo

ICCPR – International Covenant on Civil and Political Rights

UDHR – Universal Declaration of Human Rights

INVEA – Immigration, Nationality, Vital Events Agency

ICJ – International Court of Justice

OAU – Organization of African Unity

PFP – Prima facie Procedure

PFRS – Prima facie Refugee Status

PFRSD – Prima facie Refugee Status Determination

RSD – Refuge Status Determination

UN – United Nations

UNHCR – United Nations High Commissioner for Refugees

OCP – Out of Camp Policy/Program

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## **Abstract**

*Ethiopia's refugee proclamation No. 1110/2019 provides that ARRA may recognize group of asylum seekers as refugees. Currently, asylum seekers arriving from Sudan, South Sudan, Somali and Yemen are recognized through prima facie approach in Ethiopia. Eritrean asylum seekers are among these refugees recognized in prima facie basis since 2000. However, in 2020, Ethiopia decided to change its policy on the prima facie recognition of Eritrean asylum seekers and six months after this decision, again practically pended any kind of status determination of Eritrean asylum seekers. There is an argument that this is not in line with international standards and UNHCR guidelines on prima facie recognition of refugees because there is no change of circumstances to end prima facie recognition of Eritrean asylum seekers; Ethiopia cannot pend status determination of refugees which is a violation of rights to seek asylum enshrined in international human rights instruments particularly the 1951 refugee convention.*

*This study normatively discussed and empirically investigated the nature, legal status and protection implications of this decision and practice; it finds out key challenges and gaps in the general application of prima facie recognition of refugees in Ethiopia. It also forwarded solutions and recommendations for protection of refugees during prima facie recognition of refugees in Ethiopia.*

# CHAPTER ONE

## 1. Introduction

### 1.1. Background of the study

Refugee is “someone who is unable or unwilling to return to their country of origin owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion<sup>1</sup> or on the grounds of external aggression, occupation, foreign domination or events seriously disturbing public order.”<sup>2</sup> Therefore, it is understandable that a person to be a refugee or to have refugee status and get international protection, his claim for refugee status should be determined. This is achieved through a process of refugee status determination.

‘Refugee Status Determination is the legal or administrative process by which governments or UNHCR determine whether a person seeking international protection is considered a refugee under international, regional or national law’.<sup>3</sup> RSD is the primary responsibility of states.<sup>4</sup> This is because seeking asylum from persecution is a human right that states are responsible to implement under international human rights instruments.<sup>5</sup>

Refugee status determination can be mostly individual and in some circumstances group or prima facie basis. Even though some writers disagree with this categorization of RSD and argue

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<sup>1</sup> *Convention Relating to the Status of Refugees*, 28 July 1951, United Nations, Treaty Series, vol. 189, available at: <https://www.refworld.org/docid/3be01b964.html> [accessed 29 April 2021], p. 137.

<sup>2</sup> *Convention Governing the Specific Aspects of Refugee Problems in Africa* ("OAU Convention"), 10 September 1969, 1001 U.N.T.S. 45, available at: <https://www.refworld.org/docid/3ae6b36018.html> [accessed 30 May 2021].

<sup>3</sup> UN High Commissioner for refugees (UNHCR), ‘Refugee Status Determination’ (UNHCR 2020) < <https://www.unhcr.org/refugee-status-determination.html> > accessed 31 August 2020.

<sup>4</sup> Ibid

<sup>5</sup> *Universal Declaration of Human Rights*, 10 December 1948, 217 A (III), available at: <https://www.refworld.org/docid/3ae6b3712c.html> [accessed 7 June 2021], article 14.

that prima facie recognition of refugee is a form of individual status determination,<sup>6</sup> prima facie refugee status determination is defined as ‘the recognition by a State or UNHCR of refugee status on the basis of readily apparent, objective circumstances in the country of origin or, in the case of stateless asylum-seekers, their country of former habitual residence.’<sup>7</sup> It is mostly applicable when the numbers of asylum seekers are more than the capacity of a state to recognize refugees on individual basis with-in the reasonable time or the mass influx of refugees make the individual status determination of refugee unnecessary or surpass it. This is when the humanitarian assistance is more pressing than the recognition process.<sup>8</sup>

There is no international or regional binding instrument for the application of prima facie recognition. However, there are non-binding soft laws like the UNHCR executive committee conclusions and guidelines. Among these, the most comprehensive and up to date instrument is UNHCR guidelines on prima facie recognition of refugee status.<sup>9</sup> The only binding laws currently are national legislations which states apply in their respective jurisdictions.

Ethiopia has a centuries-old tradition of receiving and hosting refugees and asylum seekers.<sup>10</sup> For long time the main way of refugee status determination was prima facie or group status determination. Ethiopia is signatory to international and regional refugee protection instruments. Therefore, to enforce these responsibilities in its domestic jurisdiction, it has recently revised and adopted a new refugee proclamation No.1110/2019. This proclamation included individual and group recognition or prima facie procedures. Under the proclamation, the mandate to decide on the claims of refugees is given to the ARRA.

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<sup>6</sup> UN High Commissioner for Refugees (UNHCR), 'Ref world | Prima Facie Status and Refugee Protection' (Ref world, 2020) < <https://www.refworld.org/docid/4ff3f8812.html> > accessed 31 August 2020, P10.

<sup>7</sup> UN High Commissioner for Refugees (UNHCR), 'Protection of Refugees in Mass Influx Situations: Overall Protection Framework' (UNHCR, 2020) < <https://www.unhcr.org/3ae68f3c24.html> > accessed 31 August 2020.

<sup>8</sup> UN High Commissioner for Refugees (UNHCR), Handbook on Procedures and Criteria for Determining Refugee Status and Guidelines on International Protection Under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees, April 2019, HCR/1P/4/ENG/REV.4, available at: <https://www.refworld.org/docid/5cb474b27.html> [accessed 1 September 2020].

<sup>9</sup> UN High Commissioner for refugees (UNHCR), Guidelines on International Protection No.11 : Prima facie Recognition of Refugee Status, 24 June 2015, HCR/GIP/11, available at: <https://www.refworld.org/docid/555c335a4.htm> [accessed 31 August 2021]

<sup>10</sup> 'Message from the Director' (ARRA, 2020) < <https://arra.et/message-from-the-deputy-director-2/> > accessed 1 September 2020.

Ethiopia recognized refugees coming from most of neighboring countries - Somalia, Eritrea, South Sudan, Yemeni and Sudan through prima facie approach.<sup>11</sup> It recently decided to change its policy on prima facie recognition of Eritrean Refugees.<sup>12</sup>

The decision to apply combined prima facie and individual recognition of Eritrean refugees depending on the cases in Ethiopia currently raises many issues which are not clear in addition to what really constitutes change of circumstances to change application of prima facie recognition.

It is widely held that the reasons that led Ethiopia to adopt prima facie recognition of Eritrean refugees are humanitarian, practical and political very much like other refugees from neighboring countries. The humanitarian aspect of it is individual RSD could be rigorous to apply. Practically, the application of individual RSD on a large number of refugees with high rate of fleeing from Eritrea was inappropriate. Politically, Ethiopia and Eritrea have strong historical tie which strengthened the preference of prima facie recognition over individual RSD.<sup>13</sup>

## **1.2. Statement of the problem**

Despite the existence of UNHCR's guidelines on prima facie recognition of refugee status which has the effect of interpretative guidance for governments,<sup>14</sup> countries continue to violate the principle of non-discrimination in the protection of refugees or in general the protection of human rights, and adopt or terminate refugee status recognized on the basis of prima facie refugee status determination. The uniform application of recognition and terminating refugee status given on the basis of prima facie approach is important for the protection of refugees. This

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<sup>11</sup> Key informant Interview with Mr. Teshome Kassa, RSD and Registration Team Leader, ARRA, 16 July 2021 (hereafter KII with Mr. Teshome Kassa)

<sup>12</sup> Ibid

<sup>13</sup> Tadesse Woldetsadik and Mulu Kidanemariam, "The Ethio-Eritrean Rapprochement And Potential Implication On Eritrean Refugees" In Ethiopia In Revisiting The Ethio-Eritrean Relations From Separation To Conflict And Beyond INTERNATIONAL LAW SERIES Volume 3' (ResearchGate, 2020) <  
[https://www.researchgate.net/publication/341592073\\_The\\_Ethio-Eritrean\\_Rapprochement\\_and\\_Potential\\_Implication\\_on\\_Eritrean\\_Refugees\\_in\\_Ethiopia\\_in\\_Revisiting\\_the\\_Ethio-Eritrean\\_Relations\\_From\\_Separation\\_to\\_Conflict\\_and\\_Beyond\\_INTERNATIONAL\\_LAW\\_SERIES\\_V](https://www.researchgate.net/publication/341592073_The_Ethio-Eritrean_Rapprochement_and_Potential_Implication_on_Eritrean_Refugees_in_Ethiopia_in_Revisiting_the_Ethio-Eritrean_Relations_From_Separation_to_Conflict_and_Beyond_INTERNATIONAL_LAW_SERIES_V)> accessed 17 March 2021, p105.

<sup>14</sup>Guidelines On International Protection No. 11 (n.9)

is the reason why UNHCR's guidelines come up with a set of standards for general application by states and the UNHCR itself.<sup>15</sup>

There are instances that the decisions of states for prima facie recognition of refugees or termination of prima facie approach is confusing or can be a point of disagreement. Therefore, the understanding of how the prima facie refugee status determination is implemented or the criteria and procedures should be clear. Based on UNHCR's guidelines on the prima facie recognition of refugee, countries have domestic legislations for the effective implementation of such refugee status determination.

Large numbers of asylum seekers reach the Ethiopian border every day seeking for refugee status. Currently, Ethiopia has changed its policy on prima facie recognition of Eritrean Refugees. The reasons for this change of approach and how it was decided is not publicized to the public even though some reported that it was because of change of circumstances.<sup>16</sup> In addition to lack of clarity on the procedure and criteria for ending prima facie recognition, handling the huge numbers of refugee claims through individual refugee status procedure is time consuming, costly and hard for evidencing the numbers of claims by officers screening them or asylum seekers claiming it. This may force asylum seekers to stay long in reception centers and sometimes there may be a probability of being rejected due to difficulty of backing these claims with evidences.

The decision to apply prima facie recognition of Eritrean refugees depending on the cases which is the first decision on change of application of prima facie recognition in Ethiopia is discriminatory unless there is justification for the decision of resorting to individual status determination; this could not simply be about the improvement of relationship between Eritrea and Ethiopia. Discrimination in the protection of asylum seekers or status determination is a human rights violation of asylum seekers. The existence of discrimination entailed as a result of

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<sup>15</sup> Ibid, p2

<sup>16</sup> 'Peace for Whom? The Situation of Eritrean Refugees In Ethiopia | À Propos' (à propos, 2020) <https://www.swisspeace.ch/apropos/peace-for-whom-the-situation-of-eritrean-refugees-in-ethiopia/> accessed 27 August 2020.

the decision on prima facie recognition of Eritrean asylum seekers and the implications thereof needs to be ascertained by making study to enhance protection of refugees.

The Ethiopian government' policy decision may also trigger challenges to the management of refugee status determination process in many ways that makes it unmanageable. Recognizing the high number of Eritrean asylum seekers arriving from Eritrea through individual status determination procedure is not possible given the situation in the ground because it is costly, time consuming and impracticable.

### **1.3. Objective of the study**

#### ***1.3.1. General objective***

General Objective of this study is to explore the actual operation of the prima facie procedure, the conditions on which the application of such approach is based, new and recent developments in its operationalization, and possible causes and challenges that ensue in freezing the application of prima facie recognition of Eritrean refugees in Ethiopia.

#### ***1.3.2. Specific objective***

The study has the following specific objectives:-

1. Present on the conceptual essence of the prima facie procedure, and identify the international and national legal foundations of the prima facie procedure;
2. Present on key rights and obligations of refugees to a status determination based on prima facie procedure, and recognized through prima facie approach;
3. Carefully scrutinize Ethiopia's national laws on prima facie procedure in light of UNHCR's guidelines and the international protection of refugees;
4. Analyze and present on the current change of policy in relation to Eritrean asylum seekers to apply prima facie and individual procedures; the procedure and the legal basis for the decision; the current implementation of individual status determination and its implication on enshrined rights of Eritrean asylum seekers.
5. Identify and analyze possible negative repercussions of Ethiopia's policy choice and practice in withholding the use of prima facie procedure in relation to Eritrean refugees; whether and to what extent this may entail Ethiopia's legal responsibility;

6. Indicate the extent of involvement of UNHCR and other bodies in the adoption of the decision to end prima facie recognition in Ethiopia.
7. And finally recommend measures that should be taken by Ethiopia to continue prima facie procedure or ensure equal protection of Eritrean refugees without discrimination and forward possible solutions to challenges encountered in relation to the application or cessation of the prima facie recognition of refugees in Ethiopia.

## **1.4. Research questions**

### ***1.4.1. General questions***

The main research question is: does Ethiopia's 'decision' to apply the two forms of RSD depending on the cases and 'subsequent practice to pend' the application of all kinds of RSD in respect of Eritrean refugees lead to violation of refugees' protected rights, and if so, does this also entail Ethiopia's breach of treaty and national law obligations?

