



REFUGEES' RIGHT TO WORK IN ETHIOPIA:

Prospects and Challenges

MINILIK ASSEFA

SCHOOL OF LAW
ADDIS ABABA UNIVERSITY

JULY, 2020

**REFUGEES' RIGHT TO WORK IN
ETHIOPIA:
PROSPECTS AND CHALLENGES**

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

BY
MINILIK ASSEFA

ADVISOR
YONAS BIRMETA (Ph.D.)

Addis Ababa University
College of Law and Governance Studies

The thesis titled “Refugee’s Right to Work in Ethiopia: Prospects and Challenges”
by Mr. Minilik Assefa is approved for the degree of Master of Laws (LLM)

Board of Examiners

	Name	Signature
Advisor	_____	_____
Examiner	_____	_____
Examiner	_____	_____

DECLARATION

I, the undersigned, declare that the thesis entitled “Refugee’s Right to Work in Ethiopia: Prospects and Challenges” comprises my original work. In compliance with widely accepted practices, I have duly acknowledged and referenced all materials used in this work.

Signature

Name: Minilik Assefa

ID: GSE/0466/10

Date: July 8, 2020

Acknowledgments

I am delighted to give my sincerest gratitude to my colleagues, classmates, professors, my advisor, and all those who helped me in various ways throughout my study and preparation of this thesis. My special appreciation goes to Kebebush Tullu for her unwavering support and acceptance.

List of Abbreviations

ACHPR – African Charter on Human and Peoples Rights

ARRA – Agency for Refugee and Returnee Affairs

CRRF – Comprehensive Refugee Response Framework

EIC – Ethiopian Investment Commission

FEOs – Foreigners of Ethiopian Origin

GCR – Global Compact on Refugees

GoE – Government of Ethiopia

ICESCR – International Covenant on Economic, Social and Cultural Rights

MFN – Most Favored Nation

MoLSA – Ministry of Labor and Social Affairs

NCRRS – National Comprehensive Refugee Response Strategy

NGO – Non-Governmental Organizations

OAU – Organization of African Unity

UDHR – Universal Declaration of Human Rights

UN – United Nations

UNHCR – United Nations High Commissioner for Refugees

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Abstract

Ethiopia's' Refugee Proclamation No. 1110/2019, provides that refugees will have the right to engage in gainful employment on an equal basis with the most favored foreign nationals in Ethiopia. Accordingly, and in line with international refugee law, the designation of 'the most favored foreigners' in the Ethiopian legal system is the underlying factor that determines the scope of refugee's right to work in Ethiopia. Foreigners of Ethiopian Origin and Djiboutian nationals are the two most favored foreign nationals in Ethiopia regarding access to employment. It is argued that refugee's right to engage in wage-earning employment should not extend to the privileges enjoyed by Foreigners of Ethiopian Origin due to strong legal and policy objectives that predicated the special treatment of Foreigners of Ethiopian Origin in the Ethiopian legal system as well as different practical considerations. Instead, refugees should be placed on par with ordinary foreigners concerning their right to engage in wage-earning employment. However, this will be very restrictive and only few high skilled refugees will have access to the job market.

In relation to engagement in self-employment and liberal professions, refugees have an indisputable right to benefit from the preferential treatment enjoyed by Djiboutian nationals that emanates from Most Favored Nations relationships that exist between Ethiopia and Djibouti. This, with few exceptions, will enable refugees to engage in investment activities that are exclusively reserved for Ethiopian investors. The most favorable opening that will grant greater employment opportunities for numerous refugees is the Joint Projects arrangement. Joint Projects are development projects designed with the support of international donors to unrestricted job opportunities for refugees and host communities.

Introduction

Background

Ethiopia is one of the largest refugee-hosting countries in the world, hosting over 761,000 registered refugees from South Sudan, Somalia, Eritrea, Sudan, and other countries of origin.¹ The country is a State Party to the 1951 Convention relating to the Status of Refugees and its 1967 Protocol (hereinafter UN Refugee Convention)² as well as the 1969 Convention Governing the Specific Aspects of Refugee Problems in Africa (hereinafter the OAU Refugee Convention).³ These specific conventions, along with the constitution and other international human rights instruments, will oblige the Ethiopian government to guarantee civil and political rights, as well as economic social and cultural rights for refugees. This includes an obligation to respect and protect the right to work of refugees in Ethiopia. However, the country has a long-standing and strict encampment policy that limits refugees' movement and access to labor markets.⁴ The majority of refugees in Ethiopia reside in camps located in remote areas. As a result, refugees are expected to survive based on humanitarian assistance provided by international humanitarian organizations.

Nevertheless, the Ethiopian refugee protection regime exhibited a huge policy shift towards the promotion of self-reliance and free movement of refugees, in recent times. On 19 September 2016, the New York Declaration for Refugees and Migrants⁵ was adopted with the aim of delivering a more comprehensive response to large-scale and protracted refugee situations. The Declaration introduced the Comprehensive Refugee Response Framework (CRRF), which later informed the adoption of the Global Compact on Refugees (GCR).⁶ The main objectives of these

¹ UNHCR Operational Portal, Ethiopia, at <<https://data2.unhcr.org/en/country/eth>> (last accessed May 9, 2020)

² The 1951 Convention relating to the Status of Refugees, 28 July 1951; The 1967 Protocol relating to the Status of Refugees, 31 January 1967 and entered in to force on 4 October 1967, [herein after UN Refugee Convention]

³ Convention Governing the Specific Aspects of Refugee Problems in Africa, 10 September 1969; [herein after OAU Refugee Convention]

⁴ International Labor Organization, *Market Systems Analysis for Refugee Livelihoods in Jijjiga – Ethiopia*, (March 2018), p. 2

⁵ General Assembly resolution 71/1, The New York Declaration for Refugees and Migrants, A/RES/71/1, (19 September 2016), at <<https://undocs.org/A/71/L.1>> [Hereinafter The New York Declaration]

⁶ Report of UNHCR, Global Compact on Refugees, Supplement No. 12, A/73/12 (Part II), 2018, Part II, Para. 10, [hereinafter GCR], at <https://www.unhcr.org/gcr/GCR_English.pdf>

CRRF is provided as Annex I of the New York Declaration and forms an integral part of the Global Compact on Refugees

international policy documents are, easing pressure on host countries, enhancing self-reliance of refugees, expanding third-country solutions, and supporting conditions in country of origins to facilitate return in safety and dignity.⁷

A day after the adoption of the New York Declaration, the Leaders' Summit on Refugees was held and several countries pledged to increase global responsibility sharing and strengthen the international community's capacity to address mass displacement.⁸ In light of these global efforts, the Government of Ethiopia (GoE) made highly significant nine pledges relating to further improving the rights and services enjoyed by refugees in the country within the bounds of domestic law and depending on availability of resources.⁹ Among others, five of the pledges made by Ethiopia were directly related to the expansion of refugee's access to employment opportunities and freedom of movement. This initiated a substantive legal and policy reforms in the Ethiopian refugee protection regime.

In February 2017, the government decided to be a pilot country for the implementation of the CRRF.¹⁰ Accordingly, the government came up with a Roadmap outlining key activities for the implementation of the pledges and CRRF.¹¹ The Government drafted a National Comprehensive Refugee Response Strategy (NCRRS) for consultation in May 2018.¹² The Strategy provides for the GoE's plan to change the primary refugee protection model from camp-based assistance towards development-oriented settlements with greater self-reliance of refugees and host communities over 10-year period.¹³

Moreover, the country adopted a new Refugees Proclamation on 17 January 2019.¹⁴ UNHCR and the international community acclaimed it as 'the most advanced refugee proclamation in

⁷ Ibid

⁸ UNHCR, Summary Overview Document Leaders' Summit on Refugees, p.1, at

<https://www.unhcr.org/events/conferences/58526bb24/overview-leaders-summit-on-refugees.html>

⁹ Administration for Refugee and Returnee Affairs, Road Map for the Implementation of GoE's Pledges and Practical Application of CRRF in Ethiopia, 2017(The list of the nine Pledges could be found in this document)

¹⁰ Ephrem Tadesse and Haileselassie Gebemariam, 'Towards a Comprehensive Refugee Response Framework (CRRF): Recent Developments on Refugee Protection in Ethiopia' [2017] 1(Refugee Protection in Ethiopia) International Law Series, Addis Ababa University - School of Law 149-164, p. 154

¹¹ Global Compact on Refugees – Ethiopia, (http://www.globalcrf.org/crf_country/eth/)

¹² UNHCR Ethiopia, CRRF Ethiopia: UNHCR Briefing Note, (July 2018)

¹³ Draft National Comprehensive Refugee Response Strategy p. 14

¹⁴ Refugees Proclamation, No.1110/2019, Federal Negarit Gazette, 25th Year No.38, Addis Ababa, 27 February 2019,

Africa'.¹⁵ The Proclamation repealed the previous Refugee Proclamation No. 409/2004 and it introduced substantive changes on refugee's access to basic and socio-economic rights, services, and durable solutions.¹⁶ Most importantly, Article 26 of the Proclamation explicitly stipulated refugee's right to work which has created huge excitement among the refugee community, international humanitarian, and refugee organizations.

Statement of the Research Questions

Article 26 of the Refugee Proclamation recognizes refugee's right to work *in the same circumstance as the most favorable treatment accorded to foreign nationals pursuant to relevant laws*. Thus, refugee's employment rights are dependent on the extent to which such rights are accorded to the most favored foreigners pursuant to relevant laws. Hence, pertinent questions that one may ask at this juncture are:

- What are the relevant laws that govern the employment rights of foreign nationals?
- Which foreign national enjoys a favorable treatment in relation to gainful employment in Ethiopia? Which favorable treatments could apply to refugees?
- What is the scope of the most favorable treatment accorded to foreigners regarding access to wage-earning employment, self-employment, and liberal professions?
- What is the scope of the opportunities that the Refugees Proclamation has brought in relation to refugees' right to work?

The answers to these questions will expound the extent to which refugee's employment rights are accessible under Ethiopian laws.

Research Objectives

The main objective of this study is to discover the legal framework in which refugee's right to work is regulated under the new refugee proclamation and other relevant legislation. The study tries to unveil the opportunities that the refugee proclamation has brought in relation to the employment rights of refugees. It also aims to identify the legal challenges that impede the accessibility of such opportunities for refugees. Specifically, the study intends to:

¹⁵ UNHCR Press Release, at < <https://www.unhcr.org/news/press/2019/1/5c41b1784/unhcr-welcomes-ethiopia-law-granting-rights-refugees.html>> (last accessed April 17, 2020)

¹⁶ Mehari Taddele Maru, IN DEPTH: Unpacking Ethiopia's revised refugee law, Africa Portal, (13 Feb 2019)

- Define and analyze the standard of treatment applicable to refugee's right to work, through critical assessment of the refugee proclamation and other relevant laws;
- Evaluate the substantive and procedural restrictions and requirements imposed in refugee's right to employment; and
- Identify the legal challenges and the opportunities that the Refugees Proclamation has brought in relation to refugee's access to livelihood opportunities.

Scope of the Study

The study is limited to an analysis of the legal framework that governs refugee's right to work in Ethiopia. Hence, the study will not include discussions on the practice and institutional framework of the implementation of the right to work of refugees. However, practical examples and trends will be used to clarify and create inferences to support and substantiate different legal interpretations. Even if the treaty obligations of Ethiopia and international principles in the refugee protection arena will be discussed briefly, the study will not delve into a broader analysis of international refugee protection instruments and policies.

Research Methodology

This research is a descriptive doctrinal study. It employs a qualitative method of study to assess the extent to which refugees can access employment opportunities in the Ethiopian legal framework. Accordingly, the study involves the assessment of all relevant laws, policies, strategic documents as well as authoritative and/or scholarly legal interpretations. Primary data collection of the study involves desk review of relevant laws and policy documents as well as interviews held with individuals involved in the drafting process of the new refugee proclamation. Secondary data of the research is to be collected through a review of the literature, including scholarly articles, policy briefs, stakeholder reports, news articles, and other publications concerning the legal and policy framework of refugee's employment rights.

Limitation of the Study

The main limitation of this study is the lack of assessment of the practical scenario of the implementation of refugee's right to work. It has been more than a year since the Refugees Proclamation came into effect and researching the practice so far might have significance in understanding the framework. Nevertheless, for reasons of precision and efficiency, this study is limited to analyzing the legal framework that regulates refugee's right to work. Subsequent

researchers could delve into the practice of such a framework to come up with tangible recommendations to curb the legal challenges faced by refugees. The inaccessibility of relevant documents in the concerned government institutions has also hindered the quality of this research.

Literature Review

In 2017, the very first volume of the International Law Series of the Addis Ababa University School of Law was published with a theme of “Refugee Protection in Ethiopia”. This Series explores the historical and religious background to refugee protection in Ethiopia;¹⁷ challenges, prospects, and its policy implications of the strong ethno-cultural associations between South-Sudanese refugees and the hosting communities in Ethiopia¹⁸ and the procedural guarantees within refugee status determination framework employed under the repealed refugee proclamation.¹⁹ Most importantly, Ephrem Tadesse and Haileselassie Gebremariam’s article in this series provided an assessment of the recent policy developments in the Ethiopian refugee protection regime.²⁰ The article expounds on the implementation of CRRF in Ethiopia, its far-reaching impact in necessitating the revision of the previous refugee proclamation as well as the legislative history and the promises of the Refugees Proclamation, which at that time was at a draft stage.

