

**Addis Ababa University**  
**School of Graduate Studies**  
**Faculty of Law**

**Assessment of the Legal Protection of Refugees  
in Ethiopia: A case Study at Sherkole Refugee  
Camp-Assosa**

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**A thesis submitted to school of Graduate studies, Faculty of law,  
Addis Ababa University, in partial fulfillment of the requirements for  
master's degree of Law (LLM)**

**November 2009**  
**Addis Ababa**

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## **Acknowledgment**

*Many individuals have assisted me, one way or another, in the completion of the thesis. The following need a special mention*

*My advisor, Ato Tilahun Teshome, has been extending his usual insightful advice on the first draft of the thesis. I am grateful to his scholarly comments.*

*Ato Haileselassie Gebremariam (from ARRA), Ato Dereje Wubshet (from UNHCR), Ato Mitiku (from ZOA), Selam (from EWLA) had contributed a lot in the course of the research. Muna, my fiancée, was always with me to alert the advantage of completing the thesis. All deserve special thanks*

*Lastly, I want to thank Saba Abayneh, who typed and edited the thesis.*

## **Abstract**

*The research focuses on Refugees in Sherkole camp-Assossa. It examines the situation of the refugees in terms of their civil, political, Socio economic and cultural status in Ethiopia and explores their situation in the context of a refugee camp. It is mainly concerned with the type of the legal protection that they are awarded with both in the international and domestic refugee legal Instruments. It also investigates the rights of Refugees relating to access to territory, access to full fledged asylum procedures and human rights protections in Ethiopia.*

*The approach used for this research is mainly a qualitative one which is suitable for the issue at hand. In-depth interviews and focus group discussions were conducted in the research. In addition, personal observation of the researcher and questionnaires were used in order to see the actual protection accorded to the refugees at camp level. From the data that were collected through these means the research described the assessment of the protection of the refugees at the normative frame work and in practice.*

*It was uncovered through the undertaking of this research that the legal framework for refugees in Ethiopia to a large extent converges with the international convention. The legal protection relating to access to territories, access to full-fledged procedures, non refoulement, non-expulsion, family unity or reunification, right to freedom of religion and access to justice is well respected in the normative framework. Nevertheless the legal rights of refugees to primary education and freedom of movement and the standard of treatment of refugees in wage-earning employment are restricted.*

*The data gathered mainly through in-depth interview revealed that there is prolonged Refugee Status Determination, Spontaneous returnees, restricted freedom of movement, inadequate subsistence allowance, denial of identity paper, language barriers in the exercise of some rights, failure of repatriation programs. This was found mainly due to lack of commitment and technical know-how on refugee issues and financial constraints*

## Acronyms

<b>ACRWC</b>	African Charter on the Rights and Welfare of the Child
<b>ARRA</b>	Administration for Refugees and Returnees Affairs
<b>BGRS</b>	Benishangul Gumuz Regional State
<b>CAT</b>	Convention Against Torture
<b>CEDAW</b>	Convention of the Elimination of All Forms of Discrimination Against Women
<b>CRC</b>	Convention on the Rights of the Child
<b>EOC-DIACAC</b>	Ethiopian Orthodox Church Development and Inter- Church Aid Commission
<b>FGD</b>	Focus Group Discussion
<b>HRC</b>	Human Rights Committee
<b>ICCPR</b>	International Covenant on Civil and Political Rights
<b>ICESCR</b>	International Covenant on Economic, Social and Cultural Rights
<b>IRO</b>	International Refugee Organization
<b>NGO</b>	Non Governmental Organizations
<b>RSD</b>	Refugee Status Determination
<b>SPLA</b>	Sudanese People Liberation Army
<b>The (Refugee) Proclamation</b>	The Ethiopia Refugee Proclamation
<b>The OAU (1969) Refugee Convention</b>	: OAU Convention Governing the Specific Aspects of Refugees in Africa
<b>The UN (1951) Refugee Convention</b>	The UN Convention Relating to the Status of Refugees
<b>UDHR</b>	Universal Declaration of Human Rights
<b>UNHCR</b>	United Nations High Commissioner for Refugees

# CHAPTER ONE

## INTRODUCTION

### 1.1 Background of the Study

Over the last fifty years, the development of international human rights law and in particular refugee law has helped spearhead a revolution in the over-all development of international law. Prior to that, the way a state treats its citizens was regarded as an internal matter over which it had sovereign control. If a state violated the rights of foreigners in its territory, the state of nationality could intervene to provide its nationals with diplomatic protection.

As for refugees, up until the end of World War II, there was a legal vacuum for the protection of refugees and it was necessary to create a specific regime of rights for them. Although international attention to forced population movements dates back to the League of Nations era and continues to be high on the multilateral, regional and national political agenda<sup>1</sup>, neither the League Covenant nor the United Nations Charter have provisions that specifically deal with the problem of refugees.

The foundations of post-second world war refugee law were laid down by the United Nations in 1946 and in the early 1950s in connection with the adoption of the international Refugee Organization, IRO, the statute of UNHCR and the 1951 Convention relating to the status of refugees. These instruments recognized refugees and displaced persons as constituting an urgent problem, which is international in scope and character. Accordingly, they are entitled to international protection to be

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1. Pirkko Kourula, *Broadening the Edges: Refugee Definition and International protection revisited*, London, Martinus Nijhoff Publishers, 1997, p. 1

safe before, during and after flight from their home states, and even to return to their country of nationality or former habitual residence or to search for new homes elsewhere.

With the strengthening of these protections, the individual has come to be recognized as an inherent bearer of human rights. The failure or inability of the country of origin to fulfill its responsibility to safeguard human rights has become a matter of international concern and responsibility, even in extreme cases of humanitarian intervention.

When one deals with protection of refugees it must not only be understood in legal terms but also a concept which must include and be implemented to satisfy all basic human rights and needs. Along this line, a summary reading of both the Statute of the office of UNHCR and the UN Refugee convention gives, what Goodwin-Gill<sup>2</sup>, called the direct and indirect protection function. The latter includes the promotion activities of the UNHCR office like promoting the conclusion of international conventions for the protection of refugees, supervising their application and proposing amendments thereto. Direct protection activities, including intervention on behalf of individuals or groups, involve protection of refugees' basic human rights, for example, non-discrimination, liberty and security of the person. The most important right guaranteed in the convention is the right to be protected against forcible return, or refoulement, to the territory from which the refugee had fled.