### ***1.4.2. Specific questions***

The study has also the following specific questions

1. What is the international and national law basis for the application of the prima facie procedure in Ethiopia?
2. Are refugees entitled to seek status determination based on prima facie procedure? What key rights and obligations are refugees, recognized on prima facie basis, entitled to?
3. What are the basic rationales and features of new developments in Ethio-Eritrean relations that may have prompted significant change in the policy of the government of Ethiopia regarding refugee status determination procedures of Eritrean refugees? What policy, political and practical considerations weighed in government of Ethiopia's decision to freeze or withdraw PFP in the context of Eritrean refugees? What is actually being done, currently, that may have impact on refugees' protection rights?
4. What are the possible negative repercussions of Ethiopia's policy choice and practice in withholding the use of PFP in relation to some group of Eritrean refugees?
5. To what extent does Ethiopia's policy choice entail Ethiopia's legal responsibility? In what measure is Ethiopia's practice on PFP consistent with the national and international law and UNHCR's guidelines on international protection of refugees?

6. What could be recommended to address challenges and fill potential gaps relating to Ethiopia's decision to scale down the negative implications on refugees' protection?

## **1.5. Scope of the study**

The scope of this study is limited to assessing the normative frameworks and the practice in relation to the prima facie recognition of refugees in Ethiopia mainly in the context of the practices of the main reception and registration centers. Currently there are 26 camps where reception and registration of refugees' mainly through prima facie approach is done. Among these refugee camps and reception centers mentioned above - Endabaguna reception center in Tigray, Dollo Ado registration centers and Gambela reception centers are the main centers where prima facie refugee registration is widely performed. Mainly informed by the objectives above, the experience of these camps and reception centers is the main spatial focus of this research.

## **1.6. Significance of the study**

This study analyses the current situation of prima facie recognition of refugees in Ethiopia, the law and the practice mainly by referring to UNHCR's guidelines and other protection standards. This serves to identify and show what Ethiopia is currently applying in relation to the prima facie recognition where the strong and weak sides situate, and indicate what type of measures need to be taken to improve the protection and recognition of refugees on the basis of the prima facie approach.

In specifics, the study identifies the gaps in the legislations on prima facie if any and other legislations in relation to prima facie recognition in Ethiopia and forwards solutions that guide the effective implementation of prima facie recognition of refugees and protection of refugees in Ethiopia.

The study also looks in to UNHCR's guidelines and protection standards as well as the legal, procedural and evidentiary values of prima facie recognition of refugees in other countries. Opportunity is thereby created for ARRA to draw lessons from good procedures and experiences to endure legislative reform and enhance protection of refugee in the future.

## **1.7. Research Methodology**

In this study, the researcher mainly used qualitative research method by collecting qualitative data since the focus of this study is analyzing the practice and finding out the main protection challenges resulting from change in the application of the prima facie recognition approach. At the same time, the quantitative data is also used to show changes and make comparisons. To conduct this research, the researcher collected primary and secondary data from ARRA and UNHCR because these institutions are the only bodies working on status determination of refugees in Ethiopia.

In terms of data gathering methods, the researcher employed semi-structured interviews focusing on the general application of prima facie approach and particular application and change of approach relating to Eritrean asylum seekers. The interviews are conducted with one ARRA staffs who worked at Endabaguna reception center of Tigray region, three ARRA staffs at Jigjiga ARRA zonal coordination office, two staffs at Dolo Ado reception center of Somali region, and two staffs at Gambella zonal coordination office.

The researcher also held interviews with Deputy Director at ARRA, RSD and registration team leader at ARRA, and senior protection officer at ARRA, and RSD officer from UNHCR office in Addis Ababa.

The researcher also used other primary and secondary sources which include international and national legislations and guidelines such as the 1951 refugee convention and 1967 protocol, the OAU refugee convention, UNHCR guidelines on prima facie recognition, the national refugee proclamation and policy documents which are binding and non-binding. In addition, the researcher also used secondary sources such as articles, researches and reports.

## **1.8. Limitation of the study**

The major challenge the researcher faced is related to the current pandemic (COVID-19) which created serious time limitations to conduct the study during the allocated time. Currently, the Agency (ARRA) at the head office and some of its field offices are partially-closed or communications are very much limited. With slight improvement of the situation over the course

of the year, however, the offices were opened for service although this development came only belatedly.

In relation to the current decision of Ethiopia to apply to forms of RSD forms depending on the cases for Eritrean refugees, some writers submitted that this is probably a politically influenced decision than change of objective circumstances that had justified the adoption of prima facie recognition after rapprochement.<sup>17</sup> There was fear that this may politicize the current study's well and challenge the researcher to get openly the required information because authorities may not be willing to give information. However, while there were some limitations in terms of openly coming out to speak on ground realities and information, all interviewees who participated in the study had satisfactorily contributed to the success of the research.

## 1.9. Literature review

There is a continuum contention on the nature of refugee status determination procedure that it is by its nature individual or there is no group determination. According to Matthew Albert, refugee status determination is individual by its nature because 'the convention definition of refugee, by referring to 'a person' requires that RSD must be done person by person';<sup>18</sup> some commentators and UNHCR contend for the existence of group determination.<sup>19</sup>

On the other hand, there is also a question raised whether persecution is related only to individual claim of asylum or each member of the group of asylums seekers, can, by reason of such membership alone, claim for asylum. This question is similar with the above contention that relates with the nature of group determination. 'It is wrong to limit the concept of persecution to measures immediately identifiable as direct and individual, when the groups have common grounds of persecution which are the government's political, economic and social policies or 'uncontrolled communal violence.'<sup>20</sup> Fear of persecution may exist when 'collective measures of enforcements' are used which included forceful denial of employment or education, access to

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<sup>17</sup> 'Eritrean Refugees: Still Caught in a Game of "Political Football"' (The Africa Report.com, 2020) <  
<https://www.theafricareport.com/28085/eritrean-refugees-still-caught-in-a-game-of-political-football>  
> accessed 28 August 2020.

<sup>18</sup> Prima facie status (no.6), p10

<sup>19</sup> Ibid

<sup>20</sup> Guy S. Goodwin-Gill and Jane McAdam, (2007), *The Refugee in International Law*. London, (3rd edn, Oxford University Press inc), p128-129.

food, and expropriation of property without compensation. In these cases only membership in a group will suffice to claim asylum.<sup>21</sup>

Jean Francois Durieux contended that the conclusion that group determination is the result of expanded refugee definitions which are developed based on the regional contexts of Africa and South America is ‘erroneous construction’ and mostly cited by European policy makers. This is because grounds of persecution under the refugee definition of the 1951 Refugee Convention, which are persecution on religious and ethnic grounds, have a group character. The notions of ‘group’ in the regional expanded definitions are not only about the caseload of asylum seekers, but also about the very motivation of their flight. Therefore, according to Durieux, the conclusion that the refugee criteria under the refugee convention is ‘highly individualistic’ is an ‘incorrect reading’ of the refugee definition.<sup>22</sup>

Matthew Albert tried to describe the legal foundation of the prima facie recognition of refugee by interpreting the 1951 Refugee Convention. His argument is that since prima facie recognition of refugees has been state practice for long time after the 1951 Refugee Convention, the Convention-based practice can be interpreted to be the legal basis for prima facie recognition. He further discussed that it is possible to drive its legal foundation from regional instruments like the OAU convention and the Cartagena Declaration and domestic legislations, and human rights law and due process.<sup>23</sup>

In her research titled ‘prima facie status and refugee protection’ Bonaventure Rutinwa discussed that the foundation of prima facie recognition of refugees can be implicitly inferred from the UNHCR’s handbook and guidelines on procedures and criteria for determining refugee status because it has included a paragraph about prima facie mechanism in situations of large scale

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<sup>21</sup> Ibid

<sup>22</sup> Jean-Francois Durieux, 'The Many Faces of "Prima Facie": Group-Based Evidence in Refugee Status Determination' (2008) 25 refugee < <https://refuge.journals.yorku.ca/index.php/refuge/article/view/26037> > accessed 4 June 2021, P152-153.

<sup>23</sup> Prima facie status (no.6)

influx.<sup>24</sup> The handbook clarified that ‘in some situation when the entire groups have been under circumstances indicating group could be considered individually as refugees.’<sup>25</sup>

The UNHCR after failed initiation of a binding protocol on the application of prima facie recognition of refugee status by High Commissioner Felix Schnyder came up with guidelines on prima facie recognition of refugee status.<sup>26</sup>

Before and after the adoption of UNHCR’s guidelines on prima facie recognition of refugee status, some countries had engaged in and developed good experience on prima facie recognition of refugees through the employ of domestic jurisdictions. Lack of international standards on prima facie recognition of refugees forced states to develop their own procedures, legislations and practices.<sup>27</sup> The procedural application or how refugees’ claims are screened for prima facie recognition is good experience for countries that have less experience in this regard.

Most importantly, in 2019, another volume of the International Law Series was published under the theme of “Revisiting the Ethio-Eritrean Relations From Separation to Conflict and Beyond”, an article written by Tadesse Kassa, et al, entitled “The Ethio-Eritrean Rapprochement and Potential Implication on Eritrean Refugees in Ethiopia” submitted that Ethiopia adopted the prima facie recognition of Eritrean refugees on the grounds of humanitarian, practical and political factors which is also common for all prima facie recognition in the country.<sup>28</sup> It further explained that from purely normative perspective, Ethiopia can end the application of the prima facie approach in respect of Eritreans because under international law, what is expected from countries is providing protection for refugee; - how states provide protection is not the primary concern. From practical perspective, Ethiopia should continue using the same approach because

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<sup>24</sup> Ibid

<sup>25</sup> Handbook And Guidelines (no.8)

<sup>26</sup> 'Guidelines On International Protection No. 11 (n.9)

<sup>27</sup> Matthew Albert, Prima Facie Determination of Refugee Status an overview and its Legal Foundation (Refugee Studies Centre 2010) < <https://www.rsc.ox.ac.uk/files/files-1/wp55-prima-facie-determination-refugee-status-2010.pdf> > accessed 2 September 2020.

<sup>28</sup> Tadesse Kassa, Mehreteab Gehbregers and Mulu Beyene (2019), The Ethio-Eritrean Rapprochement and Potential Implication on Eritrean Refugees in Ethiopia, *International Law Series*, Addis Ababa University – School of Law, vol.1, p105.

it is not possible to resort to individual determination model due to the large number of new arrivals from Eritrea.<sup>29</sup>

## **1.10. Thesis organization**

This study is organized long six chapters. The first chapter is introduction. The second chapter discusses conceptual and legal frameworks on the prima facie refugee status determination. In this chapter, while admitting that the prima facie recognition of status has been used for a long time, it would be indicated that the subject has received limited treatment in literature. The third chapter specifically focuses on prima facie recognition of status in Ethiopia. This chapter focuses on national legal and policy frameworks. The fourth chapter offers discussion on the implementation of prima facie approach in Ethiopia. It tries to identify the opportunities and challenges in the implementation of the prima facie approach in Ethiopia. The fifth chapter focuses on Ethiopia's experience of prima facie approach focuses on its implication in relation to Eritrean asylum seekers. The last chapter finalizes with the conclusions and recommendations.

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<sup>29</sup> Ibid, p107

## **CHAPTER TWO**

### **2. Conceptual and legal frameworks on the prima facie refugee status determination**

#### **2.1. Brief history of prima facie status determination**

The mass influx of refugees has a long history because most of the time asylum seekers have been crossing borders 'in masse' fearing persecution or human rights violations. Group asylum claim of refugees is one of the refugee issues in the history of refugee protection. Prima facie recognition of refugees has long history of over 60 years.<sup>30</sup>

When the number of asylum seekers is beyond the capacity of states to make individual status determination within reasonable time, states have been practicing group recognition of asylum seekers on a prima facie basis. Many of refugees all over the world are recognized on prima facie basis. This typically includes Hungarian refugees escaping the failed revolution in 1956; and refugees who fled Vietnam after the fall of Saigon till the decision is reached to use individual status determination; African states were also practicing prima facie recognition of refugees before and after the coming in to force of the 1969 OAU refugee convention.<sup>31</sup>

#### **2.2. Nature and characteristics of prima facie status determination**

##### **2.2.1. Definition of prima facie refugee status determination**

There is no legally binding international instrument that defines or directly mentions prima facie recognition of refugees.

Group determination of refugees on prima facie basis is implicitly mentioned for the first time in UNHCR's Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees.<sup>32</sup>

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<sup>30</sup> Guidelines on international protection no. 11(n.9), p.2

<sup>31</sup> Prima facie status (no.6), para.3

<sup>32</sup> UNHCR's Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees, (Re-edited version) Geneva 2019, paragraph 44, p. 13.

UNHCR Handbook expressly indicates the grounds for prima facie recognition of refugees rather than directly defining its meaning. These guidelines are based on individual refugee status determination except that it indicates prima facie recognition is also one way of determining refugee status; the second option does not clearly show the procedural and substantive contents of prima facie recognition to differentiate it from individual RSD.