Similarly, Naol Abera’s graduate thesis did also provide a detailed discussion of the role of CRRF on the protection of refugees in Ethiopia.²¹ He emphasized on the importance of the policy commitments Ethiopia made internationally to achieve better protection of refugees in Ethiopia. Yosef Girma’s graduate theses, on the other hand, has provided an assessment of the practical challenges that Eritrean refugees living in Addis Ababa were facing concerning access

¹⁷ Abdulmalik A. Ahmed, *The 7th Century Unwritten Ethiopian Laws on the Protection of Refugees*, [2017] 1(Refugee Protection in Ethiopia) International Law Series, Addis Ababa University - School of Law

¹⁸ Moti Mosisa Gutema, *The Dynamics of Refugees’ Dual- Identity along Ethiopia-South Sudan Border: Challenges, Prospects and Policy Implications’* [2017] 1(Refugee Protection in Ethiopia) International Law Series, Addis Ababa University - School of Law

¹⁹ Jetu Edosa Chewaka, *Procedural Guarantees for Refugee Status Determination under Ethiopian Refugee Law*, [2017] 1(Refugee Protection in Ethiopia) International Law Series, Addis Ababa University - School of Law

²⁰ Ephrem and Hailesilassie, (n 14)

²¹ Naol Abera, *The Role of Comprehensive Refugee Response Framework on the Protection of Refugee Rights in Ethiopia*, Addis Ababa University School of Law, (2019)

to employment opportunities.²² Yosef noted that remittance is the main source of income that out of camp Eritrean refugees can rely on for their livelihood, and the remaining refugees are employed in the informal sector with significantly low wage rates and discriminatory working conditions.²³

“Ethiopia's Refugee Policy Overhaul”, an article authored by Tadesse Kassa, Fasil Mulatu, and Jaxxu Iddossa, is of high relevance to this study.²⁴ The article provides that the biggest challenge that refugees living outside the refugee camps encounter is sustaining livelihood.²⁵ The authors maintain that, with regard to refugee’s right to work, the new refugee proclamation provides a progressive approach and a fundamental departure from the repealed proclamation.²⁶

According to the authors, Article 26 of the proclamation should not be understood as permitting refugees the equal employment rights as afforded to Foreigners of Ethiopian Origin (FEOs).²⁷ The article goes on to state that “[FEOs] are foreigners of ‘special class’ accorded preferential treatment for particular economic, social and political rationales”.²⁸ Moreover, the authors argue that there is little evidence to indicate that refugee’s right to work under the new Refugee Proclamation would stretch as far as granting all refugees in Ethiopia automatic and unconditional employment rights.²⁹ They have outlined the legal restrictions that will limit the right to work of average-skilled refugees, whereby only refugees with special expertise will be eligible to access employment opportunities. However, the authors have noted that concerning gainful employment, the most progressive opening is coined under Article 26(4) of the Refugee Proclamation - the arrangement of the joint project.³⁰

In general, most of the literature on the Ethiopian refugee protection regime were published before the promulgation of the new refugee proclamation and cannot provide for the analysis of

²² Yosef Girma, Practical Challenges of Access to Employment Opportunity of Eritrean refugees living in Addis Ababa, Center for Human Rights, Addis Ababa University, 2019.

²³ Ibid, p. 38 - 39

²⁴ Tadesse Kassa, Fasil Mulatu and Jaxxu Iddossa, 'Ethiopia's Refugee Policy Overhaul: Implications on the Out of Camp Policy Regime and Rights to Residence, Movement and Engagement in Gainful Employment' [October 2019] IV (1) Ethiopian Journal of Human Rights 124-161, [hereinafter Tadesse et al]

²⁵ Ibid, p. 149

²⁶ Ibid, p. 151

²⁷ Ibid, p. 153

²⁸ Ibid, p. 154

²⁹ Ibid

³⁰ Ibid p. 158

the existing legal framework of the implementation of refugee's right to work. Yosef's research, even if it was undertaken after the promulgation of the new refugee proclamation, is also short of providing the full legal spectrum of refugee's right to work as embodied in multiple items of legislation. The journal article authored by Tadesse Kassa et.al provides a relatively detailed analysis of the legal framework available in this regard. However, given the limited assessment and scope that a journal article can provide, there still needs to be a comprehensive and in-depth analysis of the topic for further reference by refugees, lawyers, development partners, other stakeholders, and the government itself.

Thesis Organization

The research report is organized in five chapters. The first chapter dwells upon the international and Ethiopian legal framework of refugee protection in general while chapter two deals with the refugee's right to work in general. Chapter three discusses refugees' access to wage-earning employment and refugee's access to self-employment and liberal profession is simultaneously discussed under chapter four. Chapter five provides an analysis of more favorable opportunities provided under the proclamation, which entitle refugees to be given equal treatment with Ethiopian nationals. The last chapter provides for a conclusion of the discussions made in the preceding chapters as well as recommendation pinpointed out of the analysis.

CHAPTER ONE

1. Overview of International and National Framework on Refugee Protection

1.1. International and Regional Frameworks

The UN Refugee Convention is the foundation of international refugee law and the main source of the principle of international protection. Article 14 of the Universal Declaration of Human Rights (UDHR), which provides for the right of everyone to seek and to enjoy asylum in another country from persecution, serves as the foundational basis for the UN Refugee Convention.³¹ The Convention was originally limited in scope to persons fleeing events occurring before 1 January 1951 and within Europe. This is because the convention was initially envisioned to respond to post-Second World War problems in Europe. This limitation remained intact until the adoption of the 1967 Protocol that removed these limitations; and asserted non-time-bound and universal application of the Convention.³²

Moreover, Article 2 of the UDHR and most provisions of several international human right instruments provide that, everyone is entitled to all the rights and freedoms provided without distinction of any kind, such as race, color, sex, language, religion, political or other opinions, national or social origin, property, birth or other status.³³ The term “everyone” thus comprises both citizens and non-citizens, which includes refugees and asylum-seekers. Accordingly, international human rights law does also serve as a source of state responsibility for the international protection of refugees.³⁴

Under the UN Refugee Convention, the term refugee is defined as a person who, owing to a well-founded fear of being persecuted, for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable,

³¹ Introductory note to the UN Refugee Convention by United Nations High Commissioner for Refugees (UNHCR), at < <https://www.unhcr.org/3b66c2aa10> > (last accessed March 1, 2020)

³² 1967 Protocol relating to the Status of Refugees, Article 1,

³³ Universal Declaration of Human Rights, 1948, Article 2, (emphasis added) at [hereinafter UDHR]

³⁴ See The Rights of Non-Citizens, Office of the United Nations High Commissioner for Human Rights, 2006, at <https://www.ohchr.org/Documents/Publications/noncitizensen.pdf> (last accessed March 1, 2020)

or owing to such fear, is unwilling, to avail himself of the protection of that country.³⁵ The term also includes stateless persons who are outside of the country of their former habitual residence who are unable or unwilling to return to it.

Other than the UN Refugee Convention, regional and sub-regional instruments do also provide a more specific arrangement for the international protection of that complements the standards of the UN Refugee Convention.³⁶ Most importantly, the 1969 OAU Refugee Convention was adopted to respond to large-scale refugee movements caused by post-colonial era conflicts in Africa.³⁷ The OAU Refugee Convention expands the definition of the ‘refugee’ to include persons fleeing external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his/her country of origin or nationality.³⁸ However, the Convention does not contain a list of rights that refugees are entitled to and the standard of treatment applicable for each of the rights.

The 1984 Cartagena Declaration on Refugees, though not a binding legal instrument, has served as a standard refugee authority in most of Central and South American countries. Arab Convention on Regulating Status of Refugees in the Arab Countries was adopted by the League of Arab States in 1994.³⁹ The convention is neither ratified nor entered in to force.⁴⁰ Both the Cartagena Declaration and the Arab Refugee Convention use the refugee definition contained in the 1969 OAU Refugee Convention, but the Arab Convention further extends it to include persons fleeing disasters or other grave events disrupting public order.⁴¹

1.1.1. Principles and Standards of the UN Refugee Convention

The UN Refugee Convention establishes the juridical status of refugees, underpins several principles, and sets minimum standards of treatment for refugees. Among the fundamental

³⁵ UN Refugee Convention (n 2), Art. 1(A/2),

³⁶ Sub regional systems such as IGAD and others have also provided specific arrangements that could benefit refugees

³⁷ A Guide to International Refugee Protection and Building State Asylum Systems, Handbook for Parliamentarians N° 27, 2017, Inter-Parliamentary Union and UNHCR, p. 19 [hereinafter Inter-Parliamentary Union and UNHCR]

³⁸ OAU Refugee Convention, Article 1(2)

³⁹ Inter-Parliamentary Union and UNHCR (n 37), p. 21

⁴⁰ Ibid

⁴¹ League of Arab States, Arab Convention on Regulating Status of Refugees in the Arab Countries, 1994, Article 1, at < <https://www.refworld.org/docid/4dd5123f2.html> > (last accessed 7 March 2020)

principles of the Convention, principles of non-discrimination, non-penalization, and non-refoulement are the most notable.⁴² The principle of non-discrimination calls for the application of the provisions of the convention without discrimination based on race, religion, or country of origin.⁴³ The principle of non-penalization stipulates that refugees should not be penalized for their illegal entry or stay to the host country provided they present immediately themselves to the authorities and show good cause for their illegal entry or presence.⁴⁴ The principle of the non-refoulement provides that no one shall expel or return (*“refouler”*) a refugee to a territory where his/her life or freedom would be threatened because of race, religion, nationality, membership of a particular social group, or political opinion.⁴⁵

Standards of Treatment

The UN Refugee Convention provides for basic rights to practice one's religion, acquisition of property, access to courts, education, identity papers and travel documents, association, gainful employment, welfare, freedom of movement, transfer of assets, and many other entitlements. However, the Convention provides different standards of treatment that apply to each of the rights and entitlements of refugees. Such standards of treatment range from a treatment on an equal basis with foreigners-in-general, to treatment on par with citizens.

A. Equal Treatment with Foreigners in General: As a minimum standard, the Convention stipulates, that refugees should receive at least that treatment which is accorded to ordinary foreigners. This standard of treatment imposes a binding obligation on states to grant refugees with the same level of treatment that they accord to foreigners-in-general, according to relevant laws. Refugees will be entitled to a treatment that is accorded to foreigners without the requirement of reciprocal or preferential arrangements. Such treatment will apply to refugee's right to exemption from reciprocity, acquisition of property, secondary and beyond secondary education, housing, engagement in self-employment and liberal professions, as well as freedom of movement.⁴⁶ Except for refugees' right to choice of residence and freedom of movement, this standard of

⁴² Introductory note to the UN Refugee Convention (n 31),

⁴³ UN Refugee Convention (n 2), Art 3,

⁴⁴ Ibid, Article 31

⁴⁵ Ibid, Article 33

⁴⁶ Ibid, Articles 7, 13, 18, 19, 21, 22, 26

treatment does also applies the term “as favorable as possible”, which is a recommendation for states to provide a more favorable treatment than the treatment they accord to aliens in general.⁴⁷

B. Equal Treatment with the Most Favored Foreigners: In some contexts, the Convention calls for states to provide the most favorable treatment accorded to foreign nationals in the same circumstances. Thus, refugees will be entitled to the same favorable treatment that a country has granted to certain foreigners, through reciprocity or other arrangement created by treaties, legislation, or practice.⁴⁸ According to UNHCR commentary on the UN Refugee Convention, “[it] does not matter if there are special ties between the two States, as long as they both are States in the eyes of international law”.⁴⁹ This standard of treatment applies to the right to association and wage-earning employment of refugees.⁵⁰

C. Equal Treatment with Nationals: In multiple contexts, such as the right to practice one's religion, intellectual property, access to court, rationing, elementary education, public relief, and social security, states are obliged to treat refugees in the same manner with their citizens.⁵¹ This standard of treatment provides refugees with a treatment that in no way will be inferior to the treatment enjoyed by nationals.

Levels of Attachment to the State of Refuge

The rights of refugees provided under the Convention are also subject to differential applications based on the level of attachment refugees have with their country of refuge.⁵² The level of attachment in this regard ranges from the minimum level of mere physical presence to lawful presence, and a maximum of lawful stay in the territory of the country of refuge.⁵³ Rights to practice one's religion, identity documents, and non-penalization of unlawful entry are granted to

⁴⁷ Dr. Paul Weis, *The Refugee Convention, 1951, Travaux Préparatoires Analyzed with a Commentary*, p. 85 at <<https://www.unhcr.org/protection/travaux/4ca34be29/refugee-convention-1951-travaux-preparatoires-analysed-commentary-dr-paul.html>>

⁴⁸ UNHCR, *Commentary on the Refugee Convention*, Division of International Protection, 1997, p. 41

⁴⁹ *Ibid*, p. 42

⁵⁰ UN Refugee Convention (n 2), Articles 15, 17(1)

⁵¹ *Ibid*, Articles 4, 14, 16, 20, 22(1), 23, 24(1), 29

⁵² James C. Hathaway, *The Rights of Refugees under International Law* (Cambridge University Press 2005) p. 156

⁵³ *Ibid*

all refugees who are physically present in the territories of the Contracting state.⁵⁴ ‘Physical presence’ doesn’t require continuing stay/residence or lawful entry to the territories if the state in question. Thus, refugees entitled to enjoy these rights even in countries other than their country of refuge, which recognized their refugee status.