Regional initiatives in Africa (OAU, 1969) and Latin America (OAS, 1985) have at least in theory expanded the range of protection available to

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2. Guy S. Goodwin-Gill, *The Refugee in International Law*, Oxford, Clarendon press, 1990 (Reprinted) P.136.

refugees in those regions. The OAU Refugee Convention is most recognized for having extended the Conventional concept of a refugee beyond the narrower scope of the UN Refugee Convention. This is accomplished when the Convention adopted a definition which fits the political reality of the region by broadening the concept “refugee” to apply to those individuals whose flight was caused by external aggression, occupation, foreign domination and events seriously disturbing public order. A refugee child is also entitled to receive appropriate protection and humanitarian assistance in the enjoyment of the rights set out in the African charter on the rights and welfare of the child (ACRWC) and other international human rights and humanitarian instruments to which the states are parties<sup>3</sup>. The UN refugee Convention was criticized for and was characterized by its strategic conceptualization and its Euro-centric focus.<sup>4</sup> Yet, it remains to be the most authoritative international instrument in the protection of refugees.

Even though refugees were given international protection by the aforementioned instruments and similar others, the implementation structures are generally sluggish and only occasionally effective<sup>5</sup>. This is because like any international human rights law, the protection of refugees is designed and implemented by states which themselves are fundamentally self-governing and which admit only reluctantly to a limited range of shared values and interests. Hence, States usually

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3. African Charter on the Rights and Welfare of the Child –OAU Doc. CAB/LEG/24.9/49(1990), entered into force Nov 29, 1999. Article 23

4. James C. Hathaway, *The Law of Refugee Status*, Butterworths, Toronto 1991.

5. James C, Hathaway, *Preconceiving Refugee Law as Human Rights Protection*, Oxford University Press, Article on *Journal of refugee studies* Vol. 4 No. 2, 1991, p. 113

consider refugees as “threats to national security” and thereby narrowly interpret many of the protection in the instruments. In this respect, James C. Hathaway alleged that “states pay lip service to the importance of honoring the right to seek asylum but in practice devote significant resources to keep refugees away from their borders”<sup>6</sup>

The response of industrialized states of the northern hemisphere has been to restrict many of the legal protection accorded to refugees in the different multi-lateral instruments. This is in practice done in member states of the European Union by imposing pre-entry and post -entry measures<sup>7</sup>, which could effectively leave refugees without guaranteed legal protection.

Pre-entry measures affect the possibility of protection-seekers to reach the territory of potential host states. Among these measures, visa requirements and carrier sanctions are the main tools of control. In these strategies of control, the possession of a valid visa, which is hard to be found in the hands of a refugee fleeing from persecution, is made a pre-condition for departure from the country of origin or third country and carriers are also made liable for transporting aliens not in possession of a valid visa. Moreover, human smugglers are punished for control purpose and not strictly as a human right protection. These strategies violate the right to entry of a protection seeker and non-rejection at the border of a host state.

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6. James C. Hathaway (Ed.), *Preconceiving international Refugee Law*, London, Martinus Nijhoff Publishers, 1997. P. xvii.

7. Gregor Noll, *Negotiating Asylum; the Eu Acquis, Extra territorial protection and the common Market of Deflection*. London/Boston, martinus Nifhoff Publishers, 2000, p.162.

With respect to the post-entry measures, most member states of European Union incorporate 'safe third country' in their domestic asylum law. In this scheme, where a protection seeker passed through a safe third country, his claim would be repealed and he shall be asked to turn to that country. Denmark was among the first countries to introduce the safe third country concept in its domestic legislation – the so – called Danish clause<sup>8</sup>. In 15 June 1990, the Dublin Convention was adopted by the European Union to establish responsibility for processing asylum application and the readmission obligations to implement the same concept. The safe third country concept denies the protection seeker the opportunity to choose among potential host countries and does away with a state obligation to process each claim in substance.

A further restriction is developed in relation to the determination of refugee status. Certain states introduced the concept of “manifestly unfounded application”<sup>9</sup> and “safe country of origin”<sup>10</sup>, where an application is rejected respectively, by reasons of non-fulfillment of the substantive criteria before hand and if the applicant resorts from a presumed safe country of origin. These mechanisms will deny the refugee’s right to full-fledged procedure and violate the non-refoulement norm. Moreover, the presumption of safety oversees the existence of single and exceptional persecution and sudden change may also take place in the countries of origin.

In the African context, similarly, there exist legal and non-legal constraints adversely affecting refugee protection. The Refugee legislation of most African states give priority to the issue of security and this has

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8. Ibid. P. 184.

9. Ibid.p. 182

10. Ibid, p.

resulted in a diminution of the extent to which refugees may enjoy the rights as provided in the international instruments<sup>11</sup>. Rights relating to the freedom of movement, access to employment, freedom of association and expression are seen to be highly curtailed in this regard.

Another constraint also arises from a combination of political, social and economic factors. The root causes for forced displacements originate mainly from the civil conflicts prevailing in the continent. The continent can generally be characterized by a large-scale political violence, socio-economic decay and anarchy<sup>12</sup>. This atmosphere of insecurity not only makes states unable to absorb the unending refugee influxes, but it also becomes obstacle for effective and sustainable international protection. Apart from the root causes, there exist glaring gap between legal standard and actual performance. The low level of capacity of African states, the absence of non-legal considerations for protection such as institutional, resource related, logistical and material nature have been prominent<sup>13</sup>. From this perspective, Cholera epidemic may be considered as one of the most pitiful failures of refugee protection of modern times<sup>14</sup>. Most African states fail to create departments with adequate trained personnel specifically to administer refugee matters<sup>15</sup>.

Ethiopia is no exception to the general situation we described earlier. Historically, Ethiopia's tradition of hospitality and care for refugees dates as far back as the first half of the 2<sup>nd</sup> century B.C when Jews settled in

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11. -----, Issues and challenges in International protection in Africa, OAU/ UNHCR, A.A symposium on Refugee and Forced population displacements in Africa 8-10 September 1994, International Journal of refugee law, oxford University press, July 1995, p.59

12. Ibid p. 60

13. Ibid p.63

14. Ibid

15. Ibid

northern Ethiopia<sup>16</sup>. Prophet Mohammed also dispatched the first Muslim Hegira fearing of persecution<sup>17</sup>. In the 1920s and 1930s Ethiopia welcomed Armenian Christians that fled Bolshevik rule and later in the 1950s and 1960s, African freedom fighters seeking asylum<sup>18</sup>.