The UNHCR based on its mandate, issued guidelines on prima facie recognition of refugees to clarify the above procedural and substantive matters or compliment the UNHCR Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees (1979, reissued, Geneva, 2011).It defined prima facie recognition of refugees as:

*A prima facie approach means the recognition by a State or UNHCR of refugee status on the basis of readily apparent, objective circumstances in the country of origin or, in the case of stateless asylum-seekers, their country of former habitual residence. A prima facie approach acknowledges that those fleeing these circumstances are at risk of harm that brings them within the applicable refugee definition.*<sup>33</sup>

The difference between this definition and the former is that the former clarifies what group determination is in which members of a group are regarded as prima facie refugees, while the later explains what refugee status determination in prima facie approach is all about. As alternative approach for recognition of refugee status, the refugee definitions stated in the 1951 refugee convention, regional refugee conventions and UNHCR statute and refugee mandate should exist for its use. That means members of a group should request asylum on readily apparent common risk of harm including based on their ethnicity, religion, gender, political background or age, or a combination thereof, which exposes them to risk.<sup>34</sup>

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<sup>33</sup> 'Guidelines On International Protection No. 11 (n.9), para.1

<sup>34</sup> Ibid, para.10

Grounds which are included in the refugee definitions and reasons for seeking asylum for the group should be based on readily apparent, objective circumstances in the country of origin or former habitual residence.<sup>35</sup> These objective circumstances' in the country of origin information is mostly obtained from UNHCR because of its international refugee protection mandate, including its supervisory responsibility, field presence and operational activities.<sup>36</sup> Country of origin information (COI) is 'Information about the situation in refugees home countries which is used in procedures for determining international protection needs'<sup>37</sup> or is 'information which is used in procedures that assess claims to refugee status or other forms of international protection'<sup>38</sup>.

Prima facie recognition of refugees is based on the presumption that members of the group are refugees within the meaning of the relevant refugee instruments. There should be well-founded fear of persecution to claim refugee status. Therefore, prima facie refugees should also have well-founded fear of persecution to be recognized as refugees. It should also be for reason of one or more of grounds included in the refugee conventions.

### **2.2.2. Prima facie refugee status determination versus individual status determination**

Prima facie and individual status determination of refugees, together, are part of the general determination of refugee status. Refugee status determination is 'examination by government authority or UNHCR of whether an individual who has submitted an asylum application or otherwise expressed his or her need for international protection is indeed a refugee that is whether his or her situation meets the criteria specified in the applicable refugee definition.'<sup>39</sup>

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<sup>35</sup> Ibid, para.5

<sup>36</sup> Ibid, para.17

<sup>37</sup> 'Researching Country of Origin Information' (Coi-training.net, 2021) <https://www.coi-training.net/site/assets/files/1021/researching-country-of-origin-information-2013-edition-accord-coi-training-manual.pdf> accessed 7 September 2021. p.12

<sup>38</sup> Ibid, p12

<sup>39</sup> Refugee Status Determination Identifying Who Is A Refugee Self-Study Module 2 (Department of International Protection, Office of the United Nations High Commissioner for Refugees 2021) < <https://www.unhcr.org/publications/legal/43144dc52/self-study-module-2-refugee-status-determination-identifying-refugee.html> > accessed 29 March 2021, p.4

Whether based on the individual or prima facie approach, the importance of status determination of refugee is to get international protection which contains entitlements of rights and benefits and assistance and protection as provided in the conventions.<sup>40</sup>

Individual refugee status determination is a recommendable approach except when it becomes meaningless to apply it or the mass influx of refugees makes group recognition of refugees preferable than individual RSD because humanitarian assistance is urgent and there is no enough time and resource to conduct individual RSD. Therefore individual RSD is the general principle and prima facie recognition is the exception.

Individual status determination is a detailed or in-depth examination of the individual circumstances of the applicant's claim.<sup>41</sup> The 1951 Refugee Convention and its 1967 protocol do not have provisions on status determination procedure in general. They only contain the definition of refugee and give for states the opportunity to develop their own status determination procedure. For procedural guarantees that could enhance better protection of refugees, UNHCR handbook came up with procedures for determination of refugee status with detailed components.<sup>42</sup>

### **2.2.3. Nature and effect of prima facie status determination**

The nature of prima facie recognition of refugees is directly related with the idea that refugees recognized in prima facie basis acquire refugee status in the same way and to the same extent as refugees recognized on individual basis. There are two thoughts in relation with this idea forwarded by scholar in this field.

The first thought in this regard which is forwarded by George Okoth-Obbo states that 'where persons are granted asylum after a group status determination, they are, strictly speaking, not conclusively determined to be refugees under any of the above definitions'.<sup>43</sup> As mentioned above, determination of refugee status is deciding the claim to refugee based on the definition in the 1951 refugee convention and regional instruments relating to refugees like the 1969 OAU

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<sup>40</sup> Who Is A Refugee(n.39) p4

<sup>41</sup>Ibid, p12

<sup>42</sup> Handbook (n.32)

<sup>43</sup> Prima facie status (no.6) p4

and the Cartagena Declaration. This line of thought does not say anything about when the claim to get refugee status is going to be decided.<sup>44</sup>

The second thought compares the extent of prima facie status with the refugee status determined on individual basis. It is explained by Ivor Jackson in his assessment of refugee status in group situations. He submitted that:

*Determination that a group is prima facie a refugee group raises a presumption that the individual members of the group are refugees. As such they can benefit from the international protection and assistance extended to them by UNHCR, on behalf of the international community. They retain their refugee character unless there are strong indications that they are not- or are no longer- to be considered as refugees.*<sup>45</sup>

From his explanation, it can be understood that prima facie refugee status or status granted in group determination is conclusive with all its benefits until there is a proof that prima facie refugees do not or no longer retain their refugee status.

#### **2.2.4. Characteristics of prima facie refugee status determination**

Prima facie recognition of refugees has unique features compared to recognition of refugees in individual status determination. The better way to understand prima facie recognition of refugees is the better understanding of its unique features.

##### **2.2.4.1. Exclusion and non- inclusion**

The 1951 Refugee Convention, under Article 1F, clearly provided exclusion criteria for definition of refugees. Finding out the exclusion criteria during status determination, requires detailed screening of facts and laws. This detailed process of screening needs longer time and it can be done only in times of individual status determination and not when implementing the prima facie approach. This is because prima facie refugee status determination is conducted when a country is incapable of doing it because it is not practical or there is lack of finance.

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<sup>44</sup> Ibid

<sup>45</sup> Ibid

Therefore, the exclusion criterion does not go with prima facie recognition process.<sup>46</sup> The prima facie procedure is applicable only for refugee status determination nothing more than that. As a result, any decision to reject refugee status claim could only be given after an individual assessment.<sup>47</sup>

Refugee status or right to asylum is a human rights activity which needs proper application so that it should not be misused. The main purpose of giving asylum to persons requesting it is protecting them from persecution on the convention grounds or protecting them from human rights violations.<sup>48</sup> This means asylum claims which are not related or not based on justification of serious human rights violations are not acceptable. In prima facie refugee status determination process there is no opportunity to determine the non- inclusion of such claims which is not acceptable in refugee protection.<sup>49</sup>

#### **2.2.4.2. Compelling reasons in cessation of refugee status**

It is stipulated in the 1951 Refugee Convention as follows: ‘He has no longer, because of the circumstances in connection with which he has been recognized as a refugee have ceased to exist, continue to refuse to avail himself of the protection of the country of his nationality; provided that this paragraph shall not apply to a refugee falling under section A (1) of this article who is able to invoke compelling reasons arising out of previous persecution for refusing to avail himself of the protection of the country of nationality.’<sup>50</sup>

The most important clause here is ‘compelling reasons arising out of previous persecution’. Refugees who have compelling reason arising out of previous persecution will never lose their refugee status. This needs strong justification mostly from the records that are registered during status determination.<sup>51</sup>

Sometimes it is difficult to get this record from the prima facie refugee status determination files, and as a result prima facie refugees face difficulty of evidencing their claims no to lose their

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<sup>46</sup> Matthew A. (n.27) p14

<sup>47</sup> Guidelines On International Protection No. 11 (n.9), para.6

<sup>48</sup> Convention Relating to the Status of Refugees (n.1), preamble

<sup>49</sup> Matthew A. (n.27) p15

<sup>50</sup> Convention Relating to the Status of Refugees (n.1), article 1C(5)

<sup>51</sup> Matthew A. (n.27), p15

refugee status as provided in the refugee conventions. This is not a problem for refugees who obtained refugee status through individual status determination because the information about compelling reasons is already recorded during the screening process. Such compelling reasons to retain refugee status are part of the screening format that is used in any individual status determination process. This demonstrates the benefit of individual refugee status determination and presents one of the main differences between the two approaches.<sup>52</sup>

### **2.2.4.3. Resettlement and prima facie recognition**

Resettlement is one of the traditional durable solutions offered to refugees along with local integration and repatriation. Refugee status ends through one of these three durable solutions. There is no difference between individual and prima facie refugee status determination in cases of local integration and repatriation except in times of resettlement. It is submitted that ‘resettlement results in being moved to a country which takes a quota of refugees from other host states to be locally integrated’.<sup>53</sup>

Countries which give quotas for taking refugees and locally integrating refugees in their countries do not totally depend on prima facie determination of refugees. They need detailed individual status determination to be conducted because they need to consider the exclusion criteria. Therefore, prima facie refugees are forced to go through detailed individual status determination process. As the main difference to refugees recognized through individual status determination procedure, refugees recognized on prima facie basis have no direct access to resettlement.<sup>54</sup>

## **2.3. Concept of prima facie refugee status determination: nexus with other laws**

### **2.3.1. Prima facie recognition and evidence law**

Under the law of evidence, presumption is made to shift the burden of proof from claimer to the opposing party. Presumption also can be made based on the prima facie evidence. ‘The

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<sup>52</sup> Ibid

<sup>53</sup> Ibid, p16

<sup>54</sup> Ibid, p17

prevailing orthodoxy on prima facie refugee status determination (PFRSD) is that the term ‘prima facie’ is a shorthand reference to evidence law in relation to presumption.<sup>55</sup>

If a person is recognized on prima facie basis, it is presumed that he or she has been recognized because his or her flight fulfills all criteria on the convention. Rutinwa explained that a person found to be refugee on prima facie basis is presumptively refugee within the meaning of the relevant instruments. This presumption is conclusive unless proved to be wrongly recognized or excluded by exclusion provisions of refugee law.<sup>56</sup>

However, the conception of presumption is criticized in many ways. The first criticism is on the shift on burden of proof. As mentioned above, presumption shifts burden of proof for the benefit of claimant of asylum in the refugee context. The criticism here is the concept of presumption does not go with the refugee status determination because in the refugee context, burden of proof is not the only responsibility of the asylum seeker or the decision maker of the asylum case. Rather it is a shared responsibility of both. In addition to this, the claimant or asylum seeker has the advantage of benefit of doubt. Therefore, the burden of proof that intended to benefit the claimant does not work in the refugee status determination context.<sup>57</sup>

Presumptions are either of fact or of law. Refugee status determination presupposes presumption of fact, not law. Presumption of fact by its nature needs inferences from objective information or positive proof.<sup>58</sup> In refugee status determination, inference is made from the ‘objective information’ unlike the prima facie refugee status determination which is based on presumption.<sup>59</sup> In prima facie recognition of refugees, if a claimant positively proved his identity and nationality to the state of asylum or UNHCR in addition to the time that he or she has been suffered of persecution, she or he has to be given refugee status because the state of asylum and UNHCR infers and presume that the person has conventional grounds to seek asylum.<sup>60</sup>

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<sup>55</sup> Matthew A. (n.27), p31

<sup>56</sup> Prima facie status (no.6), p2

<sup>57</sup> Matthew A. (n.27), p32

<sup>58</sup> Ibid, p34

<sup>59</sup> Ibid.

<sup>60</sup> Ibid

The other important consideration that should be clear in relation to the conception of presumption in the refugee status determination is whether the application of presumption has legal base or not under legal frameworks governing refugee status determination. Writers like Rutinwa infer the application of presumption from the Handbook and the Guideline on Procedures and Criteria for Determining Refugee Status.<sup>61</sup> It provides that ‘recourse has therefore been had to so-called “group determination” of refugee status, whereby each member of the group is regarded prima facie (i.e. in the absence of evidence to the contrary) as a refugee.’<sup>62</sup>

Even though the Hand-book is not a binding law, it is the only source for conception of presumption in refugee status determination. There is no other international or regional convention that justifies presumption in refugee status determination.<sup>63</sup>

However, this inference is criticized by Matthew Albert because the phrase does not say anything except showing that ‘refugee status is granted to the claimants when there is no evidence contrary to the idea that the person is a refugee.’ He also believes that the phrase does not sufficiently justify presumption in refugee status determination.<sup>64</sup>

### **2.3.2. Prima facie recognition and civil procedure law**

Prima facie recognition conceptually fits with injunction in civil procedure law more than presumption; this is because the purpose of injunction ‘is to preserve the status quo in situations in which further acts of the specified type, or failure to perform such acts, would cause one of the parties irreparable harm’<sup>65</sup> This is similar to the purpose of granting refugee status through accelerated procedure to protect asylum seekers from irreparable harm of human rights violation due to urgency of assistance. An injunction that is provisional can in some instances be final form of relief like prima facie status that could stay until durable solutions are found or individual status determination is conducted.<sup>66</sup>

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<sup>61</sup> Ibid, p35

<sup>62</sup> Handbook (n.32), paragraph 44, at p. 12.