On the other hand, the right to self-employment, movement, and choice of residence, non-expulsion are right associated with refugees lawfully in the territories of the host state.⁵⁵ The term ‘lawfully in the territory’ of the Contracting State could be a temporary stay or a visit authorized by state authorities.⁵⁶ More extensive attachment, lawful staying, is required from refugees for them to access the right to artistic and industrial property, associations, wage-earning employment and practicing a profession, housing, public relief, social security, travel documents, as well as just and favorable conditions of work.⁵⁷

The term “lawfully staying” is not synonymous with domicile or permanent resident status as conceived in several legal systems.⁵⁸ However, it implies “settling down and, consequently, a certain length of residence”.⁵⁹ Thus, neither a prolonged stay nor the establishment of habitual residence is required for a refugee to be considered as “lawfully staying”.⁶⁰ However, the presence of the refugee must be ‘ongoing in practical terms’.⁶¹ According to Paul Weis’s commentary, “any refugee, who with the authorization of the authorities is in the territory of a Contracting State otherwise than purely temporarily, is to be considered as ‘lawfully staying’”.⁶²

⁵⁴ UN Refugee Convention (n 2), Articles 4, 27 and 31

⁵⁵ Ibid, Articles 18, 26 and 32

⁵⁶ Paul Weis (n 47), p. 109

⁵⁷ UN Refugee Convention (n 2), Articles 15, 17, 19, 21, 23, 24 and 28

⁵⁸ Hathaway (n 52), p. 186

⁵⁹ Statement of Mr. Juvigny of France at UN Ad Hoc Committee on Refugees and Stateless Persons, Ad Hoc Committee on Refugees and Stateless Persons, Second Session: Summary Record of the Forty-Second Meeting Held at the Palais des Nations, Geneva, on Thursday, 24 August 1950 at 2.30 p.m., 28 September 1950, E/AC.32/SR.42, available at <<https://www.refworld.org/docid/3ae68c190.html>> (last accessed 28 March 2020)

⁶⁰ Id

⁶¹ Id

⁶² Paul Weis (n 47), p. 268

1.2. National Refugee Protection Framework in Ethiopia

The Constitution of the Federal Democratic Republic of Ethiopia does not specifically provide for the rights of refugees or the protection refugees could get in Ethiopia.⁶³ The Constitution provides for fundamental rights and freedoms to be enjoyed by everyone or exclusively by Ethiopian Citizens. With the exception to nationality rights, the rights to vote and run for office, the rights to self-determination, property, development as well as economic social and cultural rights, all the rights and freedoms provided under the 21 provisions (from Art. 14 to 44) of the Constitution are crafted to benefit everyone. Certainly, non-citizens, including refugees, can legitimately enjoy the rights that are guaranteed for everyone.

Most importantly, the Constitution provides that international agreements ratified by Ethiopia are an integral part of the law of the land.⁶⁴ Ethiopia is a state party to the ‘Core International Human Rights Instruments’⁶⁵ except two.⁶⁶ Moreover, the country has ratified the UN Refugee Convention with its Protocol and the OAU Refugee Convention.⁶⁷ Ethiopia has reservations on Articles 8, 9, 17(2), and 22 (1) of the UN Refugee Convention.⁶⁸ These provisions are only to be recognized as recommendations and not as legally binding obligations.⁶⁹

Until recently, the main domestic legislation on the protection of refugees in Ethiopia used to be the Refugee Proclamation No. 409/2004 (hereinafter ‘the previous refugee proclamation’).⁷⁰ There were no concrete national policies nor laws, which regulate situations of asylum-seekers

⁶³ The Constitution of the Federal Democratic Republic of Ethiopia, 1995, article 47/1

⁶⁴ Ibid, Article 9 (4)

⁶⁵ United Nations Office of High Commissioner for Human Rights, The Core International Human Rights Instruments and their monitoring bodies, at <<https://www.ohchr.org/EN/ProfessionalInterest/Pages/CoreInstruments.aspx>> The list of Core human Rights treaties is available in this website

⁶⁶ National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21, par. 22 at <<https://www.ohchr.org/EN/HRBodies/UPR/Pages/ETIndex.aspx>> (last accessed March 7, 2020) The two instruments that Ethiopia has not ratified yet are: International Convention for the Protection of All Persons from Enforced Disappearance (CEPED) and International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICMW).

⁶⁷ State Parties, Reservations and Declarations, Convention Relating to the Status of Refugees, 2019, p. 8 at <<https://www.unhcr.org/5d9ed32b4>> (last accessed March 7, 2020)

⁶⁸ Ibid

⁶⁹ Ibid

⁷⁰ Refugee Proclamation No. 409/2004, Federal Negarit Gazeta No. 54 19th July, 2004

and refugees.⁷¹ The Proclamation was promulgated as a response to the dramatic increase in the number of refugees coming from neighboring countries in the late 1990s and early 2000s. The proclamation substantively replicates the UN and OAU Refugee Conventions and it stipulates refugees in Ethiopia to be subject to the rights and duties contained in these instruments.⁷²

Nevertheless, the previous Refugee Proclamation did not provide a list of all the gamut of rights that refugees are entitled to according to such Conventions. Rather, it simply stated that refugees are entitled to all the rights contained in the UN and OAU Refugee Conventions.⁷³ This approach has created difficulties in the interpretation and enforcement of the rights of refugees in the legal system.⁷⁴ The failure of the proclamation to list out all the rights of refugees, coupled with lack of policy and political commitment, was one of the reasons that hindered the full and practical realization of the employment rights of refugees.⁷⁵

The Agency for Refugee & Returnee Affairs (hereinafter ARRA) is the primary government agency that is mandated to deal with issues of refugees and asylum seekers.⁷⁶ The key mandates of ARRA include conducting refugee status determination, establishing and manage refugee camps, coordinating country-wide refugee assistance programs as well as support and maintain the physical safety and dignity of refugees.⁷⁷

1.2.1. Refugees Proclamation No. 1110/2019

The enactment of the new Refugees Proclamation No. 1110/2019 was the result of a long legislative process shaped by substantive policy changes. As of July 2016, UNHCR and ARRA have already initiated a legislative process to draft a Refugee Regulation that will complement and fill the gaps of the Repealed Refugee Proclamation.⁷⁸ Besides, at the 2016's Leader's

⁷¹ Zelalem Mogessie Teferra, *Delimiting the Normative Terrain of Refugee Protection: A Critical Appraisal of the Ethiopian Refugee Proclamation No. 409/2004*, Ethiopia' [2017] 1(Refugee Protection in Ethiopia) International Law Series, Addis Ababa University - School of Law, p. 45

⁷² The Repealed Refugee Proclamation (n 70), Article 21(1/b)

⁷³ The Repealed Refugee Proclamation (n 70), Art. 21(1/d)

⁷⁴ Tadesse et al (n 10) p. 129

⁷⁵ Zelalem Mogessie (n 71), pp. 35-41

⁷⁶ Definition of Powers and Duties of the Executive Organs of the Federal Democratic Republic of Ethiopia Proclamation No. 1097/2018, Federal Negarit Gazette No. 8, 29th November 2018, Article 32 (14)

⁷⁷ ARRA Official Website, at <<http://arra.et/mandates/>>;

⁷⁸ Ephrem and Hailesilassie (n 10), p. 156

Summit, the Government of Ethiopia made the nine pledges to further improve refugee's access to socio-economic services, work, and livelihoods, as well as local integration.

Among others, Ethiopia pledged to expand its Out of Camp Policy to benefit 75,000 refugees and to provide work permits to refugees in the areas permitted for foreign workers.⁷⁹ Additionally, Ethiopia pledged to make available 10,000 hectares of irrigable land to allow 100,000 refugees and members of host communities to engage in crop production by facilitating irrigation schemes.⁸⁰ Ethiopia also pledged to work with international partners to, potentially build industrial parks that could employ up to 100,000 individuals, with 30% of the jobs to be reserved for refugees. However, all these commitments are subject to the bounds of domestic laws and the availability of external financial assistance.⁸¹

Accordingly, the legislative process adjusted itself to include the pledges made by the government of Ethiopia into the draft Refugee Regulation.⁸² However, multiple consultations on the draft Refugee Regulation highlighted the need to revise the previous Refugees Proclamation to accommodate substantive rights and procedural guarantees of refugees and asylum seekers.⁸³ The need might have arisen from the legal/technical problem concerning the Proclamation's failure to flesh out the substantive rights of refugees.⁸⁴ This concern and the need to integrate the policy shift introduced by the nine pledges and the CRRF, the Refugees Proclamation adopted by the Parliament and entered in to force on 27 February 2019.

The proclamation adopted a combination of the definitions used under the UN and OAU Refugee Convention to define the term 'refugee'. The Refugees Proclamation has also provided basic principles and procedures that are mostly compatible with the standards set under international

⁷⁹ Leaders' Summit on Refugees (n 8), p. 4

⁸⁰ Ibid

⁸¹ Ibid

⁸² Ephrem and Hailesilassie (n 10), p. 157

⁸³ Ibid, p. 160

⁸⁴ See Sisay Alemahu Yeshanew, 'The Justiciability of Human Rights in the Federal Democratic Republic of Ethiopia' [2008] 8(2) African Human Rights Law Journal 273-93, p. 286;

Besides the political will and competence of the government to implement provisions of international instruments, lack of publication of the full texts of the treaties on the official gazette of the country is attributed as a challenge hampering the implementation of international instruments in the country. Some has argued that the full text of the ratified international treaties should have to be published in the Negarit Gazette, for their provisions to be implemented through the countries legal system. Should this be the case or not, courts and government agencies have not developed a practice of applying and implementing the provisions of international instruments ratified by Ethiopia, unless there exists a domestic legislation that fleshes out such provisions in the Federal Negarit Gazette.

instruments and policies. Unlike the previous Refugee Proclamation that made a mere reference to the rights recognized under international instruments, a list of most of the rights provided under the UN Refugee Convention has been enshrined under the new Refugees Proclamation.

In some cases, the Refugees Proclamation goes beyond the reservations made by Ethiopia on the UN Refugee Convention to provide better rights and access to services for refugees.⁸⁵ Some provisions in the proclamation adopt a standard of treatment on an equal basis the most favorable foreigner, while their Convention counterparts had applied treatment on an equal basis with foreigners in general. The proclamation has also outlined durable solutions, including voluntary repatriation, local integration, and naturalization.⁸⁶

Other than the Proclamation, the nine pledges, the Roadmap for the Implementation of the pledges, as well as the draft NCRRS will serve as a policy framework for refugee protection in Ethiopia. Moreover, Ethiopia has made new four pledges at the Global Refugee Forum.⁸⁷ These are mostly related to expanding socio-economic opportunities through agricultural and livestock value chains, provision of sustainable energy solutions and skills training for refugees, as well as strengthening the asylum system and social protection capacity.⁸⁸

⁸⁵ Refugees Proclamation (n 14), Article 24, 26 (9) and 29

⁸⁶ Refugees Proclamation (n 14), Art 40, 41 and 42

⁸⁷ Statement by HE Mr. Demeke Mokonnen, Deputy PM of FDRE, at the Global Refugee Forum, Geneva, December 2019, p. 6

⁸⁸ Ibid

CHAPTER TWO

2. Refugees' Right to Work in General

Refugee's right to work is guaranteed under several international and regional human rights instruments. Article 23 of the UDHR provides for everyone's right to work. More importantly, ICESCR duly recognizes the right to work, which includes the right of everyone to the opportunity to gain his/her living by work which he/she freely chooses or accepts.⁸⁹ Similarly, the African Charter on Human and Peoples' Rights (ACHPR) provides for every individual's right to work. Refugees can validly invoke such provisions to exercise their employment rights.⁹⁰ However, the implementation of such rights under ICESCR might be compromised due to the principle of progressive realization of Economic, Social, and Cultural Rights.⁹¹ Moreover, Article 2(3) of ICESCR provides that: "Developing countries, with due regard to human rights and their national economy, may determine to what extent they would guarantee the economic rights recognized in the present Covenant to non-nationals". This provision will allow States Parties to restrict the enjoyment of economic rights by non-nationals, which also includes refugees.

However, the UN Refugee Convention has provided specific and more tangible provisions regarding refugee's right to work. Chapter three of the Convention deals with gainful employment and it dedicates three different articles to stipulate for refugee's right to engage in wage-earning employment, self-employment, and liberal professions.

Wage-earning Employment: Article 17 (1) of the UN Refugee Convention states, "Contracting State shall accord to refugees lawfully staying in their territory the most favorable treatment accorded to nationals of a foreign country in the same circumstances, as regards the right to engage in wage-earning employment."

⁸⁹ International Covenant on Economic, Social and Cultural Rights, Adopted on 16 December 1966, entered into force 23 March 1976, Article 6,

⁹⁰ African Charter on Human and Peoples' Rights, adopted on July 1981, entry into force October 1986, Article 15

⁹¹ ICESCR, Article 2(1)

Self-employment: Article 18 of the UN Refugee Convention provides that “The Contracting States shall accord to a refugee lawfully in their territory treatment as favorable as possible and, in any event, not less favorable than that accorded to aliens generally in the same circumstances, as regards the right to engage on his own account in agriculture, industry, handicrafts, and commerce and to establish commercial and industrial companies.”

Liberal Professions: Article 18 (1) of the UN Refugee Convention stipulates that “Contracting State shall accord to refugees lawfully staying in their territory who hold diplomas recognized by the competent authorities of that State, and who are desirous of practicing a liberal profession, treatment as favorable as possible and, in any event, not less favorable than that accorded to aliens generally in the same circumstances.”

2.1. Convention Standards

Scope and Definition

The meaning of all the three types of gainful employment has not been provided under the UN Refugee Convention or any other instruments relevant to refugee protection. However, UNHCR’s commentary on the convention has provided the scope of the terms and indicative definitions. Accordingly, ‘wage-earning employment’ includes all kinds of employment, which cannot properly be described as self-employment or fall within the scope of Article 19 (liberal professions).⁹² Wage-earning employment comprises state employees, factory workers, farmhands, office workers, sales clerks, domestics, and any other work the remuneration for which is in the form of a salary as opposed to fees or profits.

Self-employment refers to the engagement of an individual in any trade or business activity carried on by himself for subsistence or earning a profit. The Convention has listed activities that should be deemed as self-employment activities such as agriculture, industry, handicrafts, and commerce. The list provided in the convention is exhaustive and it might exclude other activities that might have different legal terminologies in different jurisdictions.