The recent history of refugees in Ethiopia is a result of mainly the unrest in Southern Sudan, Somalia and Eritrea. Ethiopia hosts more than 80,479 refugees predominately from Somalia, Eritrea and Sudan. There are also small numbers of Kenyan, Congolese, Rwandese and Djiboutian refugees. These refugees are settled in 11 refugee camps located in the northern, eastern and western parts of Ethiopia. The camps are Shimelba, Mayayni, Berahale, Assayita, KebriBeyah, Sheder, Aweber (Teferiber), Fugindo, Sherkole, Megado & Dillo . Apart from camp refugees, there are about 1,630<sup>19</sup> so called “urban refugees” of different nationalities residing in Addis Ababa.

To alleviate the misery and suffering of these refugees in Ethiopia, the country has undertaken a series of measures- both internationally and nationally. Internationally, Ethiopia is one of those countries, which are parties to both the 1951 UN Convention and the Protocol on 10 November 1969. Ethiopia has made reservations to Art 8 (Exemption from exceptional measures), 17(2) (Wage-earning employment), 19(Liberal professions), and 22(1) (Public elementary education) at the time of acceding to the UN Refugee Convention. It is agreed that the reservation affected/ restricted some of the rights of refugees. As a member of the organization of African Unity, Ethiopia also ratified the OAU convention

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16. Ayalew Awoke: lessons learned: The way forward, special issue for the 50<sup>th</sup> anniversary of UNHCR (2000)p.5.

17. Pankhrust, Richard: Ancient Ethiopia's Hospitality to Refugees, Special issue for the 50<sup>th</sup> Anniversary of UNHCR(2000)p.7

18. Ayalew, Supra note7.

19. The number refers only to those refugees who are recognized through RSD

governing the specific aspects of refugee problems in African on 15 October 1973. Nonetheless, like many of the other African States, the protection of refugees is constrained by capacity, resource, material, logistic and other non-legal matters.

Ethiopia has promulgated a refugee law (proclamation) in 2004. The law, inter alia, recognizes the right to non-refoulement, voluntary repatriation and administrative assistance. It also has a procedure for granting and withdrawing refugee status. The law reflects the national interest of the country in some civil, social and economic rights accorded to refugees.

Since the law governing refugee status and protection has been promulgated, not much was said in evaluating the law and practice prevailing. But this by no means indicates the absence of researches which are out of the reach of this researcher. Thus it is believed that the research will somehow be an original one on assessments of refugee rights at the camp.

## **1.2. Statement of the Problem**

As described earlier, Ethiopia is a party to the UN and OAU Refugee Conventions. These two basic international and regional instruments were the sole Conventions governing refugee status and protection in the state. Up until 2004, these two conventions were not translated in to national law in order to enable effective protection of refugees and detailed implementation of the standards in the convention. Hence, the protection of refugees was blurred and could not be progressively improved for lack of precision.

On 19<sup>th</sup> July 2004, the House of Peoples Representatives enacted Refugee Proclamation No 409/2004. This first legislation on refugee protection has detailed provisions on the rights and duties of refugees.

The Security, Immigration and Refugee Affairs Authority is empowered with the function of supervision, granting and withdrawing status of refugees. This Authority used to undertake similar functions before as it was created by Proclamation No 6/1995. This latter proclamation empowered the Authority to formulate policies and strategy concerning state and public security as well as immigration and refugee affairs. The Authority was specifically made responsible for matters relating to refugees. It was investigating and deciding on cases of persons who apply for asylum and Ethiopian nationality.

Observing the substantive contents, one can safely argue that the refugee proclamation is a product of the UN and OAU Refugee Conventions. It frequently makes clear reference to these instruments. It nevertheless makes no distinction between some contradictory strategies envisaged in the two instruments. Hence, one may allege that it created confusion concerning the rights of refugees and their extent. Some of the restrictions also seem to contradict other international human rights instruments which Ethiopia adopted.

In Ethiopia, refugees are hosted in 11 different camps, located mainly around the country's borders. Although it is evident that most of the refugees faced many problems of social, economic and civil nature, not much has been studied with regard to the implementation of refugee law in practice. This study is therefore meant to assess the current state of protection of refugees in the camps. Furthermore, it intends to identify some of the constraints of refugee protection in Ethiopia in particular in the area selected for the study i.e. Sherkole camp at Assossa.

The study attempts to seek answers to the following basic questions:

1. To what extent are civil, political, social, economic and cultural rights of refugees respected in the present refugee law and what is the practice?

2. How is the responsible governmental authority or ARRA (Administration of Refugees and Returnees Affairs) handling cases of granting and withdrawing individual and group refugee status?
3. What are the problems and challenges the refugees face in their camp and / or outside and what are the causes for these problems?
4. Do UNHCR, the Ethiopian state and responsible actors have strategies for durable solutions to refugee problems? If yes, what are they and their implementation outcomes?

### **1.3. Objective and Significance of the Study**

The main objective of the study is to assess the current status of protection of refugees in Ethiopia in general and the situation of refugees in Sherkole camp in particular and to clearly point out the concrete problems refugees are facing. The study also intends to identify the source of these problems. In this regard, the study will encourage implementation and make recommendations concerning the improvement and promotion of effective laws, policies and strategies in refugee protection and for durable solutions to their problems.

It is therefore, believed that the study should be of interest to different researchers, concerned refugee protection actors such as UNHCR, NGOs working in the field and respective governmental bodies that are responsible for refugee protection.

### **1.4 Delimitation of the Study**

A study which attempts to assess the level of protection of refugees in all the refugee camps in Ethiopia is clearly very broad and difficult to undertake. Therefore, because of time and financial constraints, the study is delimited to manageable size. Out of the 11 refugee camps one is selected.

The study intends to evaluate the situation that exists between the right holders (the refugees), the duty bearers (ARRA and the Authority) and the facilitator (UNHCR). To effectively assess the realities in which the refugees are living, the refugee camp-Sherkole, which hosts more than 4,800 refugees, has been selected. The Sherkole camp has been selected for the study for at least two major reasons. First, this camp hosts a variety of nations and tribes including the Sudanese and the Congolese refugees. This will help analyze the legal protection (Most importantly the non-discrimination principle) in a multi-national refugees camp. Moreover, the camp is characterized by fairly large number of refugees and protection partners like NGOs. The scope of protection and the coordination can well be tested in such a situation.

## **1.5. Methodology**

### **1.5.1 Data Source of the Study**

The data source of this study is composed of structured interview, data collection, focus group discussion and questionnaire. In order to attain the objective of the study, the officials of the Authority (or ARRA), the protection officers at Assossa, Administrator of the refugee camp, refugee community leaders and refugees in the camp are interviewed. Furthermore, the UNHCR office in Ethiopia and field protection officers will be used as a source of data. Written data are also collected from these sources.