<sup>63</sup> Ibid

<sup>64</sup> Ibid, p35

<sup>65</sup> Brian Duignan, 'What Is An Injunction?' (Encyclopedia Britannica, 2021) <<https://www.britannica.com/story/what-is-an-injunction> > accessed 8 April 2021.

<sup>66</sup> Matthew A. (n.27), p38.

Injunction also has strong legal bases because provisional measures including injunction are common protection measures in human rights conventions and international law. Prima facie recognition as provisional measure for protection of rights of refugees from human rights violations could be enforceable in court of law because it is provisional measure which ought to be taken to preserve the respective rights as provided in the ICJ statute article 41 sub articles 1.<sup>67</sup>

### **2.3.3. Prima facie recognition and temporary protection**

Similarities between prima facie recognition and temporary protection sometimes create misunderstanding. Therefore clarifying the difference between the two avoids any wrong reading of rights. Temporary protection is complimentary to emergency response to large- scale movement of persons in need of international protection that provides for refoulement and appropriate treatment in accordance with international human rights standards.<sup>68</sup> But it is not intended to substitute existing protection mechanisms including prima facie recognition.<sup>69</sup> It is applicable in countries which are not parties to the refugee conventions.<sup>70</sup>The main difference between them is on the duration of the time that they are applicable. Unlike temporary protection, prima facie recognition has no fixed time to end or is not pre-determined. Temporary protection is mostly applicable in times of mixed migrations whereas prima facie recognition is applicable for recognition of refugees.<sup>71</sup>

### **2.4. Legal Frameworks of prima facie refugee status determination**

Prima facie determination has been applied in recognition of refugees in almost all parts of the world. Despite its wide spread application, there is no binding agreement or convention on it. The legal foundations of prima facie recognition are the interpretation of the conventions, domestic legislation and human rights law.

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<sup>67</sup> Ibid

<sup>68</sup> Guidelines on International Protection No. 11 (n.9), para.26

<sup>69</sup> Ibid

<sup>70</sup> UN High Commissioner for Refugees (UNHCR), Guidelines on Temporary Protection or Stay Arrangements, February 2014, available at: <https://www.refworld.org/docid/52fba2404.html> [accessed 29 April 2021], para.3.

<sup>71</sup> Ibid, para.4

### **2.4.1. Convention Relating to the Status of Refugees**

The 1951 Refugee Convention is silent but it considers the existence of refugee status determination procedure in its definition of what a refugee is.<sup>72</sup> This is because the definition contains different criteria including inclusion and non-inclusion criteria which require procedure to ascertain them. Hence, the interpretation of provisions of the convention provides for legal foundation of prima facie recognition of refugees.<sup>73</sup>

The interpretation is based on Article 31(3) (b) of the 1969 Vienna Convention on the Law of Treaties.<sup>74</sup> It states that the interpretation of treaties should take in account, together with the context any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation. This means the practice of states and UNHCR that came to existence could be used to interpret the 1951 refugee convention to know the inclusion of prima facie recognition of refugees or to ascertain that the convention is the legal foundation of prima facie recognition.<sup>75</sup>

Historically, prima facie recognition of refugees has been practiced by states and the UNHCR for long time immediately after the adoption of the 1951 Refugee Convention and its 1967 Protocol. This practice in majority of states shows that the 1951 Refugee Convention does not exclude prima facie recognition of refugees.

### **2.4.2. Regional refugee instrument: the 1969 Convention**

The OAU adopted the 1969 OAU Convention Governing the Specific Aspects of Refugees Problems in Africa in September 1969.<sup>76</sup> The purpose of this convention was to ‘provide refugee protection in specific humanitarian situations, including large scale arrival of people fleeing situations or circumstances in their country of origin which fall within the OAU convention’s

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<sup>72</sup> Convention relating to the Status of Refugees (n.1), article 1(A).

<sup>73</sup> Matthew A. (n.27), p19.

<sup>74</sup> United Nations, Vienna Convention on the Law of Treaties, 23 May 1969, United Nations, Treaty Series, vol. 1155, available at: <https://www.refworld.org/docid/3ae6b3a10.html> [accessed 30 May 2021], p331.

<sup>75</sup> Ibid, p20

<sup>76</sup> OAU Convention (n.2).

Article 1(2) criteria.<sup>77</sup> The 1969 OAU Convention is complementary to the 1951 Refugee Convention and its 1967 Protocol which remained to be the universal and primary legal protection instruments for refugees.<sup>78</sup> It defines refugee similar to the 1951 refugee definition and extended the definition.<sup>79</sup>

This extended definition of refugee under the 1969 OAU Refugee Convention indicates that the convention focuses more on prima facie recognition of refugees rather than individual status determination; the convention incorporates clearly group recognition of refugees unlike the 1951 refugee convention which defines refugee on individual basis. However, it is difficult to conclude that the 1969 OAU convention laid the legal foundation for prima facie recognition. This is because there were practices of recognition of refugees on prima facie basis before the adoption of the 1969 OAU Convention even in African countries.<sup>80</sup>

### **2.4.3. National legislations establishing the legal basis of prima facie approach**

The UNHCR and United Nations monitoring bodies recommended the adoption of domestic legislations and establishment of national institutions to ‘offer...a clear legal status to prima facie refugees’ through a direct enforcement by local courts.<sup>81</sup>

The most important regional instruments that incorporated group recognition or mass influx of refugees and has direct relation with prima facie recognition of refugees have been used as standard by many countries to adopt national legislations. The 1969 OAU Convention provided that member states could be requested about the implementation of the convention and laws, regulations and decrees which are or will be adopted in relation to refugees to enforce their obligations in the conventions or agreements.

The Cartagena Declaration, in this regard, is clear and provided in its first conclusion that it is expected of countries: ‘to promote with-in the countries of the region the adoption of national

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<sup>77</sup> 'Key Legal Considerations on The Standards of treatment of refugees recognized under The 1969 OAU Convention Governing The Specific Aspects Of Refugee Problems In Africa' (Refworld.org, 2021) <<https://www.refworld.org/pdfid/5a391d4f4.pdf>> accessed 12 April 2021.

<sup>78</sup> Ibid

<sup>79</sup> OAU Convention (n.2)

<sup>80</sup> Matthew A. (n.27), p25.

<sup>81</sup> Ibid

laws and regulations facilitating the application of the convention and the protocol, and if necessary, establishing internal procedures and mechanisms for the protection of refugees; and in addition to ensure that the national laws and regulations adopted reflect the principles and criteria of the convention and protocol, thus fostering the necessary process of systematic harmonization of national legislations on refugees.<sup>82</sup>

As a result, many countries like Kenya, South Africa, Sierra Leone etc. adopted domestic legislation which contains detailed procedure for implementation of prima facie recognition in their jurisdiction. However, most of these countries use the word mass influx or group determination rather than prima facie determination. The domestic legislation of these countries could be used as a source of procedural development for refugee status determination.<sup>83</sup> They developed their own national procedure based on national legislations and state practices because there was no international standard for long time until the coming of the UNHCR guidelines on prima facie recognition of refugees.<sup>84</sup>

#### **2.4.4. Human rights instruments and due process**

All rights enshrined in international human rights instruments benefit refugees because refugees too are human beings who should be protected without discrimination. 'Due process and procedural fairness in human rights law necessitates that refugees status be granted without unreasonable delay.'<sup>85</sup>

Delaying the determination of refugee status seriously harms the rights of asylum seekers because asylum seekers cannot exercise substantive rights which are dependent on refugee status.<sup>86</sup> Therefore, when there is a situation of mass influx of refugees, this makes individual status determination incapable of recognizing asylum seekers within reasonable time.

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<sup>82</sup> UN High Commissioner for Refugees (UNHCR), The Cartagena Declaration on Refugees and the Protection of People Fleeing Armed Conflict and Other Situations of Violence in Latin America, June 2013, PPLA/2013/03, available at: <https://www.refworld.org/docid/51c801934.html> [accessed 29 April 2021], conclusion no.1

<sup>83</sup> Ibid

<sup>84</sup> Prima facie status (no.6), p7

<sup>85</sup> Matthew A. (n.27), p28

<sup>86</sup> Ibid

As a result, prima facie recognition of refugees is regarded an aspect of a due process of law in refugee status determination in case of mass influx of refugees.<sup>87</sup> It also establishes that states have the responsibility to determine status within reasonable time period.

#### **2.4.5. UNHCR Office Statute**

UNHCR is established by Statute adopted by United Nations General Assembly as Annex to Resolution 428 (V) on 14 December 1950.<sup>88</sup> The mandates of the UNHCR are included in this Statute and other subsequent resolutions of the General Assembly.<sup>89</sup> This Statute is significant for UNHCR enforcing its supervisory role provided in the 1951 Refugee Convention<sup>90</sup> and its 1967 Protocol.<sup>91</sup>

This UNHCR statute is regarded as the legal basis for prima facie refugee status determination because it relates the work of UNHCR to group; paragraph 2 provided ‘the work of the High Commissioner shall be of an entirely non-political character; it shall be humanitarian and social and shall relate, as a rule, to group and categories of refugees.’ However, this analogy is criticized by Matthew Albert; he noted that even though the work of the High Commissioner is related to group, the statute does not say anything about status determination and it is not a binding document that could be a basis for prima facie recognition of refugees.<sup>92</sup>

#### **2.4.6. UNHCR Guidelines**

##### **2.4.6.1. UNHCR Handbook on Procedure and Criteria for Determining Refugee Status**

The most frequently cited source for legal basis of prima facie recognition of refugees is the UNHCR Handbook on Procedures and Criteria for Determining Refugee Status under the 1951

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<sup>87</sup> Ibid

<sup>88</sup> UN General Assembly, Statute of the Office of the United Nations High Commissioner for Refugees, 14 December 1950, A/RES/428(V), available at: <https://www.refworld.org/docid/3ae6b3628.html> [accessed 29 April 2021].

<sup>89</sup> Ibid

<sup>90</sup> Convention relating to the status of refugees (n.1), article 35 and 36

<sup>91</sup> UN General Assembly, Protocol Relating to the Status of Refugees, 31 January 1967, United Nations, Treaty Series, vol. 606, p. 267, available at: <https://www.refworld.org/docid/3ae6b3ae4.html> [accessed 29 April 2021], article 2.

<sup>92</sup> Matthew A. (n.27), p23.

Convention and the 1967 Protocol Relating to the Status of Refugees. It is issued in the context of its statutory and conventional mandate of supervisory responsibility.

However, using this Handbook for legal foundation of prima facie is not persuasive; this is because unlike its better reference of prima facie recognition, it is not a binding instrument except its use as a guideline for conducting individual status determination. There is argument that this handbook could be used as ‘subsequent states practice’ to interpret treaties, but it is not acceptable enough because it is not agreed by most of states.<sup>93</sup>

#### **2.4.6.2. UNHCR Guidelines on Prima Facie Recognition of Refugee Status**

UNHCR Handbook on Procedures and criteria for determining refugee status and guidelines on international protection in its paragraph 44 impliedly showed the possibility of group recognition. However it did not include guidelines on the recognition of refugees on prima facie basis.<sup>94</sup>

Therefore, in June 2015, the UNHCR based on its mandate under the 1951 Refugee Convention, issued guideline on prima facie recognition of refugee status to compliment the handbook to provide legal interpretative guidance for governments, legal practitioners, decision-makers, as well as UNHCR staff carrying out refugee status determination under its mandate and/or advising governments on the application of a prima facie approach.<sup>95</sup>

The guidelines on prima facie recognition, like the handbook mentioned above, are not a binding agreement between states; however, it can be used for interpretative purposes because it is issued by UNHCR in its mandate under the 1951 Refugee Convention specifically to guide prima facie application.

This study briefly looks into legal, substantive, evidentiary and procedural aspects of these guidelines to better clarify the concept and legal status of prima facie recognition.

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<sup>93</sup> Ibid p24

<sup>94</sup> Carol Batchelor, Alice Edwards, Introductory Note to UNHCR’s Guidelines on International Protection on Prima Facie Recognition of Refugee Status, *International Journal of Refugee Law*, Volume 28, Issue 2, June 2016, Pages 318–321, <https://doi.org/10.1093/ijrl/eev017/>, p318.

<sup>95</sup> Guidelines On International Protection No. 11 (n.9)

#### **2.4.2.6.1. Guidelines relating to legal aspects**

These guidelines define prima facie as ‘at first appearance’ or ‘on the face of it’ and included the description of group determination as it is described in the UNHCR handbook.