⁹² Commentary on the Refugee Convention (n 48), Article 17, Pra. 4

The term 'liberal professions' is not also defined under Convention and it may have different meanings in different countries.⁹³ The term refers to persons who possess certain qualifications confirmed by a degree or certificate, or a special license and who are working on their own account contrary to working as an agent of the State or salaried employees.⁹⁴ Liberal professions may include lawyers, doctors, dentists, veterinarians, engineers, architects, pharmacists, artists, accountants authorized translators and interpreters.⁹⁵

Paragraph 2 Article 19 of the Convention provides that the Contracting States shall use their best endeavors consistently with their laws and constitutions to secure the settlement of such refugees in the territories, other than the metropolitan territory, for whose international relations they are responsible. This is a recommendation for states to at least consider sending such refugees to their overseas colonies.⁹⁶

Required Level of Attachment

The right to engage in wage-earning employment and liberal professions only applies to 'refugees lawfully staying' in the territories of the host country. Thus, only those refugees who have a lawful and ongoing presence will access the right to engage in wage-earning employment liberal professions. Refugee's right to self-employment applies to those refugees who 'lawfully in the territory' of the Contracting States.⁹⁷ Thus, a lawful physical presence in the territories of a state party, either for a temporary stay or for visit, is sufficient for refugees to be entitled to the right to self-employment.⁹⁸ Refugees are not expected to be lawfully staying in the territory of the host state. The refugee might reside elsewhere, and he/she might be sojourning there for a limited time. This has two implications: (1) it allows refugees to be engaged in commercial activities in any of State Parties to the UN Refugee Convention outside of their host/refugee country;⁹⁹ (2) asylum seekers whose refugee status has not been formally recognized can also

⁹³ Paul Weis (n 47), p. 113

⁹⁴ Ibid; Commentary on the Refugee Convention (n 48), pp. 46-47

⁹⁵ Commentary on the Refugee Convention (n 48), pp. 46-47

⁹⁶ Paul Weis (n 47), p. 113

⁹⁷ Ibid, p. 109

⁹⁸ Ibid

⁹⁹ Hathaway (52), p. 174

access self-employment in the host country.¹⁰⁰ For instance, refugee musicians or scientists could conduct concerts or lectures in a neighboring state to the host country.

Standard of Treatment

Article 17 (1) of the convention has applied “the most favored foreigners” standard in relation to refugee’s right to wage-earning employment. According to Paul Weis, the “most favorable treatment” means the best treatment, which is accorded to nationals of another country based on 'Most-Favored-Nation' (MFN) clauses under bilateral or multilateral treaties or usage.¹⁰¹ This includes a special treatment granted to certain foreign nationals through national legislation.¹⁰²

Article 17(2) of the Convention provides that restrictive measures imposed on the employment of foreigners for the protection of the national labor market shall not be applied to refugees who either have completed three years’ residence in the country or have a spouse or a child possessing the nationality of the country of residence. Restrictive measures for the protection of the national labor market include ‘restrictions in time or space or concerning employment in certain occupations.’¹⁰³ It also includes fixing a certain number or percentage of foreign nationals that could be employed in particular sectors, or criteria that foreign nationals may only be employed if no nationals are available for a certain job.¹⁰⁴ Nevertheless, measures that have another purpose such as national security, which entails the prohibition of employment of aliens in national defense industries and the civil service, are not exemptible under this provision.¹⁰⁵

The standard of treatment used by the Convention regarding the right to self-employment and liberal professions is a 'treatment as favorable as possible and, in any event, not less favorable than that accorded to aliens generally in the same circumstances'. Thus, State Parties are expected to grant refugees the same treatment that is accorded to ordinary foreigners and to strive to provide more favorable treatment.

¹⁰⁰ Ibid, p. 175

¹⁰¹ Paul Weis (n 47), p. 94

¹⁰² Commentary on the Refugee Convention (n 48), Article 17

¹⁰³ Paul Weis (n 47), p. 107

¹⁰⁴ Ibid

¹⁰⁵ Ibid; Commentary on the Refugee Convention (n 48), Article 17

“Same Circumstances”

In each of the provisions, refugees are only entitled to either the most favorable or the ordinary treatment accorded to nationals of a foreign country “**in the same circumstances**”. Article 6 of the UN Refugee Convention defines the term “in the same circumstances” as implying any requirements (including requirements as to length and conditions of *sojourn* or residence) which the particular individual would have to fulfill for the enjoyment of the right in question if he/she were not a refugee.

Such requirements are usually associated with age, sex, health, nationality, education, training, experience, personal integrity, financial solvency, and marital status, membership of a professional association or trade union, or residence or length of residence.¹⁰⁶ However, refugees are exempted from such requirements that are practically impossible to be fulfilled by refugees due to their unique circumstances.¹⁰⁷ Refugees may not be able to produce a certificate of nationality, passport, and other documentation that might only be obtained from the government of the country of origin of refugees.¹⁰⁸ Thus, refugees will not be required to provide such documentation; and they are allowed to prove certain facts through other mechanisms that do not require the involvement of the government of their country of origin.

2.2. Refugees Right to Work in Ethiopia

FDRE Constitution recognizes the right to work to Ethiopian nationals exclusively.¹⁰⁹ Article 41(1) of the Constitution provides that “Every Ethiopian National has the right to engage freely in economic activity and to pursue a livelihood of his/her choice, within the territory of the country.” This excludes all non-citizens within the territories of Ethiopia, which also includes refugees and asylum seekers. Nevertheless, as stated earlier, the country is a State Party to ICESCR and ACHPR, which explicitly provide for the right to work of everyone regardless of their citizenship or refugee status; and countries cannot invoke domestic law as a justification for failing to perform international treaty obligations.¹¹⁰

¹⁰⁶ Commentary on the Refugee Convention (n 48), Article 17

¹⁰⁷ UN Refugee Convention (n 2), Art. 6

¹⁰⁸ Ibid

¹⁰⁹ FDRE Constitution (n 63), Article 41 (1)

¹¹⁰ Vienna Convention on the Law of Treaties, adopted on May 1969, entered into force January 1980, Article 27

Thus, Ethiopia has an international obligation that emanates from UDHR, ICESCR, and ACHPR, to respect the right to work of non-citizens in its territory, regardless of the constitutional provision stating the contrary. Moreover, as a signatory to the UN Refugee Convention, the right to work of refugees will remain an integral part of the Ethiopian refugee legal regime, except for the reservation the country has made to article 17(2) of the Convention.

Article 26 of the Refugees Proclamation recognizes the right to employment to both Refugees and Asylum Seekers, which is more progressive than the UN Refugee Convention, which limits the enjoyment of such right to lawfully staying refugees only. The term “Recognized Refugee” is defined under Article 2(10) of the Proclamation, but it is not clear whether the term includes refugees who have come to Ethiopia after obtaining refugee status from other countries. ‘Asylum seekers’ are individuals or groups who present themselves at the border or frontier or within the territory of Ethiopia seeking refugee status and waiting for the decision of ARRA.¹¹¹ Thus, any type of recognized refugees and asylum seekers who are physically present in Ethiopia can be entitled to the right to work.

2.2.1. Standard of Treatment under the Refugees Proclamation

Article 26 of the Refugees Proclamation stipulates refugees have the right to engage in wage-earning employment, self-employment, and liberal professions, in the same circumstance as the most favorable treatment accorded to foreign nationals pursuant to relevant laws. Except for a few sub-articles, the provision has adopted a standard of treatment ‘on an equal basis with the most favored foreigners’ concerning gainful employment. This means refugees in Ethiopia will have equal employment rights with foreigners who enjoy favorable treatment through reciprocity agreement or legislation. Therefore, this will raise a question as to which laws apply to the employment rights of foreigners and identifying which foreigners enjoy the most favorable treatment in this regard. Several primary and secondary legislation will govern foreigner’s right to work in Ethiopia. These include public and private employment proclamations, commercial, and investment laws with substantive and procedural regulatory frameworks.

Such laws provide for equal employment status for all foreigners. However, exceptionally, Foreigners of Ethiopian Origin (FEOs) and Djiboutian nationals have been provided with special

¹¹¹ Refugees Proclamation (n 14), Article 2 (8)

employment rights through separate legislation and a bilateral agreement. FEOs have been granted with a gamut of privileges with regard to engagement in gainful employment by virtue of Proclamation No.270/2002 [hereinafter FEO Proclamation].¹¹² This Proclamation allows FEOs to engage in gainful employment without being required to obtain ‘work permits’ which is a mandatory requirement for other foreigners.¹¹³ The only exception to this privilege is that FEOs will not be allowed to be employed in defense, security, foreign affairs, and political establishments.¹¹⁴ Furthermore, the proclamation allows FEOs to freely engage in any commercial and business activities, which are exclusively reserved for domestic investors.¹¹⁵

On the other hand, the ‘Preferential Investment Facilitation and Property Acquisition Agreement’, signed between Ethiopia and Djibouti (hereinafter the Ethio-Djibouti Investment Agreement), will allow Djiboutian nationals to engage in any investment activities reserved for Ethiopian nationals, with few exceptions.¹¹⁶ The agreement generally regulates investment relations of the two countries, in which both countries extend ‘Most Favored Nations’ (MFN) treatment’ in all areas of investment to the nationals of each other.¹¹⁷ The preferential treatment that Djiboutian nationals would get, according to this agreement, is limited to the investment sector (self-employment). Moreover, the Ethio-Djibouti Investment Agreement does not apply to banking, insurance, micro-credit and saving, broadcasting, and press services. This makes the treatment accorded to Djiboutian nationals a bit lesser than what is granted for FEOs.

Therefore, FEOs could be considered as foreigners who enjoy the most favorable treatment in Ethiopia regarding gainful employment. This means, by virtue of Article 26 of the Refugees Proclamation, refugees in Ethiopia would be entitled to the privileges that FEOs are enjoying in Ethiopia. However, legal scholars have argued, ‘there is little evidence to indicate that Ethiopia’s legal commitment under the new Refugee Proclamation would stretch as far as’ granting

¹¹² Providing Foreign Nationals of Ethiopian Origin with Certain Rights to be Exercised in their Country of Origin Proclamation No.270/2002. 5 February 2002. 8th Year, No.17. Addis Ababa, Ethiopia.

¹¹³ Ibid, Article 5(2)

¹¹⁴ Ibid, Article 6(2)

¹¹⁵ Ibid, Article 5(5)

¹¹⁶ ‘Preferential Investment Facilitation and Property Acquisition Agreement’, adopted on 18 November 2006, Article 4; Ethiopia Ratified the Treaty through The Ethio-Djibouti Preferential Investment Facilitation and Property Acquisition Agreement Ratification Proclamation No. 516/2007, Federal Negarit Gazette, No. 16, 19 February 2007

¹¹⁷ Ibid, Articles 3(2 &3) and 5.

employment rights to refugees in Ethiopia to the extent it is granted to FEOs.¹¹⁸ On the other hand, Mehari Taddele argues that “[given] the similarity of the formulation of the restricted employment areas with the [FEO’s Law] of Ethiopia, it is safe to conclude that asylum seekers or refugees will enjoy the same treatment as accorded to [FEOs]”.¹¹⁹ According to Tadesse *et al.*, due to the unique context and set of objectives on which the adoption of the FEOs Proclamation is predicated, “it may be very challenging to read Article 26 of the Refugee Proclamation as permitting refugees the same class of protection afforded to FEOs.¹²⁰ Thus, they contend that refugees are only entitled to a treatment accorded to foreigners in general.

The Directive issued by ARRA to Determine the Procedures for Employment of Refugees (Refugee’s Employment Directive) affirms this position.¹²¹ This Directive is implementing secondary legislation issued according to Article 46 (2) of the Refugees proclamation. The Directive states that “A recognized refugee or asylum seeker may be employed upon obtaining a work permit from the competent government body.”¹²² Similarly, it provides that recognized refugee or asylum seeker may be self-employed, in fields of activity open for foreign nationals upon obtaining the appropriate license from the relevant licensing bodies.¹²³ The requirement to obtain work permits and restriction to only engaging in those areas open for foreign nationals indicates that the Directive considers neither FEOs nor Djiboutian nationals as the most favored foreigners in Ethiopia.

Thus, this subsidiary legislation has barred refugees from accessing employment rights on par with FEOs. The Directive did not provide literal implementation/interpretation of Article 26 of the Refugees Proclamation and its Convention counterparts, to enable refugees to access employment rights of the most favored foreigners in Ethiopia, *i.e.* FEOs. There might be many policy reasons that justify the position of the Directive. The far-reaching consequence of allowing hundreds of thousands of refugees to enter the scant national labor market might be one reason. Providing refugees with the same employment rights as accorded to FEOs is almost the

¹¹⁸ Tadesse et al (n 24), p. 153

¹¹⁹ Mehari (n 16)

¹²⁰ Ibid

¹²¹ Directive to Determine the Procedure for Employment of Refugees No. 02/2019, FDRE Agency for Refugees and Returnee Affairs,

¹²² Ibid, Article 16 (1), (Emphasis added)

¹²³ Ibid, Article 19(1), (Emphasis added)

same as allowing them to access to the national labor market on par with Ethiopian nationals. Thus, it might be practically impossible for the Ethiopian government to extend employment rights to refugees in the same circumstances with FEOs or Ethiopian nationals.