From the refugees a representative sample is selected on the basis of sex, age and clan. As one may expect, statistical representation of the refugee population is very difficult if not totally impossible. The whole purpose of the sampling is to counter check the information gathered from the community leaders, who represent the refugees in the camp for different services. To this end, 120 respondents are taken to fill the questionnaires.

### **1.5.2. Instruments for Data Collection**

Three instruments of data collection are used for the study. The first and the main instrument is interview and the others are focus group discussion and a questionnaire. In the focus group discussion, 20 participants from refugees, community leaders, ARRA & UNHCR have participated in two groups. A supplementary instrument will be observation by the researcher of the different visible protection instruments for the refugees, in particular with regard to shelter, health and educational facilities.

The questionnaire has been designed primarily as an open ended one which dealt with specific rights accorded, and duties imposed in the three basic instruments i.e. the 1951 UN convention, the 1969 OAU convention and the Ethiopian refugee proclamation. It has also addressed the treatment, supervision, guidance and cooperation extended by the refugee camp administrators, ARRA, UNHCR, NGOs and others. 120 respondents from all tribes are randomly selected to fill the questionnaires.

### **1.6. Chapter Outline**

This chapter is introductory. The background, the objective, and the problems of the research are stated in this chapter.

Chapter two discusses the international protection of refugees in depth. The meaning and scope of international protection is explored. In addition the definition of refugee and rights accorded to refugees as inhabitants and aliens is described.

In chapter three the legal framework for refugee protection will be analyzed in the Ethiopian context. As has been indicated in the statement of the problem herein above, the convergence or divergence of

the standards of the refugee proclamation with the UN Refugee Convention is the theme of the thesis. Thus, this chapter deals with the assessment of refugee protection in the normative framework.

Regarding the assessment of refugee protection in practice, chapter four entitled “practical realities of Refugee protection in Sherkole camp-Assossa” is devoted for it. Accordingly, it describes general background about the camp and deals with problems refugees face in their camp life. Rights of refugees to access to territory, full- fledged asylum procedures, and the different civil and socio economic rights are analyzed.

The study closes with concluding remarks.

## **CHAPTER TWO**

### **INTERNATIONAL PROTECTION OF REFUGEES: MEANING, SCOPE AND RIGHTS ACCORDED TO REFUGEES**

#### **2.1 Meaning and Scope of International Protection of Refugees**

To give a single universally applicable definition for “international protection” is not an easy task, though not impossible. This is not only due to the lack of any international instrument defining the phrase but also because of the ever-changing flexible concept developed in the history of refugees. Hence, what will be done in this section is to highlight the concept on the basis of its literal meaning and to describe the scope of the concept as developed historically in the different international instruments and in practice.

To begin with, protection is a term with many connotations. Its Latin root, *pro regere*, means literally “to cover in front” and suggests a curtain or shelter against sun or storm, or a screen or shield to preserve a person or a thing from danger.<sup>1</sup> Like its synonymous or explanatory terms such as safeguard, guarantee, help, it has a connotation of security.

The term as employed in the political and legal sense, is placed at the heart of the bond between individuals and their state of nationality<sup>2</sup>. It is first and foremost, the responsibility of states to protect their citizens.

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1. Pirkko Kourula, *Broadening the Edges, Refugee Definition and International Protection Revisited* Martinus Nijhoff Publishers, London (1997) p. 203

2. *Ibid*

The state is formed, in a democratic society, by its people and is presumed to act in the interest of the citizens. The act of the state is usually expressed through secular or diplomatic protection. However, when the state fails or is unable to protect the human rights and security of its citizens, it can no longer, in traditional terms, be considered that an injury to a citizen is an injury to the state.<sup>3</sup>

The citizens of such a state remain unprotected while abroad, for instance, through diplomatic protection. That is when alternative protection needs to step in such protection is international in the sense that it is provided by other entities than the nation state.

International protection, thus, can be described as an alternative protection rendered to an individual by another state or the international community in cases where the bond between an individual and its national state is disturbed or has ceased for different reasons. The reasons usually have a political nature but broadly any manmade and natural disaster may be included. The entity which could provide the alternative protection is another state as its prerogative or as a legal duty depending on whether the state is party to the 1951 convention or not. This is because it is for states to determine who obtains the status of a refugee. From this conceptual understanding, one can safely argue that the role of non-state entities, devoid of territorial power, like UNHCR can necessarily be only supportive or promotional in character.

The concept of international protection made its appearance after the First World War when refugees themselves were timidly making their first entrance in international law. The concept was reflected in the regime of the League of Nations when the High Commissioner was instructed to

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3. Ibid

define the legal status of refugees. As Sadruddin Age khan described,<sup>4</sup> it was in 1930 that international protection made its official entry into the vocabulary of international affairs when the Assembly of the League of Nations requested its competent bodies to ensure the legal and political protection of refugees.

The concept “International Protection”, then, developed as a composite of the legal and political protection to be granted to refugees. However, the change of outlook in the establishment of UNHCR gave little emphasis to the political element, at least in the normative framework. In this respect, High Commissioner Sadruddin Aga Khan Stated that

*“The formula which was thus adopted took in to account both the essentially legal nature of protection and the fact that its implementation involved relation with governments at the political level. However, when UNHCR was established in 1950, it was felt that the word “Political” might cause confusion, the function entrusted to UNHCR by its statute being defined as humanitarian and social and of an entirely non-political character. The words ‘international protection’ were therefore preferred to the earlier formula”<sup>5</sup>*

The concept of international protection for refugees after the Second World War was incorporated in paragraph 1 and 8 of the statute of UNHCR in terms of institutional competence. International protection as a term does not appear in the 1951 Convention, the 1967 Protocol or the Regional Refugee Instruments. However, it is undisputed that the obligation in all these instruments is to ensure immediate protection to refugees. The question that needs to be answered and is subject to controversy is, however, the content and scope of international protection.

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4. Sadruddin Aga khan, UN High Commissioner, lecture on the legal problems relating to refugees and displaced persons given at the Hague Academy of international law, 4 -7 August 1976, online <[http:// www.unhcr.ch/cgi-bill/ texis /vix/home](http://www.unhcr.ch/cgi-bill/texis/vix/home) p.18

5. Ibid

The original notion of international protection was conceived narrowly to refer to the regulation of the status of refugees through the issuance of travel documents. All the instruments adopted prior to the 1951 Convention aimed at defining the legal status of refugees and facilitating their right to freedom of movement. However, in the 1950's protection is further extended to guarantee the right to life of refugees, as the most basic survival need was not dealt with. In this respect the 1951 Convention can be cited as the most detailed instrument which guarantees the civil, economic, political, social and cultural rights of refugees.