Prima facie recognition of refugee status is different from other interim or provisional status like temporary protection as discussed above. This is because unlike these provisional measures which can be later confirmed to end or continue, prima facie recognition sustains until conditions of cessation are met or it is cancelled or revoked. A refugee recognized on prima facie basis have all the rights enshrined in the refugee conventions.<sup>96</sup>

Prima facie recognition is applicable in situations of large-scale arrival of peoples which makes the application of individual status determination not practical.<sup>97</sup> Large scale arrival is not clearly provided in the guidelines and there is no fixed number of persons to objectively determine what large scale arrival is. Moreover, prima facie recognition can be applicable ‘in relation to groups of similarly situated individuals whose arrival is not on a large scale, but who share a readily apparent common risk of harm.’<sup>98</sup> The common characteristics of these similarly situated individuals can be their ethnicity, religion, political background, and place of former habitual residence, gender or age or a combination thereof which expose them to risk.<sup>99</sup>

#### **2.4.2.6.2. Guidelines relating to substantive aspects**

In determining refugee status as the universal and primary instrument, the 1951 Refugee Convention should be considered first unless there are good reasons for doing otherwise.<sup>100</sup> Countries which are not parties to the 1951 Refugee Convention have the option to consider the regional refugee instruments that they are parties to because regional definitions are recognized as alternatives or additional ways.

The guidelines stated that individual assessment using element of fear of persecution as stated on the 1951 Refugee Convention definition could be unnecessary if there is evidence of persecution

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<sup>96</sup> Ibid, paragraph 7.

<sup>97</sup> Ibid, paragraph 9.

<sup>98</sup> Ibid, paragraph 10.

<sup>99</sup> Ibid

<sup>100</sup> Ibid

against entire group on these conventional grounds; this is because the problem is apparent from the circumstances that caused the flight.<sup>101</sup>

Readily apparent, objective circumstances of countries that are sources of flight could be found from country of origin information. Such information should be relevant, current and from reliable sources. There is a possibility of getting conflicting information when there is complexity of events in the country of origin or former habitual residence.<sup>102</sup> Since it has been working in the researching activities in relation with preparing country of origin information, UNHCR most of the time recommends the application of prima facie approach in some of the situations.<sup>103</sup>

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<sup>101</sup> Ibid, paragraph 15.

<sup>102</sup> Ibid, paragraph 17.

<sup>103</sup> Ibid

# CHAPTER THREE

## 2. Prima facie recognition of refugees in Ethiopia

### 3.1. Legal frameworks for recognition of refugees in Ethiopia

Ethiopia had no legal framework for the administration and protection of refugees until the time when it enacted the first Refugee Proclamation No. 409/2004 in 2004. Ethiopia is signatory to the 1951 Refugee Convention and the 1967 Protocol and regionally to the 1969 Convention Governing the Specific Aspects of Refugee Problems in Africa. Moreover, it ratified international and regional human rights conventions which should apply domestically the protection of refugees.

Refugee Proclamation No. 409/2004 was the only legal framework which provided for application of prima facie procedure in the recognition of refugees.<sup>104</sup> However, while it introduced the group recognition procedure, it did not provide for detailed procedure for its implementation on the ground. There was no other regulation or directive governing the procedure.

#### 3.1.1. Ethiopia's Refugee Proclamation

The Current Refugee Proclamation No.1110/2019 compared to refugee proclamation No.409/2004 tried to be more detailed in providing procedure for the adoption of group determination, the criteria that should be fulfilled, the date of the decision for its application, and the date of termination of group recognition.

##### 3.1.1.1. Definition of refugee

Like other African countries, the Proclamation combined the refugee definition of the 1951 Refugee Convention and the extended definition of 1969 OAU Refugee Convention and incorporated them in a single article. Especially, the definition of refugee under Article 5 sub article 1(c) stated that a refugee is a person, who 'owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his

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<sup>104</sup> Refugee Proclamation No. 409/2004. 19 July 2004. 10<sup>th</sup> Year No.54, Addis Ababa. Art. 19

country of origin or nationality, he is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality.’

This indicates that prima facie recognition is one of the ways to decide refugee status because the grounds of persecution mentioned in this definition which are external aggression, occupation or events seriously disturbing public order are mainly the causes for mass influx of refugees.

### **3.1.1.2. Principle of non-refoulement**

The principle of non-refoulement is provided in this proclamation under the title non-forceful repatriation. It stated that no person shall be refused entry in to Ethiopia or expelled or returned from Ethiopia to any other country or subject to any similar measures if it resulted persecution or threatens the life, physical integrity or liberty of this person on the grounds specified in the refugee definition except he or she is regarded as danger to national security or convicted by a final judgment of a particular serious crime, constitutes a danger to the community.<sup>105</sup> This phrasing directly guarantees the right to asylum of persons who come to Ethiopia as a group or in mass influx which necessitates the application of prima facie procedure.

### **3.1.1.3. Definition of prima facie refugee status determination**

The proclamation, under Article 21 sub article 1, provided that the Agency may declare any group of persons that meet the criteria set out in Article 5 as refugees. This explicitly shows that there may be a possibility of group determination of refugee status when members of the group fulfill the criteria in the refugee definitions of the 1951 Refugee Convention and 1969 OAU Refugee Convention.

As per refugee proclamation, the government organ which has the authority to decide a group of persons that meets the criteria in the refugee definition as refugees is ARRA.<sup>106</sup> It is not mandatory for ARRA to decide for group determination because the provision is not coined as mandatory. This means even when there is readily apparent objective circumstance to apply group determination on a prima facie basis, ARRA may still decide for individual status determination considering its capacity.

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<sup>105</sup> Refugee proclamation No.409/2004 (n.104), article 11.

<sup>106</sup> Refugee Proclamation No.1110/2019. 27 February 2019. 25<sup>th</sup> Year No. 38, Addis Ababa. article 21(1)

#### **3.1.1.4. Procedures for prima facie recognition of refugees**

Unlike the previous refugee proclamation, the current refugee proclamation has included a provision on the issuance of a directive for group recognition of refugees by ARRA in consultation with the UNHCR.<sup>107</sup> This is a good approach because the UNHCR has a long experience and expertise in the application of prima facie recognition of refugees. The purpose of this consultation is to get its expert support.

The directive to be drafted on the decision of the application of group determination, according to the proclamation, shall have details of a description of the events in the country of origin or former habitual residence of the asylum seekers underlining the decision; the characteristics of the group of beneficiaries to whom the decision applies; and the applicable date of the decision.<sup>108</sup> The description of the country of origin is expected to include the apparently objective circumstance which forced asylum seekers to leave their country and request for refugee status. In this regard, the UNHCR has significant contribution because of its presence in many of asylum countries and experience in developing and applying country of origin information. The description of characteristics of the group of beneficiaries to whom the decision applies includes characteristics of the group that differentiate members from other asylum seekers coming from the same country of origin; this can be their nationality or ethnicity.

The proclamation authorized ARRA to give group refugee status when the asylum seekers left their country of origin or former habitual residence prior to the applicable date of decision to recognize group of refugees' prima facie basis.<sup>109</sup> This is significant not to exclude refugee sur place<sup>110</sup> or asylum seekers who left their country of origin or former habitual residence before the decision to adopt group recognition of refugees on prima facie basis. It is not mandatory for ARRA to recognize this group of refugees on prima facie basis because the provision in the proclamation is not a mandatory.

The proclamation also provided that any decision to recognize refugees on prima facie basis shall be terminated, using the same procedure of issuing the directive, considering country of origin

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<sup>107</sup> Ibid, article 21(2)

<sup>108</sup> Ibid

<sup>109</sup> Ibid, article 21(2)

<sup>110</sup> Ibid, article 6

information and in consultation with UNHCR when confirmed that the circumstances which led to group determination ceases to exist.<sup>111</sup>

In part two, the proclamation introduces several principles including principle of non-discrimination, non-forceful repatriation, principle of family unity; these are applicable in the determination of refugee status on prima facie basis. Rules on criteria for refugee status and cessation of refugee status are also applicable to refugees wishing to get refugee status and end refugee status acquired through prima facie approach.

Most importantly, refugees who acquired refugee status via group determination have, when the circumstances which were used to recognize them ceased to exist, the right to invoke compelling reasons arising out of previous persecution and on that basis refuse to be repatriated to their country origin or former habitual residence.<sup>112</sup>

To date there is no detailed regulation that aids the implementation of the refugee proclamation although it can be submitted that the proclamation has a fairly detailed provisions on group determination of refugees on prima facie basis. While the proclamation has mandatorily provided for the issuance of a directive especially on the decision to adopt and end group determination of refugees, currently no directive is enacted to such effect or nor is there any instrument governing the implementation of group recognition of refugees in general. However, ARRA's Directive No.03/2018 has provisions relating to group recognition of refugees.<sup>113</sup>

### **3.1.2. Asylum Seekers and the Refugees Service Provision Directive of ARRA**

The purposes of Directive No.03/2018 are administering the general service provision based on transparent, responsible, fast and effective system and to create a non-discriminatory service provision.<sup>114</sup>

The Directive set new norms on several issues; the first is about status determination of asylum seekers below the age of 18 years or unaccompanied children. It clearly provided that their nationality is the only consideration used to decide on their claim of refugee status. However, it

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<sup>111</sup> Ibid, article 21(4)

<sup>112</sup> Ibid, article 9(2)

<sup>113</sup> Federal Democratic Republic of Ethiopia Agency for Refugee and Returnee Affairs (ARRA) Directive No. 03/2018, Addis Ababa Ethiopia.

<sup>114</sup> Ibid, article 2.

is not clear whether it is applicable for individual or group determination of refugees or both. The practice in many reception centers, especially at the Endabaguna reception center for Eritrean refugees, shows that it is widely applicable for group determination based on prima facie basis. The second provision is about the measures that should be taken against fraudulent acts in the registration or status determination process. This is applicable in respect of Ethiopian fraudulently recognized as refugees.

All in all, it can be understood that under the directive, there is no difference between the rights of refugees recognized on prima facie basis and refugees recognized through individual status determination procedures.

### **3.2. Compliance of national legislation with UNHCR guidelines on prima facie recognition**

States are recommended to develop their domestic legal framework for recognition of refugees through prima facie approach using UNHCR guidelines on prima facie recognition to promote the effective implementation and protection of rights of refugees.

#### **3.2.1. Substantive guidelines**

UNHCR guidelines clearly define prima facie recognition and indicated also that it is based on readily apparent objective circumstance. For instance, Kenya's Refugee Act provided that a person shall be prima facie refugee if such person is compelled to leave his place of habitual residence in order to seek refuge in other place outside his country of origin or nationality on the grounds mentioned in the 1969 OAU Refugee Convention.<sup>115</sup> This is a good experience for Ethiopia that the circumstances to apply prima facie recognition are better defined and included in the national legislations governing refugee status determination.

UNHCR guidelines stated that refugees recognized through prima facie status determination procedure shall equally benefit from all rights stipulated in the refugee conventions or human rights instruments without any discrimination.<sup>116</sup>

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<sup>115</sup> Kenya Refugee Act No. 13 of 2006, 30<sup>th</sup> December 2006, section 3

<sup>116</sup> Guidelines On International Protection No. 11 (n.9), para.7

### **3.2.2. Procedural guidelines**

The refugee proclamation has incorporated detailed procedures on the decision to adopt and end prima facie approach; in this regard, and it is similar with the UNHCR guidelines except that some related procedures that should go with the adoption and termination of prima facie approach are lacking.

Periodic review of the decision to adopt prima facie approach is significant to ensure the continuing practice of recognizing refugees in deliberative prima facie approach.<sup>117</sup> If the prima facie approach is reviewed continuously, the need for ending the approach could be identified in time and the protection of refugees who acquired refugee status will not continue for unnecessary period which itself is against the purpose of the right to asylum.

The end of prima facie approach does not mean the end of recognition of refugee status which is obtained on the same grounds of persecution on which the prima facie approach was adopted. Rather, it means coming to the regular or recommended approach which is individual determination of refugee status.<sup>118</sup> Therefore, ending prima facie approach has no effect on the status of refugees who have already been recognized before the decision to end this approach was taken.

It may be too technical and detailed to include procedures and contents of registration of refugees under the refugee proclamation. However, registration is highly related with prima facie recognition of refugees. The UNHCR guidelines in this regard provided that appropriate questions to identify any contrary evidence, including potential excludable individuals, should be included during the registration process.<sup>119</sup> Registering contrary evidence enhances the protection measures especially during the time of repatriation of refugees to their country of origin or habitual residence.

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<sup>117</sup> Ibid, para.36

<sup>118</sup> Ibid, para.38

<sup>119</sup> Ibid, para.34

## CHAPTER FOUR

### 4. General overview of the implementation of prima facie approach in Ethiopia

#### 4.1. Situation of refugees recognized on prima facie procedure

Mostly, refugees come to Ethiopia crossing the borders to refugee reception centers and refugee camps administered ARRA. Currently, there are 26 refugee camps and three main reception centers in Ethiopia. Majority of the asylum seekers reaching these camps and reception centers are recognized on prima facie basis.