Another justification might be the uniqueness of the objectives behind the Diasporas Proclamation, which provided extensive employment rights and privileges for FEOs; such justification might not be compatible with the justifications behind refugee protection as envisaged by international refugee law. According to the preamble of the FEOs Proclamation, the main justification behind granting FEOs with such privilege are two: 1) addressing the aspirations of FEOs to strengthen their ties with their country of origin and 2) utilize the contribution of FEOs for the development and prosperity of the Country. This rationale is not compatible with the MFN clauses in reciprocally designed bilateral preferential treaties or the humanitarian/rights-based nature of refugee protection. Nevertheless, according to the Commentary of the UN Refugee Convention, in cases where ‘the most favored nationals’ standard of treatment is adopted, signatories of the Convention are duty-bound to grant refugees the most favorable treatment accorded to foreign nationals regardless of the special ties between the countries in question.¹²⁴

Nevertheless, this interpretation assumes MFN arrangement as to only be formed between countries to reciprocally benefit their respective nationals. However, the FEOs Proclamation grants such favorable treatment for individuals from all foreign nations, so long as such an individual has been an Ethiopian before acquiring foreign nationality, or one of his/her ascendants are Ethiopian Nationals.¹²⁵ In other words, the relationship between Ethiopia and FEOs could not, in any way, be regarded as MFN. Thus, the interpretation of the Commentary may not square-fit the unique arrangement of FEOs and the position taken by the Refugee’s Employment Directive might be justified with this reasoning. To this end, for the most part, refugees will have to be treated on par with foreigners in general (foreigners other than FEOs), as duly provided under the Refugee’s Employment Directive.¹²⁶

¹²⁴ Commentary on the Refugee Convention (n 48), Article 17, (Emphasis added)

¹²⁵ The only exception to this rule is exclusion of persons who forfeited Ethiopian nationality to acquire Eritrean nationality from the definition of FEOs under the Diaspora Proclamation.

¹²⁶ Refugee Employment Directive (n 121), Articles 16 and 19

Nevertheless, Djiboutian nationals do also enjoy preferential treatment, particularly in relation to investment (self-employment). As noted earlier, if we are to avoid FEOs from the discussion, it would be the Djiboutian nationals who will take the floor as “the most favored foreign nationals” in relation to self-employment/investment. However, the Refugee’s Employment Directive still does not recognize Djiboutian nationals as the most favored nationals in relation to self-employment. The Employment of Refugees Directive has stipulated that refugees will only be allowed to engage in self-employment activities permissible for foreign nationals in general.¹²⁷ This might be in line with the standard of treatment provided under Article 18 of the UN Refugee Convention, but it contravenes Article 26(2) of the Refugees Proclamation.

No policy justification and legal prohibition could be applied to erode the preferential treatment that Djiboutian nationals enjoy concerning investment (self-employment). Allowing refugees to benefit from MFN treatments available in their country of refuge is the literal interpretation and vision of Article 18 of the UN Refugee Convention and Article 26(2) of the Refugee Proclamation. Therefore, according to Article 26(2) of the Refugees Proclamation, refugees should be allowed to engage in any self-employment activities regardless of the position taken by ARRA’s Employment of Refugees Directive.

This will lead us to the conclusion that refugees will be on par with ordinary foreigners concerning wage-earning employment, while they should be granted a treatment on par with Djiboutian nationals regarding self-employment. Nevertheless, the Refugee’s Employment Directive has also determined to place refugees on par with ordinary foreigners even concerning self-employment. There is no specific legal regime that designates most favored foreign nationals in relation to liberal professions under the Ethiopian legal system. Refugee’s Employment Directive has no provision governing the implementation of the right to engage in liberal professions of refugees. The standard of treatment applicable for refugee’s right to liberal professions will be discussed along with the discussion on access to self-employment for reasons to be explained therein.

¹²⁷ Ibid, Article 19(1)

CHAPTER THREE

3. Access to Wage-Earning Employment in Ethiopia

Article 26(2) of the Refugees Proclamation

“Every recognized refugee and asylum-seeker shall have the right to engage, individually or in a group, in agriculture, industry, small and micro-enterprise, handicrafts and commerce, in the same circumstance as the most favorable treatment accorded to foreign nationals pursuant to relevant laws.

Except for the reservation Ethiopia has made to paragraph 2 of Article 17 of the UN Refugee Convention, the right of refugees to engage in wage-earning employment, as enshrined in the Convention applies to refugees in Ethiopia along with Article 26 of the Refugees Proclamation. The meaning of the term ‘wage-earning’ employment has not been provided in any of the provisions of the Proclamation, and it is not either defined elsewhere under the Ethiopian legal system. Nevertheless, as the Refugee Proclamation is a domestication of the UN Refugee Convention, it is possible to consider the interpretation of the term we used in the preceding discussions.

Clearly and in line with its Convention counterpart, this provision has adopted the “the most favored foreigners” standard in relation to refugee’s right to wage-earning employment in Ethiopia. As discussed in the preceding chapter, FEOs could have been considered as the most favored foreigners in Ethiopia in relation to wage-earning employment. However, the Refugee’s Employment Directive requires refugees to obtain work permits to engage in wage-earning employment.”¹²⁸ The requirement of a work permit is only imposed on foreigners in general. This had not been required from refugees if the Directive envisages treating refugees on par with FEOs. Accordingly, in relation to wage-earning employment, refugees will be treated on par with foreigners in general and they will be subject to numerous restrictions and the requirement of work permits.

¹²⁸ Ibid, Article 16 (1)

3.1. Major Restrictions and Work Permits

According to the Civil Servants Proclamation, foreign nationals are not eligible to be civil servants.¹²⁹ The Proclamation Provides that government institutions may appoint a foreign national temporarily if it is impossible to fill a vacant position that requires high-level professionals by an Ethiopian through promotion, transfer, or recruitment.¹³⁰ Moreover, Regional Civil Service Proclamations do not allow the employment of aliens in the civil service.¹³¹ Foreigners are not also allowed to be employed as public prosecutors, judges, and as members of the police or armed forces.¹³² Thus, refugees cannot be employed in these sectors that are prohibited for aliens. Moreover, Article 26(10) of the Refugee Proclamation prohibits employment of refugees in the Security, Foreign Affairs, and other similar political establishments.

Regarding private sector employment, the Labour Proclamation provides that any foreigner may only be employed in any type of work in Ethiopia where he possesses a work permit given to him by the Ministry of Labour and Social Affairs (MoLSA).¹³³ MoLSA is the primary government Ministry mandated to regulate the issuance of work permits and employment of foreigners in private sector employment in Ethiopia.¹³⁴ MOLSA is also entrusted with the power to issue Directive concerning types of works that require work permits and the terms and conditions for the issuance of such permits. Currently, the applicable directive in this regard is

¹²⁹ Federal Civil Servants Proclamation No.1064/2017, Federal Negarit Gazette No.12, 15th December 2017, Article 15; FEOs are exempted from this restriction by the FEOs Proclamation

¹³⁰ Ibid, Article 21 (2)

¹³¹ See Oromia Regional State Civil Servants Proclamation No. 61/2002, Article 12; Gambella National Regional State Civil Servants Proclamation No. 35/1995, Article 12; Revised Tigray National Regional State Civil Servants Proclamation No. 314/2011, Article 15; Afar National Regional State Civil Servants Proclamation No. 38/1999, Article 12; Benishangul-Gumuz National Regional State Labour Proclamation No. 150/2010, Article 15, Somali Regional State Civil Servants Proclamation No. 38/1995, Article 12 of the

¹³² See the Federal Attorney General Establishment Proclamation, Proclamation 943/2016, Art. 11(2) (d); Amended Federal Judicial Administration Council Establishment Proclamation, Proclamation 684/2016, Art. 11(1); Federal Police Officers Administration Council of Ministers Regulation, Regulation 268/2012, Art. 4(a); and Defense Forces Proclamation, Proclamation 1100/2019, Art. 5.

Regional laws have also adopted the same position in prohibiting employment of aliens from these sectors

¹³³ Labor Proclamation No.1156/2019, Federal Negarit Gazette, No. 89, 5th September 2019, Article 176 (1)

¹³⁴ Ibid, Article 171 (1/e)

the Revised Directive on the Issuance of Work Permits for Expatriates in Ethiopia (Expatriates Work Permit Directive), issued in January 2019.¹³⁵

However, Ethiopian Investment Commission (EIC) does also assumes a co-regulatory role on the issuance of work permits for foreigners in investment undertakings.¹³⁶ This includes employment in wholly foreign-owned investments, joint investments made by domestic and foreign investors, and investments made in areas eligible for incentives by a domestic investor who is required to obtain a business license from an appropriate federal body.¹³⁷ Similarly, EIC is also bestowed mandated to issue work permits to foreigners to be employed by an industrial park developer, operator, or enterprise that has been given an investment permit concerning an industrial park.¹³⁸

Generally, apart from those sectors restricted for foreigners in general, refugees can be employed in Ethiopia upon obtaining work permits.¹³⁹ However, work permits are very restrictive and will exclude the majority of refugees from accessing the labor market.

3.2. Preconditions Attached to Issuance of Work Permits

Non-Availability of Qualified Ethiopians: The Expatriate Work Permits Directive provides that foreigners could only be employed in Ethiopia where there are no qualified nationals available for the job position in question.¹⁴⁰ The relevant sectoral Ministry is expected to ascertain that there is no qualified Ethiopian national to undertake the employment in question.¹⁴¹ Similarly, according to the Investment Proclamation, an investor may employ duly qualified foreigners necessary for the operation of his investment in positions of higher management, supervision, trainers, and other technical professions, if there are no Ethiopians nationals qualified for the sector.¹⁴² The Refugee Employment Directive also endorses this criterion where refugees or

¹³⁵ Revised Directives on the Issuance of Work Permits for Expatriates in Ethiopia, MoLSA, January 1st 2019

¹³⁶ Investment Proclamation No. 1180/2020, Federal Negarit Gazette No. 28 April 2nd, 2020, Article 22, [hereinafter Investment Proclamation]

¹³⁷ Investment Proclamation (n 136), Article 4 (1)

¹³⁸ Industrial Parks Council of Ministers Regulations No. 417/2017, Federal Negarit Gazette No. 83, 15th September 2017, Article 17 (1),

¹³⁹ However, members of diplomatic missions and International Organizations are exempted from the requirement of work permits provided that Ministry of Foreign Affairs will have to confirm the employment (Expatriate Work Permit Directive, Article 7/2)

¹⁴⁰ Expatriate Work Permit Directive (n 135), Article 6 (1)

¹⁴¹ Ibid, Article 8(1)

¹⁴² Investment Proclamation (n 136), Article 22(1)

asylum seekers are only to be employed in a field of work that cannot be covered by Ethiopian nationals.¹⁴³ It is less likely that the majority of the refugees in Ethiopia will be able to possess a qualification that is not available in the national labor market.

Other Conditions: The Expatriates Work Permit Directive does also provide certain conditions in which the Ministry will issue work permits.¹⁴⁴ The Ministry can issue work permits where the foreign employee is¹⁴⁵:

- employed in a Non-Governmental Organization (NGO) which is engaged invaluable for the country, such as humanitarian assistance, education, health
- an employee of an organization which is headquartered abroad but seeks to open a branch in Ethiopia
- employed in a Company that he has a stake in or owns shares
- contracted to only undertake installation of machinery
- employed as a result of a bilateral or multilateral agreement concluded by the government

From the way the provision of the Directive is crafted, it will be right to conclude that these categories of foreign nationals will be employed regardless of the availability of a qualified Ethiopian. Similarly, Article 76(2) of the Civil Societies Proclamation provides that Foreign Organizations shall not be barred from appointing a Foreign National as their country representatives.¹⁴⁶

Similarly, according to the Investment Proclamation, an investor may employ foreigners for top management positions, including the chief executive officer, chief operating officer, and chief financial officer as necessary, regardless of the existence of qualified Ethiopians for such positions.¹⁴⁷ A work permit may also be issued to a cohabiting spouse of any investor and a foreign worker without the requirement of establishing the non-availability of qualified Ethiopians.¹⁴⁸ Furthermore, any industrial park developer, industrial park operator, or industrial park enterprise may hire expatriate personnel for its top management, supervisory, training, or

¹⁴³ Refugee Employment Directive (n 121), Article 17(1)

¹⁴⁴ Expatriate Work Permit Directive (n 135), Article 8

¹⁴⁵ This is not an exhaustive list of the conditions provided under Article 8 of the Expatriate Work Permit Directive

¹⁴⁶ Organizations of Civil Societies Proclamation No.1113/2019, Federal Negarit Gazette No.33 12th March , 2019

¹⁴⁷ Investment Proclamation (n 136), Article 22(2)

¹⁴⁸ Ibid, Article 22(3)

other technical functions, without the need to determine the availability of a qualified Ethiopian for the job in question.¹⁴⁹ The same is true for the spouse of a foreign industrial park worker who lives in Ethiopia.¹⁵⁰ These criteria are also less likely to benefit refugees. Most of the conditions mentioned here are impractical for refugees as a result of their refugee status.