In the 1980's international protection was defined mainly in relation to the competence of the UNHCR.<sup>6</sup> The High Commissioner was required, as a fundamental and humanitarian responsibility, to stand between the endangered individual and a state authority which was unable to provide that protection. Moreover, in the 1980's this development was further advanced to a system which was predominately characterized as a human right activity. The link that exists between refugee law and human rights was strengthened. Protection policies, in fact, can be said to be determined by the level and extent of human right situations. In this respect a person is in need of protection as a refugee on the basis of persecution or the violation of his basic human rights. Similarly, the upholding of human rights of forced migrants in their country of refugee is an expression of their protection. Still, it is the re-establishment of human rights standards in the country of origin that can effectively permit the possibility of return.

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6. Supra note 1, p.206

Hence, it is with this developed understanding toward human rights approach to international protection that this research is intended to be undertaken. In this respect, then, we use the definition described by Joanne van selm Thorburn as a working definition for this study. He interpreted protection as:

*“The act of upholding fundamental human rights, such as the core rights declared in the covenants on civil and political rights and on economic and social rights and includes also the very specific right of non-refoulement. It may also refer to respecting human rights while treating a person in a humanitarian way.”<sup>7</sup>*

The term “legal” rather than “political” protection of refugees is preferred for this topic in cognizant of the human rights aspect of refugee protection. Legal protection imposes a binding obligation on states on the basis of a bilateral, or multilateral treaty or international custom to protect and respect the human rights of refugees. This regime of legal protection, in return, provides for the treatment of refugees in accordance with recognized legal principles and standards regarding personal safety, social, economic and civil rights.

## **2.2 Definition of Refugee**

To begin with, one may ask why a definition is needed for a refugee as doing or trying the same may obstruct a prompt response to the needs of people in distress. The early development of refugee laws had shown the absence of states interest to define who a refugee was. But in later developments the protection of refugees was not seen only as helping sovereignty of states. Thus, it has become important for states to give a definition to the term.

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7. Joanne van selm- Thorburn, *Refugee protection in Europe*, martinus Nighoff Publishers, London, (1998). P. 43

Defining a refugee is not an academic exercise but of practical importance having far reaching repercussions both for states individually and collectively and the individual concerned<sup>8</sup>. This is because the protection of refugees requires the action of states, the United Nations-notably the UNHCR as well as wide circle of other international actors. In this respect, the definition of refugee helps to identify individuals in need of a solution to their predicament usually forced exile.

This will have a two fold advantage; to delineate or to distinguish individuals or groups from other population groups with a view of conferring rights, and secondly, and conversely, imposing obligations on states and for monitoring compliance of the execution of binding obligations. Definition is also required to determine both institutional competence and obligation of states and other actors with respect to management of population movements.

Even though, as we have just said, defining who a refugee is has an advantage to facilitate and to justify aid and protection, it may have an adverse effect of excluding individual who are in need of protection. Since the sources for protection arise mainly from the agreement of states, who themselves want to restrict most of the rights to the needy, even having a definition may not be a guarantee for proper protection. The development of refugee law has shown the interest of the international community to render protection to all those who need it, as expressed in the UNHCR Statute and other resolutions of UN. Nonetheless, this in practice is neither part and parcel of a binding multilateral treaty nor is frequently witnessed in state practice.

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8. Supra note 1, p. 40

The definitions we are going to consider in the coming section focus on the different conflicting interests and have some mission to accomplish; some focus on the situations in which the individuals are living by stating certain characteristics of a refugee. Others, on the other hand, emphasize the implied recognition and /or sometimes protection of states who ultimately owe obligation through the usage of terms with different interpretation.

In ordinary usage the term refugee has a broader, looser meaning signifying “some one in flight, who seeks to escape conditions or personal circumstances found to be intolerable.”<sup>9</sup> Moreover, the term has been popularly used to describe flight from disasters, hardship or situations of inconvenience<sup>10</sup>. Such a description does not seriously consider the reasons for flight and the destination of the refugee. Moreover, it hardly helps us to distinguish refugees from other populations, such as economic migrants and /or displaced persons.

The popular understanding is not static as it has changed through time. Thus, quite contrary to the above assertion a refugee has often also been considered as some-one associated with elements of a society which pose a threat or a risk to the stability or security of recognized states, such as political opponents, members of liberation movements and even terrorists.<sup>11</sup>

Though the ordinary and popular usage of the term may have its own positive and negative effects on the protection of a refugee, it is of little or no help as regards the juridical (legal) protection of such individual. Yet, we have to take note that implicit in the ordinary meaning of the word

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9. Ibid, p. 41

10. Ibid

11. Ibid

'refugee' lies an assumption that the person concerned is worthy of being and ought to be, assisted, and if necessary, protected from the causes and consequences of flight.

In determining the content in international law of the term "refugee" we need to look at the source of protection, particularly treaties. As the instruments have their own historical and ideological background, they do have particular refugee definition, which is defined by different values. Whether the international legal framework is progressive or regressive towards the interest of those in need of actual protection remains to be seen.

### **2.2.1 Refugees Defined in International Instruments 1922-46**

In analyzing international refugee accords entered into between 1920 and 1950 James C. Hathaway,<sup>12</sup> outlined three distinct approaches to the refugee definition. Prior to the League's regime there was no specific effort to define the term refugee in international law as there was unrestricted migration. Let us now consider the three perspectives Hathaway identified.

#### **2.2.1.1 The Judicial perspective**

From 1920 until 1935, refugees were defined largely in juridical terms, which meant that they were treated as refugees because of their membership in a group of persons effectively deprived of the formal protection of their government since individuals were not recognized subjects with rights and duties. The breakdown of formal protection

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12. James C. Hathaway, *The law of Refugee status*, Butterworths Toronto (1991). P. 2

13. *Ibid* p. 3

between the citizen and the state creates an anomalous situation in the international legal order.<sup>13</sup> Hence, the definitions adopted in this period aimed to correct this breakdown and contained a criterion of ethnic or territorial origin coupled with a stipulation that the applicant does not enjoy de jure national protection.