There are 331,615 Eritrean refugees in Adi Harush, Mai Aini camps under Shire Operation; Aysaita and Barahle camps under Samara Operation and under OCP/Urban scheme. There are 349,514 South Sudanese refugee in Pugnido, Kule , Jewi, Akula, Tierkidi, Pugnido, Nguenyiel, Okugu refugee camps under Gambella Operation; Gnangatom refugee camp located in South Omo and OCP/Urban scheme. There are 67,860 Sudanese refugees in Gureshanbola, Sharkole, Bambasi, Tongo and Tsore refugee camps under Assosa Operation; and OCP/Urban scheme. There are 206,129 Somali refugees in Kberibeyah, Awbare, and Sheder refugee camps under Jigjiga Operation; Melkadida, Kobe, Hilaweyn, Buramino, Bokolmayo refugee camps under Melkadida Operation; and OCP/Urban scheme. There are 2,340 Yemeni refugees all under OCP/Urban scheme. There are 5,137 Kenya refugees in Dilo and Megado refugee camps.<sup>120</sup>

From 1<sup>st</sup> January 2020 until 19<sup>th</sup> of May 2021, 11,532 Eritrean, 29,484 South Sudan, 11,809 Somalis, 2,876 Sudanese and 133 Yemeni asylum seekers are recognized through prima facie procedure.<sup>121</sup>

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<sup>120</sup> ARRA population update report as of 31<sup>st</sup> March 2021 report.

<sup>121</sup> ARRA population update report 1<sup>st</sup> January 2020 – 19<sup>th</sup> May 2021.

## **4.2. The practice of prima facie recognition of refugees in refugee camps and reception centers and the assessment of gaps**

### **4.2.1. Prima facie recognition of South Sudan refugees**

Refugee status determination of South Sudanese asylum seekers is conducted in Gambella regional state. Information collected from the interviews with key informants shows that it is difficult to know when the group-based determination of status of South Sudan refugees started.

All refugees settled in Gambella came from South Sudan, mainly from the Upper Nile and Jonglei state; more than 90% of the refugees belong to the Nuer ethnic group. Majority of refugees fled to Ethiopia by the end of 2013 and in 2014 following the political struggle between President Salva Kiir and the Deputy President Riek Machar which led to in-fighting between the factions of the Sudan People Liberation Movement (SPLM).<sup>122</sup>

Moreover, generalized insecurity in different areas like Jonglei, Upper Nile and East Equatorial and clan conflicts between Lou Nuer and Murule is usually invoked by refugees for claim of recognition of refugee status through prima facia approach.<sup>123</sup>

When asylum seekers cross borders, they will be directed or collected to reception center for registration. The first level registration of asylum seekers<sup>124</sup> is conducted by ARRA and UNHCR. After the registration, ARRA organizes a screening team at a zonal office to perform nationality screening based on the standard procedures on refugee status determination under the UNHCR handbook.<sup>125</sup> The screening committee is composed of ARRA, UNHCR and representatives from different kebeles of the Nuer Zone in order to identify Ethiopians that came from their respective kebeles posing as asylum seekers from South Sudan.<sup>126</sup>

The screening committee interviews members of the household to verify the nationality of asylum seekers and decides on the credibility of the asylum claims. The list of recognized

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<sup>122</sup> Key Informant Interview with Mr. Mezgebework Geberemariam. Head of Protection Unit, ARRA Gambella coordination office. 19 May 2021 (hereafter KII with Mr. Mezgebework Geberemariam)

<sup>123</sup> Ibid.

<sup>124</sup> Initial registration/level-1 registration according UNHCR hand book is simplified or family registration used for collection of data which includes family size, age, location or address, name of household, special needs and completed before interviews or photographs.

<sup>125</sup> UNHCR handbook (n.8)

<sup>126</sup> KII with Mr. Mezgebework(n.122)

refugees is prepared and only listed asylum seekers will be transferred to refugee camps. After the recognition of asylum seekers, refugee camps conduct level-3 registration<sup>127</sup> up on receiving in advance the list of recognized refugees transferred to them. Recognized refugees are then provided documents like proof of registration and ID cards to ascertain their recognition and registration.

The information taken during the registration process is mainly country of origin information (COI), flight route, reasons of flight, administration units in the country, current situation in the country of origin, clan and tribe composition, language dialectics and the like. Exclusion trigger questions are included and there were cases of exclusion on ex-combatants or active combatants.<sup>128</sup>

Asylum claims rejected by the screening committee are not referred to individual status determination procedure; rather the decision on credibility of nationality is the final and asylum seekers whose refugee status claims are rejected, are believed to be Ethiopian nationals. There is no appeal against the decision of the screening committee.<sup>129</sup>

The decision to adopt and end prima facie recognition of refugees in Gambella or South Sudan is conducted by ARRA's Zonal Coordination Office in Gambella. However, the office should in advance give the information to ARRA Head office for approval. UNHCR Gambella sub-office works with ARRA specially in providing country of origin information in addition to supporting the overall activity of status determination by providing logistic, financial and technical assistances to ARRA.<sup>130</sup>

#### **4.2.2. Prima facie recognition of Somali refugees in Jigjiga**

Asylum seekers from Central and Southern Somalia are recognized through the prima facie approach due to insecurity in these areas. Prima facie recognition of refugees in these areas started in 2007. Recognition of newly arriving Somali asylum seekers who were refugees in

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<sup>127</sup> Level -3 registration according UNHCR hand book is standard individual registration required for protection planning and monitoring, for targeting of assistance and service, for performing individual status determination, and for identifying and delivering durable solutions.

<sup>128</sup> KII with Mr. Mezgebework(n.122)

<sup>129</sup> Ibid.

<sup>130</sup> Ibid.

Yemen is also undertaken in 2015 on prima facie basis due to the occurrence of the civil war in Yemen.<sup>131</sup>

The main entry points for asylum seekers to Ethiopia are Goroya awl and Wechale check points on the Somaliland or Northern Somalia boarder. Along these check points, asylum seekers are received by Awbare woreda police and federal immigration officers. The officers' conduct preliminary interview with all persons crossing the border and transfer or report the existence of asylum claims to ARRA Jigjiga Zonal Coordination Office. ARRA's protection unit at Awbare refugee camp conducts the initial registration and transports the asylum seekers to refugee camps for status determination.<sup>132</sup>

Status determination is conducted by a screening committee organized by ARRA. The committee is composed of ARRA protection officers; other ARRA staffs mainly teachers; and UNHCR protection officers. There is no distinct RSD officer working in this operation. Mostly, UNHCR protection officers together with ARRA protection officers verify nationality credibility of asylum seekers. The nationality screening questions are mainly related with country of origin, family composition and travel roots.<sup>133</sup>

Exclusion assessment is not conducted and there is no exclusion assessment procedure. There are no cases that triggered exclusion provisions and remained pending for assessment. There is no appeal lodged against a decision to reject an asylum claim.<sup>134</sup>

The decision to recognize Somali refugees on prima facie basis in these refugee camps has not been reviewed for long time.

#### **4.2.3. Prima facie recognition of Somali refugees in Dollo Ado**

Asylum seekers from southern and central Somalia mainly from areas of Gedo, Bay, Bakool, Banadir and Middle Juba are received at Dollo Ado reception center; most of them flee due to insecurity in these regions. The operation is commenced in 2009.<sup>135</sup>

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<sup>131</sup> Key Informant Interview with Mr. Mohamed Ali. Protection Officer, ARRA Jijiga coordination office. 10 June 2021 (hereafter KII with Mr. Mohamed Ali)

<sup>132</sup> Ibid.

<sup>133</sup> Key Informant Interview with Mr. Abdirezake Modamed. Protection Officer, ARRA Jijiga coordination office. 15 June 2021 (hereafter KII with Abdirezake Modamed)

<sup>134</sup> Ibid.

Refugee status determination is conducted by the eligibility committee which is composed of protection officer, reception center supervisor and a member of the local community representative.<sup>136</sup>

The eligibility committee decides on the credibility of nationality of asylum seekers. Asylum seekers whose claims are accepted will be registered in the UNHCR database and relocated to refugee camps. Asylum seekers whose nationalities are not credible will have their case pending, in which case further verification is undertaken by the eligibility committee, and a decision is made on the claim whether is credible or not.<sup>137</sup>

Even though the decision to recognize Somali refugees through prima facie procedure is adopted before twelve years ago, it has not yet been reviewed as required under the relevant law.

#### **4.2.4. Prima facie recognition of Sudanese and South Sudanese refugees in Benishangule Region**

Under the Assosa operation, five refugee camps are established in 1997 recognizing refugees on prima facie basis. Currently prima facie recognition of asylum seekers from only the Blue Nile and South Kordofan states of Sudan and all asylum seekers from South Sudan is being practiced. There is no recorded information when prima facie recognition of other nationalities is ended.<sup>138</sup>

Refugee status determination is conducted by the eligibility committee which meets on ad-hoc basis for urgent RSD cases. The eligibility committee does not meet regularly. The committee investigates the nationality of asylum seekers and decides on the credibility of their asylum claims. Asylum claims which are rejected by the eligibility committee are referred to ARRA and the UNHCR protection team based in Assosa Zonal and sub-office respectively for review.<sup>139</sup>

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<sup>135</sup> Key Informant Interview with Mr. Mahadi Mohamed. Head of Protection Unit, ARRA Dollo ado coordination office. 26 June 2021 (hereafter KII with Mr. Mahadi Mohamed)

<sup>136</sup> Ibid.

<sup>137</sup> Ibid.

<sup>138</sup> Key Informant Interview with Mr. Kumsa Jagama. IT- Wave and Digital Communication Officer, Returnees coordination office, ARRA. 2 August 2021 (hereafter KII Mr. Kumsa Jagama). He was working as RSD registration staff in Assosa coordination office (2021).

<sup>139</sup> Ibid.

There is no appeal procedure against the decision that rejected refugee status claim in this operation as provided in the refugee proclamation.<sup>140</sup>

The decision to recognize asylum seekers from Sudan and South Sudan has been implemented for about twenty years without any review undertaken to assess effectiveness of the system.

#### **4.2.5. Prima facie recognition in urban settlements**

Currently, Addis Ababa is the only urban settlement where refugee status determination is conducted. Asylum seekers may directly arrive to Addis Ababa using different transportation schemes mainly air transport through Bole International Airport. Currently, Congolese (DRC), Sudanese, South Sudanese, Somalis, Burundians, Syrians and Iraqis are being assisted through the OCP/urban programme.<sup>141</sup>

When refugees apply for asylum in Addis Ababa, they will be transported to a refugee camp or reception center where members of the same nationalities are settled; however, their claim is decided in Addis Ababa where medical or protection reasons necessitate so, or they are South Sudan asylum seekers who arrived from the Blue Nile and South Kordofan States, or Yemenis who arrived on and after 01 January 2015 where the latter's case is handled on prima facie basis.<sup>142</sup>

Asylum seekers applying for refugee status determination in Addis Ababa including Yemenis and South Sudanese are first required to go to the Immigration, Nationality and Vital Events Agency (INVEA) to bring a letter that attests the asylum status of the person.<sup>143</sup>

South Sudanese asylum claims for refugee status based on prima facie procedure are conducted by the eligibility Committee (comprised of ARRA and UNHCR staffs). ARRA does not have RSD officers or a staff that can be fully engaged in the RSD process. The eligibility committee

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<sup>140</sup> KII with Mr. Kumsa Jagama(n.138).

<sup>141</sup> Key Informant Interview with Mr. Wondwosen Gizaw. Head of Refugee Service and Vital Registration Unit, ARRA head office. 15 February 2021 (hereafter KII with Mr. Wondwosen Gizaw)

<sup>142</sup> KII with Mr. Teshome Kassa(n.11).

<sup>143</sup> Key Informant Interview with Miss Sara Sisay. Senior Protection Officer Working on RSD, ARRA Head Office. 6 July 2021 (hereafter KII with Miss Sara Sisay)

interviews and decides on the asylum claims. Practically, the UNHCR RSD officers prepare the assessment and submit the report to be reviewed and approved by ARRA.<sup>144</sup>

Yemenis asylums claims are not submitted to the eligibility committee; rather they will be registered and refugee status is granted without nationality screening because almost all Yemeni asylum seekers come with documents like passport, ID cards and driving license.<sup>145</sup>

Exclusion assessments are conducted when there are cases that trigger exclusion clauses mostly for combatants from South Sudan. When cases that trigger exclusion clauses emerge, they undergo individual refugee status determination. Exclusion triggers arise during the resettlement processes.<sup>146</sup>

Asylum seekers' appeals against the decision of the eligibility committee are handled by the appeal hearing council. The appeal hearing council may decide to uphold or reverse the decision of the eligibility committee; in the past three years, asylum seekers have been getting refugee status based on such decision. However, currently the appeal hearing council is not fully functional mainly due to lack of budget.<sup>147</sup>

### **4.3. Opportunities and challenges of prima facie refugee recognition in Ethiopia**

#### **4.3.1. Opportunities availed by the use of the prima facie approach**

Ethiopia is a member state to the 1951 Refugee Convention, 1967 Protocol and 1969 OAU Convention. It has open door policy for refugees coming from all countries. This is great opportunity for refugees fleeing from countries with the large number or in a group. The open door policy can be witnessed from assessment of the current practice where the great majority of refugees are recognized through prima facie procedure.