Responsibility to Transfer Knowledge

One major obligation attached to the employment of aliens is the responsibility to transfer knowledge and train Ethiopian nationals. According to the Expatriates Work Permit Directive, the employer of a foreign national is required to make sure that Ethiopian nationals are being trained to replace the foreign employee.¹⁵¹ This is also affirmed by the Investment Proclamation and Industrial Parks Regulation in which Investors, industrial park developers, operators, and enterprises are responsible for replacing, foreign employees by Ethiopians through the provision of necessary training.¹⁵²

3.3. Procedures for the Issuance of Work Permits

As a principle, foreign nationals could only obtain work permits and be employed upon the request of the employer.¹⁵³ Nonetheless, the Directive envisages a possibility in which refugees may also request a work permit and where ARRA could write a support letter for MoLSA.¹⁵⁴ The Directive provides that an employer seeking to employ a refugee or asylum seeker must obtain a work permit from the competent body with the support letter of the agency.¹⁵⁵ According to the Directive, where an employer requests or a refugee applies for a work permit, the agency shall write a support letter to the Ministry confirming, based on a determination by the competent authority that the work in respect of which work permit is requested may not be covered by Ethiopians.¹⁵⁶

¹⁴⁹ Industrial Parks Proclamation, No. 886/2015, Federal Negarit Gazette No. 39, 9th April, 2015, Article 13(1)

¹⁵⁰ Id, Article 13(2)

¹⁵¹ Expatriates Work Permit Directive (135), Article 10 and 13(10)

¹⁵² Investment Proclamation (n 136), Article 22(4), see also Industrial Parks Regulation, Article 18

¹⁵³ Expatriates Work Permit Directive (n 135), Article 6(2)

¹⁵⁴ Refugee Employment Directive (n 121), Article 18(1)

¹⁵⁵ Ibid, Article 17(1)

¹⁵⁶ Ibid, Article 18(1)

According to the Labour Proclamation, work permits are to be issued for employment in a specific type of work.¹⁵⁷ This means the work permit will only serve as permission to be employed in a specific job position and a specified employer. The Refugee Employment Directive has also adopted this position in which a work permit may only be granted to employ the refugee or asylum seeker in the specific organization and to work in a position for which the work permit is requested.¹⁵⁸

Expatriate Work Permits Directive provides for certain documentary requirements expected from foreigners applying for a work permit. These include an application form, resume, authenticated educational and work experience qualifications, passport, visa, and relevant support letters.¹⁵⁹ Yet, these requirements might not be cognizant of the unique conditions of refugees. Accordingly, Refugee Employment Directive has stipulated the requirement of the passport should be replaced by a refugee ID.¹⁶⁰ The Directive also relinquishes the requirement of a visa or residence permit.¹⁶¹

A work permit will only serve for three years and it shall be renewed every year.¹⁶² However, MoLSA may vary or extend the three years limit as required.¹⁶³ The Investment Proclamation States that, renewal of a work permit is subject to verification of the concrete measures taken by the investor to train Ethiopian replacements.¹⁶⁴ A work permit may be canceled where MoLSA or the Investment Commission ascertains that the foreigner is not required for the work.¹⁶⁵

¹⁵⁷ Expatriates Work Permit Directive (n 135), Article 6(3), see also Article 176 (2) of the Labour Proclamation

¹⁵⁸ Refugee Employment Directive (n 121), Article 17(2)

¹⁵⁹ Expatriates Work Permit Directive (n 135), Article 15

¹⁶⁰ Refugee Employment Directive (n121), Article 18(3/a)

¹⁶¹ Ibid, Article 18(3/b)

¹⁶² Expatriates Work Permit Directive (135), Article 2(1)

¹⁶³ Ibid, Article 2(1) and 17 (1)

¹⁶⁴ Investment Proclamation (n 136), Article 22(5)

¹⁶⁵ Expatriate Work Permit Directive (n 135), Article 17(1); Investment Proclamation (n 136), Article 22(6)

CHAPTER FOUR

4. Access to Self-Employment and Liberal Professions

Article 26 of the Refugees Proclamation

(2) “Every recognized refugee and asylum-seeker shall have the right to engage, individually or in a group, in agriculture, industry, small and micro-enterprise, handicrafts and commerce, in the same circumstance as the most favorable treatment accorded to foreign nationals pursuant to relevant laws.”

(3) “Every recognized refugee who has academic credentials authenticated by the competent government authority, and who desires to practice his profession, may be accorded the most favorable treatment as accorded to foreign nationals in areas permitted to foreign nationals.”

Self-Employment: The term self-employment is not defined anywhere in the Ethiopian Legal system. The most relevant legal document in this regard might be the Commercial Code of Ethiopia, which has designated activities in which persons who are professionally and for gain carry on such activities will be considered as traders.¹⁶⁶ This is the closest definition we have for self-employment, but it has excluded farmers and handicrafts-men from the designation of Traders.¹⁶⁷ Indeed, both farmers and handicrafts may not necessarily be deemed as traders, even though they could be considered as self-employed. Nevertheless, for the Refugees Proclamation, all the activities listed under article 5 of the code (commercial activities), as well as agriculture and handicrafts are to be considered as self-employment activities.

Moreover, like its Convention counterpart, Article 26(2) of the Refugees Proclamation has listed activities that it considers as self-employment. The provision has provided an illustrative (non-exhaustive) list of activities that might also include other activities that have not been listed, but which by nature fall under the term ‘self-employment’.¹⁶⁸ Furthermore, the provision has added

¹⁶⁶ Commercial Code of the Empire of Ethiopia, Proc. NO. 166/1960, Negarit Gazeta, Gazette Extraordinary, Art. 5

¹⁶⁷ Ibid, Articles, 6, 7, 8 and 9

¹⁶⁸ The authoritative Amharic version of Article 26(2) of the Refugees Proclamation is drafted in a manner to also include other activities than those listed under the provision

‘small and micro-enterprise’ (SMEs) into the list which is also very significant in terms of enabling refugees to benefit from the supports that the government provides for such sector.¹⁶⁹

Liberal Professions: We cannot find the term “liberal professions” anywhere in the Ethiopian legal system and we do not also have a definition to interpret the scope of the right enshrined Article 26(3) of the Refugees Proclamation. However, we can refer back to the list provided under the commentaries of the UN Refugee Convention which considers lawyers, doctors, dentists, veterinarians, engineers and architects, pharmacists, artists, accountants authorized translators and interpreters as liberal professions.¹⁷⁰ The term liberal profession may not include those professionals who are hired as assistance or associates in companies practicing such professions for salary.¹⁷¹ However, such hired professionals might also be subject to requirements such as professional license and registration.

The Ethiopian legal system, in general, doesn’t identify and regulate liberal professions as a standalone category of gainful employment distinct from self-employment. Most of the above-mentioned professions are regulated under both the Draft and existing Investment Regulations, which generally considers all the activities regulated through them as self-employment.¹⁷² Accordingly, liberal professions will be regarded as self-employment in the Ethiopian legal system. As noted earlier, the Refugee’s Employment Directive has not also provided a provision concerning the implementation of the refugee’s right to self-employment. This is also because of the understanding that liberal professions are regarded as self-employment in the Ethiopian legal system.¹⁷³ However, the unique nature of liberal professions that is predicated on the possession of certain educational qualifications will be sustained through the particular laws that regulate each of the professions.

¹⁶⁹ According to the National SME Strategy, SMEs are not separate forms of industrial and commercial activities except for their minimum capital requirement and special support from the government: Micro and Small Enterprises Development Policy and Strategy, Ministry of Urban Development and Housing, 2016, pp. 25-18

¹⁷⁰ Paul Weis (n 47), p. 113; Commentary on the Refugee Convention, pp. 46-47

¹⁷¹ Commentary on the UN Refugee Proclamation (n 48), p. 42

¹⁷² Investment Incentives and Investment Areas Reserved for Domestic Investors Council of Ministers Regulation No. 270/2012; the Draft investment Regulation

¹⁷³ Interview with Anonymous Legal Expert who was a Member of the Team of Experts that Drafted the Refugees Proclamation and the Refugee’s Employment Directive, April 4, 2020, Addis Ababa

4.1. Interpretation of the Standard of Treatment

The scope of refugee's right to self-employment depends on the type of interpretation we apply to the standard of treatment provided under Article 26(2) of the Refugees Proclamation. Both provisions of the proclamation on self-employment and liberal professions adopt "the most favored foreigners" standard of treatment which is beyond treatment on par with "foreigners in general" as provided under their convention counterparts. However, it appears the Ethiopian government is upholding the recommendation clause (*as favorable as possible*) applicable under Article 18 and 19 of the UN Refugee Convention. The recommendation clauses urge states to provide more favorable than the treatment accorded to foreigners in general.

As discussed in preceding chapters, though FEOs enjoy preferential treatment in which they have the right to invest in any of the investment areas reserved for Ethiopian Nationals. However, it is also noted that refugees will not be entitled to the treatment accorded to FEOs due to policy and practical justifications, and most importantly because of the position taken by the Refugee's Employment Directive. However, it is argued that Djiboutian nationals will be the second favored nationals in Ethiopia preceded by FEOs. If we are to set aside the special privilege of FEOs from our radar for reasons of incompatible policy justification and practical impossibility, refugees should at least be treated on par with Djiboutian nationals in relation to self-employment. In the proceeding sub-sections, discussions will be made to outline the scope of refugee's right to self-employment considering the interpretation envisaged in the Directive and the alternate position taken by the author – to grant refugees a treatment on par with Djiboutian nationals.

4.1.1. Treatment on par with Foreigners in General

If the provisions of the Employment of Refugees Directive are going to be enforced/implemented, refugees will be subject to the restrictions imposed on the self-employment of foreigners in general. According to the Commercial Code of Ethiopia, specific requirements as to age, qualifications, sex, *nationality*, or license may be imposed by law in respect of trades and commercial activities.¹⁷⁴ Subsequently, several legislations have made

¹⁷⁴ Commercial Code of Ethiopia (n 166), Article 22 and 23 (2) (emphasis added)

restrictions that prevent carrying on certain commercial and business activities on grounds of nationality. Most importantly, the Investment Laws of Ethiopia have restricted engagement of foreign nationals in certain business and commercial activities as well as liberal professionals.¹⁷⁵ The new Investment Proclamation No. 1180/2020 has introduced a negative listing approach in dealing with investment areas prohibited for foreigners. The Investment Proclamation stipulates all areas of investment are open to foreign investors except for those areas of investment that, through a Regulation, will be reserved for domestic investors, joint investment with the government, or with domestic investors.¹⁷⁶

To date, the Council of Ministers Regulation No. 270/2012 is the regulation that provided a list of commercial activities that are allowed and prohibited for foreigners.¹⁷⁷ However, this Regulation was issued under the previous Investment Proclamation No. 769/2012, which was revised by new Investment Proclamation No. 1180/2020. The Regulation might not be compatible with the new negative listing approach introduced by the Investment Proclamation. Moreover, as there is a draft Investment Regulation prepared in light of the new Investment Proclamation, it is important to take this Draft regulation into the analysis of areas of investment open for foreign nationals, at the risk of minor changes that will come out in its final/approved version.

The Draft Investment Regulation reserves the following small scale businesses exclusively for domestic investors (Ethiopian nationals):- secretarial services; retail trade, guest house, tearoom, coffee shops, bars, nightclubs, restaurants, travel agency, trade auxiliary, and travel ticketing business; car hire service; bakery products and pastries for the domestic market; grinding mills; sawmilling, timber-making, and assembling of semi-finished wood products; barbershops, beauty salons, smithery, and tailoring work; brick and block manufacturing; private employment agency services, quarrying; customs clearance services, lottery and sports betting; brokerage and security services.¹⁷⁸

¹⁷⁵ Translation, interpretation, attorney and legal consultancy, accounting and auditing, as well as architectural and engineering services have been regulated through the Investment laws and they are either reserved for Ethiopian nationals or joint investment with Ethiopians.

¹⁷⁶ Investment Proclamation (n 136), Article 6(2&3)

¹⁷⁷ hereinafter Investment Regulation, Article

¹⁷⁸ Draft Investment Regulation (n 172), Article 4

The draft Regulation also reserves the tour operator business, construction, water well and drilling, maintenance and repair, transport and laundry services businesses for domestic investors, if they are undertaken on a smaller scale.¹⁷⁹ Furthermore, the regulation prohibits the engagement of foreigners in the following large scale business:- banking, insurance, micro-credit, and micro-savings services; wholesale trade, import trade; export trade of raw coffee, chat, oilseeds, pulses, hides and skins bought from the market, products of natural forest, live sheep, goat, camel and cattle not raised or fattened by the investor, and mineral trade; hotel, lodges, resorts, and motels.¹⁸⁰ The Draft Regulation also provides a list of large-scale areas of investment reserved for joint investment with the government¹⁸¹ and with domestic investors.¹⁸²

Liberal Professions: A cumulative reading of the Refugee's Employment Directive and Investment Regulations provides that, Lawyering is a profession reserved for Ethiopian nationals.¹⁸³ Accounting and Auditing Services are reserved for joint investment of foreigners with domestic investors.¹⁸⁴ On the other hand, architectural, and engineering works are either open or permissible for foreign nationals.¹⁸⁵ However, under the Draft Investment Regulation, translation and interpretation services are reserved for Ethiopian nationals.¹⁸⁶ Translation and interpretation services are permissible for foreigners upon the decision of the Investment Board.¹⁸⁷ However, under the Draft Investment Regulation, translation and interpretation services are reserved for Ethiopian nationals.¹⁸⁸ Refugees who can fulfill the required criteria could be licensed to practice different health professions in Ethiopia.¹⁸⁹

¹⁷⁹ Ibid

¹⁸⁰ Ibid

¹⁸¹ Ibid, Article 3

¹⁸² Ibid, Article 5

¹⁸³ Ibid, Article 4(26); Investment Regulation (n 172), Article 3(e); Federal Courts Advocates Licensing and Registration Proclamation No. 199/2000, Federal Negarit Gazette, 6th Year No. 27 Addis Ababa – 9th March 2000, Article 3(1);

¹⁸⁴ Draft Investment Regulation, Article 5(f); Establishment and Determination of the Procedure of the Accounting and Auditing Board of Ethiopia, Council of Ministers Regulation No. 332/2014, Federal Negarit Gazette, 21th Year No. 22 Addis Ababa – 14th January 2015, Art. 18(3)(a).