The arrangement concluded in 1926, for example, defined a Russian refugee as:

“any person of Russian origin who doesn’t enjoy or who no longer enjoys the protection of the government of the Union of Socialist Soviet Republics and who has not acquired another nationality”.<sup>14</sup>

As per this definition, for someone to be a refugee he must be outside his country of origin and must not enjoy the protection of the government of that state. The former requirement, though not explicit, can be implied in the objective of the arrangement, namely to issue identify certificates for the purpose of travel and resettlement.

### **2.2.1.2 The Social Perspective**

In contrast to the initial juridical focus, the refugee agreements adopted between 1935 and 1939 embodied a social approach to the refugee definition. Refugees defined from the social perspective are the helpless casualties of broadly based social and political occurrences which separate them from their home society.<sup>15</sup> Hence, the aim was to ensure the refugee’s safety or well being and not to correct the international anomaly.

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14. Supra note 1 p. 50

15. Supra note 12 p.4

Article 1 of the 1938 Convention defined those fleeing Germany and who deserve protection as to cover.

- a. Persons possessing or having possessed German nationality and not possessing another nationality who are proved not to enjoy, in law or in fact, the protection of the German government ( Emphasis Added)
- b. Stateless persons not covered by previous conventions or agreements who have left German territory after being established therein and who are proved not to enjoy, in law or in fact, the protection of the German government.

Article 1(2) excluded from the definition persons who left Germany for reasons of purely personal inconvenience.

This approach as used in the 1938 Convention included victims of social and political events which resulted in de facto if not de jure loss of protection. However, causes like natural disaster which are imminent and frequent in developing states are not dealt with, one way or another.

### **2.2.1.3 The Individualist Perspective**

The third phase of international protection, comprising the accords of the 1938-1950 eras, was revolutionary in its rejection of group determination of refugee status. A refugee by individualist standards is a person in search of an escape from perceived injustice or fundamental incompatibility with his/ her home state.<sup>16</sup>

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16. Ibid p.5

Hathaway described the radical shift from category to individual determination of status as constituting part of the then raging political controversy.<sup>17</sup> Accordingly, the intention of the socialist states to exclude protection of dissident among the ranks of refugees was unsuccessful during the debate in UN in 1946. Instead the western allies won the debate, as he described.

“ .....the voting strength and influence of the western alliance, however, led to a movement away from a focus on group de jure or de facto disfranchisement, and towards a personalized evaluation of incompatibility between the state of origin and a refugee claimant in search of personal freedom and liberty.”<sup>18</sup>

The definition embodied in the IRO Constitution can show the shift of paradigm towards individualized standards for determination of who a refugee was. Under the IRO Constitution refugees were defined by categories. It has been seen, however, that this “categories” approach was accompanied by the notion of ‘valid objection’ which indicated the conditions under which person falling in to an already defined refugee category could become the concern of the organization. One of the ‘valid objections’ was ‘persecution or fear of persecution’. This phrase was not only subject to different interpretations but it also reflected the individualized character of a refugee.

### **2.2.2 Refugee Definition in the UNHCR Statute**

The UN General Assembly decided on 3 December 1949 to establish a High Commissioner’s office for refugees, and requested ECOSOC to transmit to the General Assembly recommendations regarding the definition of the term ‘refugee’ to be applied by the High Commissioner.

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17. Ibid

18. Ibid

ECOSOC later on provided a restrictive definition which only applies to persons who had become refugees 'as a result of events in Europe before 1 January 1951'. The General Assembly wanted to avoid this temporal and geographic limitation when it adopted a general definition in the UNHCR statute on 14 December 1950.

The statute first brings within UNHCR's competence refugees covered by various earlier treaties and arrangements. It next includes refugees resulting from events occurring before 1 January 1951, who are outside their country of origin and unable or unwilling to avail themselves of its protection 'owing to a well-founded fear of being persecuted' or 'for reasons other than personal convenience'.

This definition is contained in paragraph 6A of the UNHCR Statute and as we subsequently see Article 1 of the 1951 Refugee Convention follows largely the same pattern. The definition employed in the UNHCR statute is quite similar to that given in the Refugee Convention. Among other things, the provision on statutory refugees on the new definition for refugees, exclusion and cassation are identical in the two instruments except for small difference in wording. The difference between the definitions in the UNHCR statute and the refugee Convention is that the former is not constrained by time and geographic limitations.

However, the development of the statutory definition and the subsequent extension of the UNHCR's mandate needs to be considered. The General Assembly has over the years authorized UNHCR to extend assistance and international protection to persons not falling under the statutory definition in a strict sense. UNHCR's Statute has proved to be flexible allowing for the office to deal with refugee situations as required at any given time. Different formulae have been employed in order to ensure

adequate protection for the forcibly displaced. The prima facie status determination, persons 'of concern' (to the UNHCR) and the "good office" formula extend the mandate of UNHCR not only to refugees but also returnees and internally displaced persons. Though such a broad approach is indicative of the human right aspect of displacement, it is not supplemented by any universal multilateral instrument. There is a gap between the UNHCR mandate and state obligations as embodied in the 1951 Refugee Convention.

### **2.2.3 The 1951 Refugee Convention and the 1967 Protocol Relating to the Status for Refugees**

Soon after the Second World War, as the refugee problem had not been solved, the need was felt for a new international instrument to define the legal status of refugees. This definition aims to give a general definition of who was to be considered a refugee. To this end, the 1951 Convention was adopted. The primary standards of refugee status today are that derived from this instrument and its amendment, the 1967 protocol.

The convention in its article 1 considers one a refugee to be person who satisfies the requirements mentioned in article 1(A) (2) and if she/ he can not be excluded or his status ceased by facts expressly provided in the article. Thus, this provision which defines who is a refugee consists of three parts, which have been termed respectively "Inclusion" "Cessation" and "Exclusion".

The 1967 protocol achieved the formal, but not the substantive universalization of the convention definition of refugee. The protocol eliminates the temporal and geographic limitation that existed in the

convention. In the subsequent sub-sections, we will briefly discuss the three elements of the refugee definition.

### **2.2.3.1 Inclusion Clauses**

The 1951 Refugee Convention outlined two kinds of refugees. The first includes the so-called ‘statutory refugees’ covered under Article 1A(1) and includes those persons considered refugees under the provision of international instruments preceding the Convention and the second so-called “Convention refugees” as stated in article IA(2) which includes the general definition for future refugees.