There is strong cooperation and joint protection activities in refugee status determination processes between ARRA and UNHCR across all refugee operations in Ethiopia. UNHCR provides material, financial and technical assistance in the status determination of refugees in all

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<sup>144</sup> Ibid.

<sup>145</sup> Ibid.

<sup>146</sup> KII with Mr. Teshome Kassa(n.11).

<sup>147</sup> KII with Miss Sara Sisay(n.143).

refugee camps and reception centers. In addition, all reception centers and camps refer to the UNHCR handbook in the process of recognizing refugees in both individual and prima facie recognition of refugees.

#### **4.3.2. Challenges encountered in the use of the prima facie approach**

The absence of a detailed directive or any specific legislation on implementation of the prima facie recognition of refugee remains the main problem that hindered the enhancement of protection activities in the process of refugee status determination.<sup>148</sup> The following key challenges are empirically identify by the study generally triggering negative implication of refugees' protected rights or effective implementation of the prima facie approach in status determination.

First, some rights of refugees like the right to appeal are not respected or facilitated for asylum seekers. This can be a ground for violation of rights of asylum seekers as a result of absence of adequate knowledge and experience in the area.

Second, some procedures like the involvement of the local community in status determination, if not managed properly through specific law or other mechanism could really be a source of fraud or abuse.

Third, it is noted that some of the recommended UNHCR guidelines on prima facie recognition such for example like dealing with combatants or armed elements are not strictly implemented. This gives opportunity for active combatants to get refugee status which is against the purpose of international protection.

Fourth, there is no periodic review of the decision to adopt prima facie approach. The continuous revision of grounds that forced states to adopt prima facie approach is the mechanism that indicates the exact time to end prima facie approach. The decision to adopt prima facie approach if it continuous beyond the required time, it is against the purpose of international protection.

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<sup>148</sup> KII with Mr. Teshome Kassa(n.11).

Fifth, there is no sufficient and well-trained staff or refugee status determination officers in Ethiopia;<sup>149</sup> this posed a strong challenge by reducing the quality of decisions rendered by eligibility committees in all operations.

Sixth, in the past, many members of the host community living in the areas where refugee settlements are located or have entered in to the country from the border had fraudulently tried to get refugee status further encumbering the asylum system.<sup>150</sup> It is difficult to stop such fraudulent acts and conduct nationality screening because the claimants have the same culture, language, religion and psychological makeup as the refugee they hosted.

In situations of mass influx and emergencies where the urgency to provide assistance in a timely manner is crucial, this challenge makes it very difficult to conduct high standard nationality screening and ensure that only deserving persons benefit from the use of prima facie approach, and more broadly, the refugee protection scheme.

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<sup>149</sup> Ibid.

<sup>150</sup> KII with Mr. Mohamed Ali(n.131)

# CHAPTER FIVE

## **5. Recognition of Eritrean Refugees on prima facie basis: appraisal of experiences and implication**

Against the background of the normative discussions and empirical assessment of gaps in the use of the prima facie approach in status determination in the preceding chapters, the discussion in this chapter focus only on Eritrean refugees mainly highlighting the current changes relating to prima facia recognition of Eritrean refugees in Ethiopia.

### **5.1. History of prima facie recognition of Eritrean refugees**

In 2000, Ethiopia started to host thousands of Eritrean refugees who reached Tigray and Afar fleeing persecution ‘linked to involuntary open-ended military conscription, arbitrary arrest and detention without trial, compulsory land acquisition, and other systematic human rights violations’.<sup>151</sup> Prima facie recognition of refugee is started to be applied when the first group of Eritrean refugees belonging to the Kunama ethnic group reached Tigray in 2000.<sup>152</sup> In 2000, the total number of new arrivals reaching Endabaguna reception center was very high and increasing from day to day. However, due to poor documentation, there is no record that shows in detail the history of recognition of Eritrean refugees.

### **5.2. Implementation of prima facie recognition of Eritrean refugees**

ARRA transfers asylum seekers from the border to Endabaguna reception center in Shire operation or refugee camps in Semera Operation. The screening committees established in Endabaguna and Samara refugee camps conduct status determination through prima facie basis. In the process of status determination, asylum seekers were asked the same questions to cross check and identify whether they came from Eritrea or not. Most of the questions are related with geographical locations and current situations in their place of residence. When the information

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<sup>151</sup> Ethiopia Country Refugee Response Plan (ECRRP), Mid-Year Report Jan-Jun 2020' (UNHCR Operational Data Portal (ODP), 2021) <https://data2.unhcr.org/en/documents/details/84945> accessed 19 September 2021

<sup>152</sup> KII with Mr. Teshome Kassa(n.11).

given by the asylum seekers are credible, the screening committees decide for recognition of asylum seekers and transfers them to refugee camps after 3<sup>rd</sup> level registration is conducted.<sup>153</sup>

Asylum seekers whose claims are not accepted by screening committees, when they request for reviewing the decision, their claim can be reviewed by the committee which composed of Coordinator of the reception center, Zone protection and some members of the screening committee who initially conducted the screening. There is no appeal in these registration centers. However, asylum seekers have the right to go to Addis Ababa and appeal against the decision.<sup>154</sup>

### **5.3. Change of policy on prima facie recognition of Eritrean refugees**

After twenty years, the government decided to use combined two forms of RSD namely prima facie and individual RSD for recognition of Eritrean refugees on 9<sup>th</sup> April 2020. As per the letter written by ARRA addressing to different partners, with the subject ‘updating on refugee status determination procedure and merging of refugee camps’, it stated that Eritrean refugees are the largest in number among refugees recognized on prima facie basis and such uncontrolled practice has resulted in a high influx of unaccompanied minors, illegal migrants and others who do not fulfill the criteria laid down for refugee status under the international instruments.<sup>155</sup>

The letter does not clarify how the combined form of RSD is implemented. It should be clear officially that what are the criteria used to differentiate asylum seekers who are recognized on prima facie basis and individual bases. Unofficially, it is stated that only young Eritrean are expected to be recognized through prima facie procedure.<sup>156</sup>

Except this letter which is addressing only partner, there is no official communication to the public about the decision to end prima facie recognition of Eritrean asylum seekers. After the decision, ARRA commenced individual RSD until the Tigray conflict started in November 2020. Since February 2021, the status determination for Eritrean asylum seekers has been totally

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<sup>153</sup> Ibid

<sup>154</sup> Ibid

<sup>155</sup> A letter reference No. ARA/02/453//202 dated 9 April 2020 written by ARRA

<sup>156</sup> Key informant interview with Mr. Eyob Aweke. Deputy Director, ARRA. 17 September 2021 (hereafter KII with Mr. Eyob Aweke)

pending. The reasons for this decision are the conflict which is going on in Tigray region and the time needed for preparations.<sup>157</sup>

Despite its long time implementation, the decision to recognize Eritrean refugees through prima facie procedure is not reviewed like other similar decision on prima facie recognition of refugees in Ethiopia. The current decision is accidental and is not the result of revisions conducted earlier.<sup>158</sup>

There is no directive issued on the decision to change application of prima facie recognition of Eritrean refugees. Similarly there is no also official decision or explanation to pend status determination of Eritrean refugees.<sup>159</sup>

#### **5.4. Legal shortfalls of change of policy on the Eritrean prima facie recognition**

The decisions to apply prima facie and individual forms of RSD depending on the cases and later to pend status determination of Eritrean asylum seekers has serious legal shortfalls and especially when they are assessed in light of international standards and national legislations including the UNHCR guidelines and refugee proclamation.

As discussed above, any decision to end prima facie recognition, even if partially requires issuing detailed directive that contains many facts. The refugee proclamation clearly provided that: ‘the Agency shall issue a Directive terminating the group refugee recognition procedure when determining, giving due consideration to country of origin information and in consultation with the UNHCR that the circumstances which led to the group refugee recognition has ceased to exist.’<sup>160</sup>

The first and main limitation of the government’s decision on prima facie recognition of Eritrean refugees is the non-existence of such directive that terminates the previous decision for total group determination. This non-existence of directive to apply both forms of RSD depending on the cases made the basis for the decision to be unclear or without confirmation.

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<sup>157</sup> KII with Mr. Teshome Kassa(n.11).

<sup>158</sup> Ibid.

<sup>159</sup> Ibid.

<sup>160</sup> Refugee Proclamation No. 1110/2019 (n.106), Art. 21(4)

The refugee proclamation also requires the decision to terminate prima facie recognition, even if for some group of refugees, to be made in consultation with UNHCR. This is to use the experience and expertise of the UNHCR. In the decision, there was no consultation held between UNHCR and ARRA; this was confirmed by UNHCR itself who disclosed that it was only informed about decision by ARRA, and was not involved in the decision.<sup>161</sup> According to the refugee proclamation, the consultation is mandatory and needs due consideration.

Country of origin information is significant for the decision to end (for some group of refugees) prima facie or group determination of refugees. It is also included in the refugee proclamation to be mandatorily considered in the decision to end group determination.<sup>162</sup> Ordinarily, country of origin information is obtained from UNHCR. It is based on this consideration that the refugee proclamation has provided for consultation with the UNHCR in the decision to end group determination. According to the refugee proclamation, to end group recognition, circumstances which led to group refugee recognition must cease to exist.

However, there is no evidence that shows the existence of change of circumstance for terminating the prima facie recognition of Eritrean refugees. Circumstances that led to group recognition which are persecution that includes involuntary open-ended military conscription, arbitrary arrest and detention and other systematic human rights violations remain unchanged in Eritrea. Therefore, the decision to end prima facie recognition of Eritrean asylum seekers is not in line with the refugee proclamation.<sup>163</sup>

On the other hand, it could be submitted that there is no such concept of 'pending refugee status determination' under international and regional standards and laws. The decision on the asylum claim can be 'pending' for a reasonable time and this is a common practice in Ethiopia. But such decision is against the right to asylum of refugees. If there is no option to apply for refugee status in the country of asylum, there is, among others, a possibility of refoulement by immigration authorities of the country and refugees cannot get assistance and enjoy right of protection enshrined under international and national legislations. This is against the commitment which

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<sup>161</sup> UNHCR situation update (n.151), p11

<sup>162</sup> Refugee Proclamation No. 1110/2019 (n.106), Art. 21(4)

<sup>163</sup> 'Situation of Human Rights in Eritrea, Report of The Special Rapporteur on The Situation of Human Rights In Eritrea, Mohamed Abdelsalam Babiker' [https://reliefweb.int/sites/reliefweb.int/files/resources/A\\_HRC\\_47\\_21\\_E.pdf](https://reliefweb.int/sites/reliefweb.int/files/resources/A_HRC_47_21_E.pdf) accessed 18 September 2021.

Ethiopia has undertaken as signatory of the 1951 Refugee Convention, the 1969 OAU Convention and other human rights conventions.

Moreover, the refugee proclamation has clearly provided that ARRA shall examine and decide on the application of refugee status presented to it within six months period of time of registering the application.<sup>164</sup> Even though written application is not necessarily a requirement for prima facie status determination, all asylum claims presented to the Agency should be examined and decided after registering the application; this is because there is no option other than this in the procedure for determination of refugee status in the refugee proclamation. Therefore, it is submitted that the decision or the practice of pending status determination of Eritrean refugees is not only discriminatory; it also has no legal basis and is against international protection of refugees.

## **5.5. Implication of decision to change asylum policy on Eritrean refugees**

In the following sections, attempts are made to present the implications of decisions on the change of policy in RSD of Eritrean asylum seekers.

### **(a) Impact of the decision to apply prima facie RSD depending on the case**

The decision to apply prima facie procedure depending on the case would most certainly place asylum seekers and RSD officers in stress of evidencing status claims for cases that should be decided in individual basis; this is because the grounds of persecution or violation of human rights that forced most Eritrean asylum seekers to flee are systematic and very difficult to prove. As a result of such difficulty, there is a possibility of refoulement of asylum seekers.

The application of prima facie procedure depending on the case, most probably for status claims of young Eritrean above the age of 18 years, needs clear directive and controlling mechanism to protect asylum seekers from discrimination. This is because status determination officers or eligibility committees would have discretion to decide cases discriminately whether in prima facie basis or individual basis. Since the date of the decision or for almost two years, there is no clear directive on the implementation of the decision.

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<sup>164</sup> Refugee Proclamation No. 1110/2019(n.106), Art. 16(1).

The number of Eritrean asylum seekers reaching reception centers in Tigray and Afar are high compared to the capacity to conduct individual status determination. Within the period of sixteen months, an average of six hundred asylum seekers had arrived in reception centers every month.<sup>165</sup> This shows that individual status determination of asylum seekers could take longtime and as a result, asylum seekers will not get assistance and protection within reasonable time.

Worse, there are no well-trained RSD officers that could conduct individual status determination; this affects the quality of RSD which also has effect on the protection of asylum seekers. Facilities and materials in the reception centers could not accommodate such large number of asylum seekers for a longer time and this too has effect on the rights of asylum seekers. The system requires huge financing to build capacity that accommodates the current magnitude of asylum seekers from Eritrea.