¹⁸⁵ Investment Regulation (n 172), Article 4(1) -schedule 10.1; Draft Investment Regulation, Article 6

¹⁸⁶ Draft Investment Regulation (n 172), Article 4(2)

¹⁸⁷ Investment Regulation (n 172), Article 3(1) and 4(1&2)

¹⁸⁸ Draft Investment Regulation (n 172), Article 4(2)

¹⁸⁹ Ethiopian Food and Drug Administration (EFDA), Health Professionals Registration and Licensing Administration and Control Directive No. 20/2014, June 2014, Articles 6(6) and 8(1)

The Investment Proclamation imposes minimum capital requirements on foreign investors. A foreign investor is required to allocate a minimum capital of USD 200,000 for a single investment project for him/her to engage in any of the activities permissible to foreigners.¹⁹⁰ Nevertheless, the minimum capital required of a foreign investor investing jointly with a domestic investor is USD 150,000.¹⁹¹ There are also lesser capital requirements for investments in architectural or engineering works or related technical consultancy services, technical testing, and analysis, or in publishing work.¹⁹²

According to the Employment of Refugees Directive, refugees will be subject to the above-mentioned restrictions imposed on foreigner's engagement in self-employment and liberal profession. However, the restrictions are very stringent and most, if not all, refugees may not be able to comply with the minimum capital requirement and engage in large-scale investments that are permissible for foreigners.

4.1.2. Treatment on par with Djiboutian Nationals

Apart from a few exceptions, Djiboutian nationals are accorded the right to engage in any investment activities in Ethiopia, including those reserved for domestic investors.¹⁹³ For all legal and practical reasons, Djiboutian nationals are to be deemed as domestic investors, and refugees will enjoy the same benefits.¹⁹⁴ This makes them the most favored nationals in Ethiopia in relation to self-employment and liberal professions (but lesser than FEOs). Therefore, the above-mentioned restrictions imposed on ordinary foreigners do not apply to them. Djiboutian nationals will not also be subject to any restrictions including the minimum capital requirement expected to form foreign investors. Therefore, if we are going to exclude FEOs from such discussions, refugees should be entitled to the treatment accorded to Djiboutian nationals, regardless of the position taken ARRA's Employment of Refugees Directive.

Refugees should also be allowed to engage in any investment and professional activities in Ethiopia such as agriculture, industry, small and micro-enterprise, handicrafts, commerce to the

¹⁹⁰ Investment Proclamation (n 136), Article 9 (1)

¹⁹¹ Ibid, Article 9(2)

¹⁹² Ibid, Article 9(3)

¹⁹³ Ethio-Djibouti Investment Agreement (n 116), Article 3(1)

¹⁹⁴ Directive to Implement the Preferential Investment Facilitation and Property Acquisition Agreement between Ethiopia and Djibouti, Directive No. 1/2008, Ministry of Trade and Industry, Article 3(3)

extent it is accorded to Djiboutian nationals. Similarly, refugees should also be allowed to engage in translation, interpretation, attorney and legal consultancy, accounting, and auditing, as well as architectural and engineering services on par with Djiboutian nationals. The only commercial activities that they might be barred from are banking, insurance, micro-credit and saving, broadcasting, and press services, which are excluded from the Ethio-Djibouti Investment Agreement.¹⁹⁵ Apart from these, refugees should be allowed to freely engage in any self-employment activities without restrictions including the minimum capital requirement expected from foreigners in general.

4.2. Procedural Requirements

Investment Permits

The Investment Laws of Ethiopia generally require foreign investors, or an investment jointly owned by foreigners to obtain Investment Permits. The Directive issued to implement the Ethio-Djibouti Investment Agreement has provided that Djiboutian nationals will have the right to invest in Ethiopia without obtaining Investment Permits unless they intend to benefit from incentives provided for certain areas of investments.¹⁹⁶ Yet, Article 10(1/c) of the Investment Proclamation also requires all investors who are investing as domestic investors, except for FEOs, to obtain Investment Permits.¹⁹⁷ As the Investment Proclamation is higher in hierarchy and latest than the Directive, it shall preside over the Directive and it should be understood, as Djiboutian nationals are required to obtain Investment Permits. Accordingly, refugees will be required to obtain Investment Permits whether they are accorded a treatment on par with Djiboutian nationals or foreigners in general.

Commercial Registration and Business License

The requirement of obtaining business licenses is mandatory to all individuals engaged in any commercial and business activities in Ethiopia regardless of their nationality and the type of

¹⁹⁵ Ibid, Article 4(2)

¹⁹⁶ Ibid, Article 3(3)

¹⁹⁷ Investment Proclamation (n 136), Article 10(1/c) and 10(2)

business they are engaged in.¹⁹⁸ Furthermore, commercial registration is prerequisite to obtain business licenses.¹⁹⁹ This entails registration of trade names and registering in the commercial register. All the requirements and procedures concerning obtaining a business license and undertake commercial registration are regulated through the Commercial Registration and Business Licensing Proclamation and its respective regulations and directives. ARRA is expected to write a support letter to relevant authorities with a mandate to issues business licenses, where refugees or asylum seekers request the agency to engage in self-employment individually or in a group.²⁰⁰ Federal Ministry of Trade and Regional Bureaus of Trade are mandated to issue business licenses and register businesses.²⁰¹

Certificate of Competence: is a certificate issued by relevant sectoral government office to a certain commercial activity upon verifying the required competence has been fulfilled for operating the business in question.²⁰² The Ministry of Trade is mandated to issue a Directive to determine business categories that require a certificate of competence.²⁰³ Certificate of competence, issued by the appropriate sectoral office, is a precondition for the issuance of the business license the business in question is categorized as a business requiring a certificate of competence through such directive.²⁰⁴ Business Licensing Categories Directive No. 17/2019 is the applicable directive for the designation of businesses requiring a certificate of competence and the respective authorities responsible for the issuance of each type of certificate of competence.²⁰⁵

However, not all liberal professions are required to obtain a business license and register their business at the commercial register. For instance, lawyers are not required to obtain business

¹⁹⁸ Commercial Registration and Business Licensing Proclamation, Proclamation 980/2016, as amended by Proclamation 1150/2019, Federal Negarit Gazette No.101 5th August 2016, Article 22(1)

¹⁹⁹ Ibid, Article 5

²⁰⁰ Ibid, Article 19(2)

²⁰¹ Ibid, Article 4(2 and 3) and Business Licensing Categories Directive No. 17/2019, Ministry of Trade, June 2019, Articles 5 and 6

²⁰² Ibid, Article 2(30)

²⁰³ Ibid, Article 4(10)

²⁰⁴ Commercial Registration and Licensing Council of Ministers Regulation 392/2016, Federal Negarit Gazette No.3 28th October 2016, as amended, Article 23(1/f), 24(8), 25(9)

²⁰⁵ Business Licensing Categories Directive (n 201), Article 10

licenses or register at the Ministry of Trade or Regional Bureaus of Trade.²⁰⁶ Lawyers are just required to obtain the advocate's license and register at Regional or Federal Attorney General's Office.²⁰⁷ Consultancy service on construction works, electrical/mechanical/chemical engineering, urban planning, and related activities; all health-related services; translation other related services, authorized accountants and auditors are required to obtain a business license and register their activity.²⁰⁸

Obtaining of business license and registering in the commercial register might involve many documentary requirements that refugees might not be able to provide due to their refugee status. This includes a valid identity card or passport. Unlike the waiver provided concerning wage-earning employment, Refugee's Employment Directive does not stipulate the waiver of such documentary requirements in relation to self-employment and liberal professions. This might be problematic, as there exist several layers of administrative procedures to practice professions and engage in self-employment activities in Ethiopia, including commercial registration, and obtaining of business license and investment permits. Accordingly, Refugee Employment Directive has stipulated the requirement of the passport should be replaced by a refugee ID. The Directive also relinquishes the requirement of a visa or residence permit.

Furthermore, refugees intending to practice liberal professions will be obligated to authenticate their qualifications documents.²⁰⁹ This could also apply to refugees wishing to engage in wage-earning employment. This also is another burden on refugees in accessing employment opportunities.

²⁰⁶ Ibid, Attorney and Legal Consultancy services is not part of the list that require to obtain business license.

²⁰⁷ Federal Courts Advocates Proclamation (n 193), Articles 3(1) and 16

²⁰⁸ Business Licensing Categories Directive (n 201), Article 10, The Directive Provides for a schedule for the business and commercial activities and other professions with the respective authorities mandate for the issuance of license and registration of the businesses. See row number 422, 423, 441 - 447, 475 - 487, 511

²⁰⁹ Refugees Proclamation (n 14), Article 26(3)

CHAPTER FIVE

5. More Favorable Opportunities

The Refugees proclamation has provided exceptions and more favorable treatments concerning refugee's access to employment opportunities. These exception and favorable standards of treatment are mainly based on refugee's special link with Ethiopia and the financial source of the employment opportunity.

5.1. Refugees who have Special Links with Ethiopia

Article 26(9) of the Refugees Proclamation

“Every Restrictive measure imposed, by applicable laws, on employment of foreign nationals for the protection of the national labor market shall not be applicable to recognized refugee or asylum seeker who is married to Ethiopian national or has one or more child in possession of Ethiopian nationality.

Though Ethiopia has entered a reservation on Paragraph 2 of article 17 of the UN Refugee Convention, the Refugees Proclamation has incorporated a similar provision that grants special treatment for refugees who have special links with Ethiopia. Ethiopia has declared to recognize this provision only as a recommendation and not a legally binding obligation".²¹⁰ Nevertheless, according to Article 26(9) of the Refugees Proclamation, the country provides this right beyond its treaty obligation under the UN Refugee Convention. This should not be considered as a formal withdrawal of the reservation, but a legally binding obligation under the national legal system.²¹¹ Therefore, Ethiopia still does not have an international obligation arising from article 17(2) of the UN Refugee Convention.

Nonetheless, unlike its Convention counterpart, Article 26(9) of the Refugees Proclamation has excluded ‘refugees who have completed three years’ residence in the country’ from such exemption from restrictive measures. However, refugees with Ethiopian spouses or children can benefit from this exemption; and restrictions made for the protection of the national labor market will not apply to them. This means refugees with Ethiopian spouses or children will be relieved

²¹⁰ State Parties, Reservations and Declarations, on UN Refugee Convention (n 67), 2019, p. 8 at <<https://www.unhcr.org/5d9ed32b4>> (last accessed March 7, 2020)

²¹¹ According to the Vienna Convention on law of treaties, withdrawal of a reservation must be formulated in writing (Vienna Convention on the Law of Treaties, 23 May 1969, entered into force on 27 January 1980)

from any of the above-mentioned restrictions made on the employment of aliens including the requirement of work permits.

This is reiterated by the Refugee's Employment Directive, which stipulates that refugees who are legally married to an Ethiopian or have one or more children in possession of Ethiopian nationality may be employed without having to obtain a work permit.²¹² This will entitle refugees with Ethiopian spouses or children to freely engage in any type of wage-earning employment without restrictions. In such cases, the Refugee Employment Directive requires the ARRA to verify the validity of the marriage, the registration of the certificate, or proof of the child's Ethiopian nationality.²¹³

Nevertheless, such categories of refugees will still be subject to restrictive measures imposed on the employment of foreign nationals for reasons other than the protection of the national labor market. Therefore, restrictions made for reasons of national security will also apply to refugees who have special links with Ethiopia. Such refugees cannot be hired as public prosecutors, judges, members of the security, police, or armed forces, as well as in positions related to foreign affairs and political establishments.

This exemption/provision is provided to expand refugee's access to wage-earning employment. Specifically, the Amharic translation of Article 26(9) of the Refugee Convention is explicit enough to be understood as an exemption provided on refugee's right to *wage-earning employment*. However, the Refugee's Employment Directive has extended this arrangement to also apply to the *self-employment of refugees*. Article 19(3/b) of the Refugee's Employment Directive has provided that "a refugee or asylum-seeker who is married to an Ethiopian national or has one or more child in possession of Ethiopian nationality may be self-employed in joint projects or fields of business limited to Ethiopian nationals without residence permit upon obtaining the required license from the relevant licensing body."

This provision provides for more favorable treatment than the UN Refugee Convention and the Refugee Proclamation itself. While this position is appreciable in terms of expanding refugee's access to self-employment, this right is established through the lowest form of legislation, a Directive, making it less reliable. ARRA could amend this directive anytime and refugee's right

²¹² Refugee's Employment Directive (n 121), Article 16(3)

²¹³ Ibid, Article 16(4)

to such arrangement could perish accordingly. Nevertheless, it is significantly important to have this level of commitment at the Agency level.

5.2. Joint Projects

Article 26(4) of the Refugees Proclamation

“Recognized refugees and asylum-seekers engaged in rural and urban projects jointly designed by the Ethiopian government and the international community to benefit refugees and Ethiopian nationals, including in environmental protection, industry and small and micro enterprises, shall be given equal treatment as accorded to Ethiopian nationals engaged in the same projects.”

The term ‘joint project’ is defined under the Refugee’s Employment Directive as ‘an urban or rural development project jointly designed by the Ethiopian government and the international community to benefit refugees and Ethiopian nationals’.²¹⁴ The Refugees proclamation provides that refugees engaged in such projects will be given equal treatment as accorded to Ethiopian nationals engaged in the same projects.²¹⁵ Such projects are not restricted to any type of gainful employment and can include both wage-earning and self-employment.²¹⁶ Thus, refugees who are engaged in such projects will not be subject to requirements of obtaining work permits, investment permits, or any substantive restriction imposed on the employment of foreign nationals.

The joint project arrangement is inspired by the pledges Ethiopia made at Leaders’ Summit on Refugees.²¹⁷ Ethiopia has pledged to extend irrigable land to allow 100,000 refugees and host communities to engage in crop production and build industrial parks that could employ up to 100,000 individuals, with 30% of the jobs to be reserved for refugees. Ethiopia has indicated that these pledges are dependent on the availability of external financial assistance and support from international partners. Accordingly, this notion is incorporated in the Refugees Proclamation as the joint project’s arrangement. Joint projects will be developed through the financial assistance of international partners and are meant to create new job opportunities for both refugees and host

²¹⁴ Refugee’s Employment Directive (n 121), Article 4(5)

²¹⁵ Refugees Proclamation (n 14), Article 26(4)

²¹⁶ Refugee’s Employment Directive (n 121), Articles 16(2) and 19(3/b)

²¹⁷ Interview with Anonymous Legal Expert who was a Member of the Team of Experts that Drafted the Refugees Proclamation and the Refugee’s Employment Directive, April 4, 2020, Addis Ababa

communities. Therefore, refugees will be allowed to have unrestricted access to job opportunities in these projects without compromising existing labor markets reserved for Ethiopian nationals.