#### **i. Statutory Refugees**

##### **Article IA(1) Provides that**

*“ for the purpose of the present Convention, the term ‘refugee’ shall apply to any person who has been considered as a refugee under arrangements of 12 may 1926 and 30 June 1928 or under the Conventions of 28 October 1933 and to February 1938, the protocol of 14 September 1939 or the Constitution of the International Refugee Organization”.*

As can be understood from this provision a person who was considered as a refugee by pre-1951 arrangements would remain a refugee in as far as she/ he cannot be excluded or his status ceased by the provisions of the convention. The enumeration is given in order to provide a link with the past and to ensure the continuity of international protection.<sup>19</sup> Thus, a holder of the so-called ‘Nansen passport’ or ‘ a certificate of eligibility’ issued by the IRO must be considered a refugee under the 1951 Convention.

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19. Handbook on Procedures and Criteria for Determining Refugee Status, UNHCR, 1979 (Reedited, Geneva, January 1992) paragraph 33 (page 10)

## ii. Convention Refugees

According to article IA(2) of the 1951 Convention the term 'refugee' shall apply to any person who.

*“as a result of events occurring before 1 January 1951 and 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 or owing to*

*such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.”*

For states parties to the 1967 protocol the term “as a result of events occurring before 1 January 1951 has lost its practical significance since the protocol eliminates the temporal and geographic limitations. A close reading of the remaining elements of the definition reveals that one acquires refugee status if the following inclusive requirements are met.

- a. The person must have left his country of nationality or, in case of a stateless person, his country of former habitual residence.
- b. The refugee claimant must be genuinely at risk i.e. have a well founded fear
- c. The claimants' flight must be motivated by the prospect of “persecution’ that is, risk of serious harm against which the state of origin is unwilling or unable to offer protection.
- d. The risk faced by the refugee claimant must have some link to his /her race, religion, nationality, membership in particular social group or political opinion.

The phrase “well founded fear of being persecuted” is the key element of the definition. It reflects the views of its authors as to the main characteristics of a refugee. It replaces the earlier method of defining refugees by categories by the general concept of ‘fear’ for a relevant motive. On the other hand, since there is no clear universally accepted definition prescribed for the phrase in the Convention, it is subject to different interpretations. From article 33 of the 1951 Convention it may be inferred that a threat to life or freedom on account of race, religion, nationality, political opinion or membership of a particular social group is always persecution. Other serious violations of human rights for the same reasons would also constitute persecution.<sup>20</sup> However, it is always proper to see the circumstances of each case. The subjective and objective conditions prevailing as the persecutory element is bound to vary.

#### **2.2.3.2 Cessation Clauses**

Article 1C (1) to (6) of the 1951 convention spell out the condition under which a refugee ceases to be a refugee when international protection is no longer necessary or justified. The cessation clauses include two reasons for loss of refugee status.

The first four reflect a change in the situation of the refugee which has been brought about by the refugee himself, namely:

- i. Voluntary re-availment of national protection
- ii. Voluntary re-acquisition of nationality
- iii. Acquisition of a new nationality
- iv. Voluntary re-establishment in the country where persecution was feared

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20. Ibid, paragraph 51 (p. 14)

The last two cessation clauses under sub article 5 and 6 are based on the consideration that international protection is no longer justified on account of changes in the country where persecution was feared, because the reasons for a person becoming a refugee have ceased to exist. However, refugees who can invoke compelling reasons arising out of previous persecution may refuse to avail to national protection.

### **2.2.3.3 Exclusion Clauses**

The 1951 Refugee Convention, in sections D,E, and F of Article 1, contains provisions whereby persons otherwise having the Characteristic of refugees, as defined in Article 1, section A, are excluded from refugee status. Such persons fall in to three groups.

- i. Persons already receiving United Nations protection or assistance
- ii. persons who are not considered to be in need of international protection (if the refugees are given better protection as nationals)
- iii. persons who are not considered to be deserving of international protection ( E.g those who commit war crimes)

## **2.3 Legal Protection Accorded to Refugees Under International Instruments**

As we noted in the previous section legal protection is so flexible that it encompasses a great number of human right safeguards extended to refugees. Beginning his flight from his home country the asylum seeker faces different hurdles on the road to safety. The order in which a would be protection seeker is confronted can be constructed with protection system before, during and after flight. As we all could imagine the most crucial protection for a refugee is to resolve the serious cause of flight from his home country. This is called preventive protection. However, preventive protection by no means should be implemented at the sacrifice of extra territorial protection, which aims to produce a subsidiary form of human right protection to refugees once she/he crossed the territory of a host state,. In fact, the ultimate purpose of the extra territorial protection lies in searching for a durable solution to the problem of the refugee.

This section is not meant to describe all these legal protections. Rather it discusses extra-territorial protection granted to refugees in the host state. In this respect the first two problems that refugees face are the problem getting entry to the country of refugee and once this is achieved, the problem of gaining admittance to internal asylum procedures the legitimization and regularization of the refugees stay in the country of asylum. The various human rights can then be enjoyed if the two problems earlier outlined are solved. Following the route of the victim of persecution, we can separate the following conventional categories of extraterritorial protection for properly addressing the problem of a protection seeker in a host state.

**First,** *access to territory*

**Second,** *access to full-fledged asylum procedures and*

**Thirdly,** *access to protection*

Let's deal with each in the following and subsequent sections.

### **2.3.1 Access to territory**

The first challenge an asylum seeker faces while running from a well founded fear of persecution is to search for his place of destination. All the legal protection extended for the refugee after he left his country of origin depends on whether another state has a substitute obligation to protect. And this in return is dependent on the fact that he is legally allowed to enter the potential country of asylum. If we place ourselves in the shoes of an asylum seeker we definitely be concerned by the question whether another country is obliged to admit us. Answering this question in the affirmative is the primary protection that is available to a refugee in the international arena. In this section a brief account of the right to access to territory with in the international normative framework will be dealt with.

To begin with, refugee law is about the inclusion of an individual in a collective protection system. An asylum seeker no longer enjoys the protection of his/her home community and is thus compelled to seek such protection elsewhere. This claim to inclusion in the host community is justified or restricted differently in the theoretical perspective Universalists argue that the claim to inclusion in a host community is a mere consequence of exclusion by the home community.<sup>21</sup> It is premised

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21. Gregor Noll, *Negotiating Asylum, The EU Acquis, Extraterritorial Protection and the common market of Deflection*, Martinus Nijhoff publishers, the Hague /Boston/London (2000).p.75

on the idea that each individual is part of a global community, which has to secure a minimum level of protection, where the local community i.e, the nation state fails.<sup>22</sup> This idea sets the existential interest of the individual above that of a potential host community.