### **(b) Impact of the decision to pend RSD**

Currently, Eritrean asylum seekers' request for asylum is not accepted by ARRA, and even worse, they are not identified as asylum seekers an internationally recognized right which cannot be taken by any government or agency decision under any circumstance.<sup>166</sup> This entailed that there is no any assistance and protection provided to Eritrean asylum seekers in refugee camps and urban areas which makes it difficult for them to stay in Ethiopia.<sup>167</sup> Many Eritrean asylum seekers are highly involved in secondary movement to Libya to reach Europe in search of better life. In their dangerous journey to Europe, many asylum seekers have lost their life.<sup>168</sup>

The fact that newly arriving Eritrean asylum seekers are not registered and do not have refugee identity documents like proof of registration and ID card<sup>169</sup> which also means that there is no any designated authority that protects their rights. The police routinely arrest them because they are neither recognized as asylum seekers nor fulfill immigration formalities to stay in Ethiopia.

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<sup>165</sup> According to ARRA status data base report, from 1<sup>st</sup> January 2020 – 19<sup>th</sup> May 2021, 11532 Eritrean refugee claims are recognized and 16 claims are registered to determination in Tigray and Afar.

<sup>166</sup> KII with Mr. Teshome Kassa(n.11).

<sup>167</sup> Key informant interview with Mr. Tadele Geneti. Urban Protection Officer, ARRA Head Office. 9 July 2021 (hereafter KII with Mr. Tadele Geneti)

<sup>168</sup> Key informant interview with anonymous refugee who is one of Eritrean refugee community representative in Addis Ababa, 28 July 2021.

<sup>169</sup> KII with Miss Sara Sisay(143).

The decision to pend refugee status determination of Eritrean asylum seekers has also affected adversely the use of durable solution in many ways. Most Eritrean refugees and asylum seekers benefit from resettlements processes to third countries either using opportunities given by resettlement countries or through unification with their family members.<sup>170</sup> In order to use these resettlement chances given by different countries, asylum seekers should first be recognized as refugees. Most Embassies of resettlement countries requires asylum seekers to submit their proof of registration and refugee travel document; Eritrean asylum seekers cannot have such documentation simply because of the illegal administrative decision to pend status determination in Ethiopia.<sup>171</sup> As explained above, asylum seekers would have the right to get travel document for purposes of travel outside Ethiopia only if they are registered as asylum seeker by ARRA.<sup>172</sup> However, Eritrean asylum seekers are not registered as asylum seekers and hence, the decision to pend status determination stands as a barrier for them to benefit from travelling or any resettlement opportunities.

The decision is also against rights establish to maintain the family integrity of Eritrean refugees as recognized under various provisions of the 1951 Refugee Convention and human rights Conventions.<sup>173</sup> Unity of the family is also protected under Ethiopia's refugee proclamation.<sup>174</sup> It clearly provided that 'a family member of an asylum seeker or recognized refugee in Ethiopia shall be entitled to all the rights and subject to the duties of the refugee or asylum seeker.'<sup>175</sup>

Despite such clear provisions of the refugee convention, the decision to pend Eritrean RSD left Eritrean asylum seekers who have recognized refugee family members in Ethiopia or elsewhere are not able to get any protection and assistance.<sup>176</sup> And as a result, they are forced to seek protection and family unity related assistance from other countries like Uganda and Sudan. In other words, they are forced to live separately in different countries. At the very least, this is against the rights of Eritrean refugees recognized under Ethiopia's own laws and international conventions. Eritrean refugees frequently ask for recognition of their family members mostly

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<sup>170</sup> Ibid.

<sup>171</sup> KII with Mr. wondwosen Gizaw (n.141)

<sup>172</sup> Refugee Proclamation No. 1110/2019(n.106), Art.32(2).

<sup>173</sup> Universal Declaration of Human Rights, article 16(3), International Covenant on Civil and Political Rights, 1966, article 23(1), African Charter on Human and Peoples Rights, 1981, article 18(1)'The family shall be the natural unit and basis of society. It shall be protected by the state which shall take care of its physical and moral health.'

<sup>174</sup> Refugee Proclamation No.1110/2019(n.106), Art.14.

<sup>175</sup> Ibid, article 14(3).

<sup>176</sup> KII with Miss.Sara Sisay (143).

their children; however, they have not been getting any response because of the government's decision. However, such requests of refugees are not formally registered and hence there is no clear government or UNHCR data on the number of derivative status claims.

On the other hand, the decision to pend RSD and failing to register asylum seekers also made them not to use their rights enshrined under the refugee conventions and refugee proclamation. For instance, under the refugee proclamation asylum seekers are granted rights which include access to education and health services, right to work (under certain conditions), right to association, freedom of movement, right to acquisition and transfer of property, right of access to justice, and access to different services.<sup>177</sup> As a result, Eritrean asylum seekers are either unable or seriously handicapped to exercise many of such rights and freedoms simply because they do not have documents that attest their identity as asylum seekers.<sup>178</sup>

The administrative action has particularly affected children. There are children asylum seekers coming from Eritrea to be with their parents who already are registered as refugees in Ethiopia. Parents of the children request for the registration and recognition of their children presenting them to ARRA office to get protection and assistance for them. However, the children are not registered and their request for refugee status which is mostly derivative status is not granted because there is no status determination service offered to Eritrean asylum seekers.<sup>179</sup>

There should be measures to protect such children from abuse, neglect, exploitation and trafficking and several norms both at the national and international levels could be lined up to reiterate Ethiopia's obligation in this regard. The government's decision is against the human rights of Eritrean children who seek refugee status and is counter to Ethiopia's responsibility to take appropriate measure to ensure that a child asylum seeker receives appropriate protection and humanitarian assistance.<sup>180</sup>

Conversely, there are a large numbers of unaccompanied and separated Eritrean refugee children in refugee camps in Tigray.<sup>181</sup> Such children have the right to unite with their parents currently

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<sup>177</sup> Refugee Proclamation No.1110/2019(n.123), Art.24, Art.25, Art.26, Art.27, Art.28, Art.29, Art.30 and Art.33-36

<sup>178</sup> Ibid, article 32(1).

<sup>179</sup> KII with Miss. Sara Sisay (143).

<sup>180</sup> Convention on the Right of the Child, adopted on November 1989, entered to force on 2 September 1990; <https://www.ohchr.org/en/professionalinterest/pages/crc.aspx> accessed 8 September 2021, article 22(1).

<sup>181</sup> KII with Mr. Teshome Kassa(n.11).

coming from Eritrea following the opening of the border. However, this has not been possible due to the decision to pend Eritrean refugee status determination. It is very difficult for parents of the children to live with their refugee children without getting refugee status because they cannot freely work and the means of survival is very limited in Ethiopia for most foreigners.

The problem is even more serious for orphan children who seek asylum in Ethiopia since they are highly vulnerable to abuse and trafficking because there is no one who can provide protection and assistance to them.

In summary, the decision to pend refugee status determination of Eritreans, and especially children, is against the best interest of these children.<sup>182</sup> The government's change of policy does not consider the possible effects of its measures on Eritrean refugee, asylum seekers and children falling either category.

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<sup>182</sup> Convention of the Right of the Child(n.180), Art.3

# CHAPTER SIX

## 6. Conclusions and Recommendations

### 6.1. Conclusions

It is the process of determining who needs international protection under international, regional and national instruments and legislations because international protection is only for those who deserve it. Most of the rights in the refugee conventions can be enjoyed after refugee status determination. Prima facie RSD is group determination of refugee status on the basis of readily apparent, objective circumstances in the country of origin or former habitual residence.<sup>183</sup>

There is no binding international agreement or convention on prima facie refugee status determination. However, the interpretation of the 1951 refugee convention, regional refugee instruments, state legislations, human rights instruments and due process, UNHCR office statute and guidelines contributed for legal foundation of prima facie recognition.

In Ethiopia, refugee proclamation No. 1110/2019 in its article 21 clearly provided that any group of persons who meet refugee criteria as stated in this proclamation can be declared as refugees by ARRA. The proclamation also stated that ARRA is mandated to issue directive on the adoption and termination of decision of prima facie status determination in consultation with UNHCR.

Asylum seekers from Somalia, Sudan, South Sudan, and Yemen are recognized through prima facie approach.<sup>184</sup> There is no uniform practice in all these camps, reception centers and Addis Ababa. Eligibility committees are established and work in almost all refugee camps in screening nationality of asylum seekers and deciding on the asylum claims. In most of these camps and reception centers, there is no access to appeal against the decision of these committees.

The absence of specific legislation or directive on prima facie recognition, lack of trained staff working on status determination, the fraudulent attempts to get refugee status by the local

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<sup>183</sup> Guidelines On International Protection No. 11 (n.9), para.1

<sup>184</sup> KII with Mr. Teshome Kassa(n.11).

community leaving around refugee camps and reception centers are the main common challenges in the implementation of prima facie status determination in Ethiopia.

Eritrean refugees were recognized through prima facie procedure due to persecution and systematic human rights violation in their country till 2019.<sup>185</sup> In 2020, ARRA decided to apply individual and prima facie forms of RSD depending on the case by an official letter addressed to its partners on 9 April 2020. Later on, all individual and group status determination of Eritrean asylum seekers is ceased for unspecified time without official confirmation and directive except the letter that addressed only for partners.<sup>186</sup>

The decision is not in line with international and national standards mainly UNHCR guidelines on prima facie recognition of refugees. Refugee proclamation mandatorily provided procedures for adopting and terminating prima facie recognition which are issuing directive and conducting consultation with UNHCR. These requirements are not met in the termination of prima facie recognition of Eritrean refugees and this is also against UNHCR guidelines.

The decision could have the effect of hardening the burden of proof which is shared by the asylum seeker and refugee status determination officer because persecution and systematic human rights violations in Eritrea are difficult to evidence in individual status determination process.

Eritrean asylum seekers are not registered as asylum seekers and not provided ID card to attest their status as asylum seeker due to the decision to pend status determination of Eritrean refugees.<sup>187</sup> This barred Eritrean asylum seekers and refugees rights enshrined in the refugee conventions and Human rights instruments. These includes right to education, right to work, right to association, right to movement, right to access to health facilities, justice and social services and other rights or freedoms.

## **6.2. Recommendations**

The author makes the following recommendations to curb impediments in the implementation and avoid adverse impact on refugees protected rights.

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<sup>185</sup> Ibid

<sup>186</sup> Ibid.

<sup>187</sup> KII with Miss. Sara Sisay (143).

**Adoption of directive on the refugee status determination:** Most of the challenges in the implementation of prima facie recognition originate from absence of binding specific law. UNHCR guidelines on prima facie recognition have significance for effective protection of refugees in the status determination of refugees. The incorporation of these guidelines in the refugee status determination directive and elaborating the general provisions on prima facie recognition of refugees included in the refugee proclamation contributes for protection of refugees in the prima facie status determination.

The adoption of directive on prima facie recognition brings uniform status determination procedure and avoids the current different procedures in different refugee camps and reception centers. Standard formats and checklist should be prepared and RSD officers and staffs need to be familiarized with it for collecting quality data in the status determination procedure.

**Registration and status determination of Eritrean asylum seekers:** The decision to pend status determination of Eritrean asylum seekers brought the end of registration of Eritrean asylum seekers despite their frequent request for determination of their refugee status. The whereabouts of these asylum seekers is not known because they are not registered and their request for refugee status is not accepted by ARRA. However, seeking asylum is a right enshrined in different human rights instruments, specifically in the refugee convention and Ethiopia refugee proclamation. Therefore, asylum seekers cannot be denied to submit their claim for refugee status. Ethiopia, as member state to these human rights instruments including the 1951 refugee conventions and as clearly provided in the refugee proclamation should register and decide asylum claims of Eritrean asylum seekers.

**Well-functioning and accessible appeal system:** Due to problems of capacity, the decision of eligibility committees could be erroneous. Therefore there should be a mechanism to review the decisions for effective protection of refugees.

The appeal hearing council established by article 17 of refugee proclamation aimed to protect rights of asylum seekers which include right to be heard, presence of qualified interpreter and best interest of the child. Asylum seekers aggrieved by the decision of eligibility committees have difficulties to access the council because they do not have ID cards to go to Addis Ababa or in some areas like Gambella; they are not allowed to go to Addis Ababa. The appeal hearing

council is not also functional because of budget constraint to give training for its members. ARRA should strongly work with UNHCR to establish a well-functioning system to protect rights of asylum seekers especially in prima facie status determination procedure which is mostly exercised by staffs with no proper training.

**Building the capacity of staffs working on status determination:** Currently, there are only two well-trained refugee status determination officers working for UNHCR in the country. It is difficult to cover all status determinations with these two RSD officers. All refugee operations should have at least one RSD officer that can follow up status determination activities in the refugee camps and reception centers under their operation. All members of eligibility committees should be trained consistently. Exclusion assessment trainings should be provided for RSD officers and staffs working in status determination.

The participation of UNHCR in refugee status determination is clearly provided in the refugee proclamation. It has observatory participation. However, in some operation including Addis Ababa UNHCR's participation goes more than that. For instance UNHCR has two RSD officers but ARRA has no officer. This makes ARRA to be dependent on UNHCR rather than strengthening its capacity. Therefore, UNHCR should be observatory and work on supporting ARRA to have a better capacity to conduct refugee status determination. This can be implemented by providing technical, financial and material support for ARRA.

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