The pledges made concerning employment opportunities in industrial parks are officially formulated as policy Commitment referred to as the ‘Jobs Compact’.²¹⁸ The World Bank and International Association for Development have sponsored the Economic Opportunities Program in support of the Jobs Compact.²¹⁹ Accordingly, the Economic Opportunities program could be deemed as a joint project in which international development partners have sponsored and co-designed a project that creates the creation of job opportunities for 100,000 individuals where 30% of the jobs will be reserved for refugees. As it appears, apart from the provision of land and other natural resources, international development partners sponsor the whole program. However, this is just one program that could fall under the category of joint projects and its mode of implementation might not serve as a valid precedent for future joint projects.

The Refugees Proclamation provides that the use of agricultural and irrigable lands, regarding joint projects, shall be made per national land-use laws, and in agreement with the Regional States, using a land lease system, subject to payment of lease price, for a period renewable every seven years.²²⁰ Other than this, it is not clear what level of resource is expected from the international community for a project to be designated as a joint project.

It is not also clear how employment opportunities should be allocated between Ethiopians and refugees for the project to be categorized as a joint project. We can understand that the Jobs Compact has envisaged a 70/30 allocation of job opportunities between Ethiopians and refugees respectively. However, this is just a single project and we cannot assume that all joint projects will be designed similarly. The Refugee’s Employment Directive or other legal or policy documents should clarify such issues in a manner that provides a clear and predictable legal framework to designate projects as joint projects.

²¹⁸ The Jobs Compact Program in Ethiopia, at <<http://www.investethiopia.gov.et/index.php/why-ethiopia/why-invest-in-ethiopia.html?id=618>>

²¹⁹ World Bank, International Development Association Program Appraisal Document, Economic Opportunities Program, p. 2

²²⁰ Refugees Proclamation (n 14), Article 26(5)

According to the Refugees proclamation, ARRA may issue resident permits to any recognized refugee selected to engage joint projects, which are renewable every five years.²²¹ Article 7 of the Directive provides that “any recognized refugees can be employed in a joint project without having to obtain a work permit if they are selected to participate in the project having met the requirements set by the agency and the project and upon obtaining a residence permit from the agency.” However, refugees who are legally married to an Ethiopian national or has one or more child in possession of Ethiopian nationality, are not required to obtain residence permits to participate in a joint project. Selection into joint projects is what predicates refugee’s right to access job opportunities on par with Ethiopian nationals and obtain resident permits.²²²

²²¹ Ibid, Article 26(6)

²²² Refugee’s Employment Directive (n 121), Article 8

Conclusions and Recommendations

The Refugees Proclamation has introduced substantive changes on refugee's access to socio-economic rights. Under the UN Refugee Convention, 'the most favored nationals' standard of treatment is only applicable to refugee's wage-earning employment. Concerning self-employment and liberal professions, the Convention only stipulates for states to grant refugees a 'treatment as favorable as possible and, in any event, not less favorable than what is accorded to aliens generally. However, the Refugees Proclamation guarantees refugee's right to engage in wage-earning employment, self-employment, and liberal professions, in the same circumstance as *'the most favorable treatment accorded to foreign nationals.'* Moreover, the Refugees Proclamation has also partially incorporated Article 17(2) of the Convention, which the country has entered a reservation. Thus, Article 26 of the Proclamation has outlined refugee's right to employment in Ethiopia in a more progressive manner than the UN Refugee Convention.

The designation of 'the most favored foreigners' in Ethiopia is the underlying factor that determines the scope of refugee's right to work in Ethiopia. The literal interpretation of the term will obviously lead to the treatment accorded to FEOs. FEOs enjoy the most favorable treatment in Ethiopia as they are accorded a right to access employment without obtaining a work permit and permission to engage in all areas of investment reserved for Ethiopians. However, the Refugee's Employment Directive has set aside the special privilege of FEOs and has stipulated for the treatment of refugees on par with ordinary foreigners in wage-earning employment, self-employment, and liberal professions. This might be due to the unique set of objectives that predicates the special privilege for FEOs as well as practical challenges that might be faced as a result of opening the scant national labor market for hundreds of thousands of refugees.

The obligation of states to provide international protection to refugees is fundamentally based on pragmatism which tries to balance the capacity and willingness of states on one hand and the minimum conditions required for the basic protection of refugees on the other.²²³ According to Mr. Rochefort, a representative of France in the drafting process of the UN Refugee Convention, unless the obligation of states is to be formulated in a form that would be acceptable to

²²³ Hathaway (n 52), p. 96;

governments, a liberal approach that is blind to the facts of reality could only beat the air.²²⁴ Therefore, advocating for the positive interpretation of the standard of treatment under the Refugees Proclamation will only lead to unrealistic aspiration, which is against the spirit of the principles of international protection as envisaged by the drafters of the UN Refugee Convention. Generally, refugees cannot be hired in the Regional Civil Service, albeit it is scarcely possible for them to be employed in the Federal Civil Service if they possess high-level professional skills that are scarcely found from Ethiopian nationals. Refugees are prohibited from being employed as public prosecutors, judges, as members of the defense force, national security agencies, foreign affairs, and other similar political establishments. However, refugees can be employed in the private sector upon obtaining work permits from relevant authorities. Work permits are very restrictive and could only be issued in fields of work that cannot be covered by Ethiopian nationals. This will exclude the majority of refugees from accessing the labor market. Refugees cannot be hired as waiters, cashiers, cleaners, security personnel, daily laborers similar jobs. Only those refugees with high-level skills will be eligible to obtain work permits and access employment in Ethiopia.

The Refugee's Employment Directive provides that refugees will also be treated on par with ordinary aliens concerning self-employment (which also includes liberal professions). This will prohibit refugees from engaging in small scale businesses such as retail trade, tearoom, coffee shops, bars, small restaurants, bakery, grinding mills, barbershops, beauty salons, smithery, and tailoring work. Refugees will only be allowed to engage in areas of investment that are not reserved for domestic investors, joint investment with the government, or with domestic investors. This will leave refugees with the possibility of engaging in largescale commercial and business activities with a minimum capital requirement of USD 50,000 - 200,000.

However, the favorable treatment accorded to Djiboutian nationals in relation to self-employment should be extended to refugees in Ethiopia. Because, if we set aside the special privilege of FEOs for their unique policy justifications, Djiboutian nationals will become the most favored foreign nationals regarding investment. Thus, interpretation of article 26(2&3) will

²²⁴ Statement of Mr. Rochefort, Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons: Summary Record of the Thirty-fourth Meeting, By General Assembly, 30 November 1951, at <<https://www.unhcr.org/protection/travaux/3ae68cdf0/conference-plenipotentiaries-status-refugees-stateless-persons-summary.html>> (last accessed May 17, 2020)

lead us to the conclusion that refugees should at least be treated on par with Djiboutian nationals in relation to self-employment and liberal profession. Moreover, unlike the unique objectives that predicated FEOs special privileges, refugees should not be deprived of the favorable treatment accorded to Djiboutian nationals based on policy justification. This will make the position of the Refugee's Employment Directive incompatible with the Refugees Proclamation.

According to the Refugees Proclamation, restrictions made for the protection of the national labor market will not apply to refugees with Ethiopian spouses or children. This means refugees with Ethiopian spouses or children could freely engage in wage-earning employment without obtaining work permits. Article 19(3/b) of the Refugee's Employment Directive has extended this arrangement to also apply to the self-employment of refugees. Therefore, refugees with Ethiopian spouses or children could be self-employed in fields of business that are reserved for Ethiopian nationals. This is commendable and it creates opportunities that are more favorable for refugees beyond what is stipulated under the UN Refugee Convention and the Refugees proclamation. However, this arrangement is prone to be amended anytime by ARRA and it does not guarantee a claimable right under the Refugees Proclamation.

The joint project arrangement is the most creative approach introduced by the Refugees Proclamation to enable refugees to access more employment opportunities. This arrangement will allow the Ethiopian government to provide unrestricted job opportunities for refugees without compromising the existing national labor market. Projects financed by international partners will be extended for both refugees and host communities without restriction based on refugee/citizenship status. Refugees engaged in such projects will be given equal treatment as accorded to Ethiopian nationals engaged in the same projects. In such projects, substantive restrictions made on the employment of non-citizens as well as other requirements such as work permits, investment permits, and capital requirements will be lifted for the benefit of refugees. Numerous refugees could access unrestricted job opportunities in the form of wage-earning or self-employment.

Recommendations

Considering the legal analysis of the right to work of refugees in Ethiopia, the author makes the following recommendations to curb the impediments that exist in this legal framework:

Binding/Authoritative Interpretation of the Standard of Treatment: The Refugee’s Employment Directive has provided that, concerning gainful employment, refugees will not be accorded the preferential treatment enjoyed by neither FEOs nor Djiboutian national. This is just the position taken by the refugee protection agency – ARRA. The author concurs with this interpretation apart from arguing refugees to be treated on par with Djiboutian nationals in relation to self-employment and liberal professions. However, binding interpretation/definition of the standard of treatment provided under the Refugees Proclamation *vis a vis* the Refugee’s Employment directive should be made by an authoritative organ of the government.

The Refugees Proclamation could be amended to add an authoritative definition of the term “the most favorable treatment accorded to foreign nationals” under its definitional provision – Article 2. Alternatively, the judiciary could also make an authoritative and binding interpretation of this term. The judiciary should review the Refugee’s Employment Directive on its compatibility with the Refugees Proclamation.²²⁵ Any interested party such as refugee and human rights advocacy groups or refugees themselves could initiate this.²²⁶ This will give a binding interpretation of the meaning of the term and settles all the scholarly debates on the matter.

Consistent Position on Refugees’ Right to Self-Employment: According to Article 18 and 19 of the UN Refugee Convention, the Ethiopian government is only duty-bound to grant refugees with the same treatment that is accorded to ordinary foreigners in relation to self-employment and liberal professions. The Refugees Proclamation, however, has adopted the most favored foreigner’s standard of treatment in relation to refugee’s right to engage in self-employment and liberal professions. Yet, the Refugee’s Employment Directive has divested refugees from accessing self-employment opportunities on par with Djiboutian nationals. This contradicts with the standard of treatment adopted in the Refugees Proclamation. If the Ethiopian government does not intend to treat refugees on par with the most favored foreigners, i.e. Djiboutian nationals, there was no need to adopt a standard of treatment more progressive than provided under the UN Refugee Convention. The Refugees Proclamation should have adhered to the standard of treatment applicable in the UN Convention if there is no political will and the

²²⁵ The Federal Administrative Procedure Proclamation No. 1183 /2020, Federal Negarit Gazette No. 32, April 7th, 2020, Article 50 (1/c)

²²⁶ Ibid, Article 48(1)

possibility of realizing a more favorable treatment. Thus, amending either the Proclamation or the Directive will solve this discrepancy regarding the standard of treatment applied concerning refugee's self-employment.

Elaboration on the Design of Joint Projects: Neither the Refugees Proclamation nor the Refugee's Employment Directive has provided details about the design and regulation of joint projects. A legal framework outlining how the Federal and Regional Governments, as well as international development partners, will collaborate to design joint projects should be made in the form of a directive or a regulation. The role of the Federal government (including ARRA and other relevant Ministries), Regional States, and the contribution of international partners should be regulated through a predictable legal framework. Moreover, the proportion of distribution of job opportunities between refugees and host communities should be clarified through a policy or legal document to manage the expectations of refugees and international development and humanitarian organizations. Approving the draft NCRRS and developing elaborated thematic strategies focusing on the realization of joint projects and outlining the facilitation of other job opportunities for refugees should be the immediate first steps in this regard.

Enactment of Refugees Regulation: The Council of Ministers is mandated to issue regulations for the proper implementation of the Refugees Proclamation and to define the powers and function of ARRA.²²⁷ To date, the Council of Ministers has not issued any regulation in this regard. Such regulation should be issued immediately to have a detailed legal framework concerning the implementation of the right to work of refugees and to regulate the common mandates and relationship of ARRA and other ministries in a more authoritative manner than the Refugee's Employment Directive.

Broadening Procedural Guarantees: Refugees are required to provide authenticated documentation to access different types of employment opportunities. However, refugees might not have their relevant educational and qualification documents with them, and they may not even be able to authenticate such documents, as they could not subject themselves to the jurisdiction of their country of origin. Thus, refugees should be allowed to provide their documentation and be able to authenticate such documents more flexibly. This is provided under

²²⁷ Refugees Proclamation (n 14), Article 46(2); Federal Executive Organs Proclamation (n 76), Article 32(14)

Article 25 of the UN Refugee Convention and the Refugees Proclamation should have incorporated a similar provision. Specifically, the Refugee's Employment Directive should be amended to incorporate a provision on the waiver of the requirements of passport and Visa concerning procedural requirements attached to the self-employment of refugees.

Proper Communication on Administrative Procedures: Accessing job opportunities for refugees involves several administrative procedures such as obtaining support letters, work permits, investment permits, certificates of competence, and many more. This is a burdensome process by itself and a refugee status adds another layer of complication in such regard. Thus, ARRA and its partners should conduct awareness creation activities to help refugees in their endeavors to access employment opportunities in Ethiopia. The procedures provided in the relevant laws should be communicated to refugees through brochures written in their respective language's other similar communication activities.

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