On the other hand, a particularist would explain things differently. In its essence, a claim for protection is *prima facie* a claim for resources- be they material, political, social and other.<sup>23</sup> Obviously, “a claim of inclusion”, the particularist argue “juxtaposes the claimant with bounded host community”. And “the very idea of a bounded community is to match community tasks with community resources.”<sup>24</sup> Once this match has taken place bounded communities are eager to avoid additional costs.<sup>25</sup> Hence, the particularists invoke an existential threat to the state for justifying restriction measures against asylum seekers.

These two opposing views on protection are reflected in the discussion of the right to entry of an asylum seeker to a host state. There is no clear international human right instrument granting an asylum a right to access to a host territory. Hence, arguments posed for or against this right is based on the interpretation of general and specific legal Instruments protecting refugees.

The right to grant asylum including the right to admit a person to its territory is “a direct consequence of sovereignty” and therefore “an exclusive right of states”.<sup>26</sup> However, this right may be limited by the contractual obligation states themselves create in international treaties.

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22. Ibid

23. Ibid, p.79

24. Ibid

25. Ibid

26. S. Parkash Sinha, *Asylum and Internatinal Law*, Martinus Nijhoff/ the Hague Netherlands, is, 1971 p. 108

Hence in this section the researcher wants to establish whether the international community (or state parties to general and specific refugee instruments) are under obligation to let the individual migrate in order to seek such protection. To tackle this basic issue resort needs to be made to international human rights law which deals specifically with migration and to explicit and implicit prohibitions of refoulement.

**i. The right to Leave and the Right to Entry**

Article 12(2) (3) and(4) of ICCPR deals with the transgression of state borders. More specifically, it enshrines a carefully delimited right to international freedom of movement.

1.—

2. *Every one shall be free to leave any country, including his own.*

3.—

4. *No one shall be arbitrarily deprived of the right to enter his own country.*

To be precise, this provision contains two rights; entitlement to emigration from any country, including one's own and entitlement to entry into one's own country. Neither this provision nor any other contained in the ICCPR, makes mention of a right to immigrate into states which are not ones' own country.

The absence of a reference to immigration be it in the permissive or in the limitative sense would lead a universalist to conclude that "a right to immigrate is a necessary corollary of the right to emigrate".<sup>27</sup> Admitting the right to emigration while denying a right to immigration would be a contradiction in terms.<sup>28</sup> A particularist would disagree with this notion

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27. Supra note 1, p.3

28. Ibid

and underscore that a right can not simply be deduced from the silence of the text.

Both positions, however, exceed the wording of the provisions and we need to address the issue from a contextual interpretation of the provision. The right to leave one's country would be nullified in a situation where no other state was prepared to receive the individual making use of this right. "the ideal to be realized by the right to leave and the right to return is free movement of persons."<sup>29</sup> This contextual argument can be based on the qualified right to expel aliens from their territory. <sup>30</sup>In order for this right to become effective, another state has to receive the person expelled. By similar interpretation the wording of Article 12 of the ICCPR should not be restricted as a claim only vis-a-vis the country of origin. This correlate is even regarded as "a norm of customary international law".<sup>31</sup>

Nevertheless, it is quite clear from the analysis of the travaux preparatoires to the ICCPR that states intended to preserve control over the composition of these populations.<sup>32</sup> Hence, if the right to entry is understood as a long term or even permanent change of settlement, those rights indeed conflict. However, if one frames the concept of entry as a temporary one they go along very well each other. This understanding would limit the right to entry to the transgression of physical borders, while admitting that the transgression of administrative borders remains a state prerogative.<sup>33</sup>

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29. Ibid, p. 417

30. Art 13 of the ICCPR

31. Supra note 1, p.418

32. Ibid, p. 418

33. Ibid

HRC, on the other hand accepts the right to entry for aliens generally in exceptional circumstances which perfectly fits the situation of refugees. HRC, in its General comment 15 provides:

*The covenant doesn't recognize the right of aliens to enter or reside in the territory of a state party. It is in principle a matter for the state to decide who it will admit to its territory. However, in certain circumstances an alien may enjoy the protection of the covenant even in relation to entry or residence, for example when considerations of non-discrimination, prohibition of inhuman treatment and respect for family life arise.*<sup>34</sup>

## **ii. Explicit Prohibitions of Refoulement**

A prohibition of refoulement may be merely taken as a states' obligation not to remove a certain group of persons present on its territory to the country of persecution. The question at this juncture is whether states are bound to admit persons applying for protection at the state border (from outside state territory). If non-rejection is established to form part of the explicit prohibitions of refoulement, then it will entail a right to transgress a physical border as well.

Article 33 of the UN Refugee Convention, article 3 of CAT and Article 45 of the Fourth Geneva Convention do contain the principle of non-refoulement. These provisions speak of the prohibition of expulsion, return, refoulement or transfer 'to the frontier of territories' or 'to another state' or 'to a country' from which the specified threats originate. But the lack of clarity of the provisions allow 'rejection at the border' to be included or excluded as part of the non-refoulement principle.

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34. HRC General comment No 15. (The position of aliens under the covenant) Twenty seventh session, 1986)

If we stick to the word of these provisions an inclusive conclusion could be achieved. The French term “refouler” precisely includes such rejection,<sup>35</sup> although the English word ‘return’ normally excludes rejection at the border. However the fact that the drafters act to complement the English term ‘return’ with the French term “refouler” indicate that they intended to exclude measures taken at the border by inserting the term ‘reforder’ into the norm. In francophone asylum law and practice, refouler’ covers non-admittance at the border.<sup>36</sup>

One the other hand, the Fourth Geneva Convention uses the verb “to transfer.” This term denotes “to convey from one person, place or situation to another”.<sup>37</sup> A person rejected at the border of a certain state is actually moved over from the jurisdiction of this state to that of another one. Therefore it could be argued that the prohibition of transfer included rejection at the border.

Determining whether article 33 of the UN Refugee Convention applies to rejection at the border has been a standard topic for doctrinal writers ever since the inception of the 1951 Convention. In this respect Robinson argued for exclusionary reading. He denies that Article 33 of the UN Refugee Convention applies to seeking entrance into the territory of a potential host state.<sup>38</sup> In a footnote, Robinson claims that the drafters didn’t intend to regulate admission by article 33.<sup>39</sup> However, as per the Vienna convention resort to the travaux need to be made only when the words and the context of the text could not help achieve a clear result.

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35. Supra note 1, p. 388.

36. Ibid

37. Websters New World Dictionary of the American Language, 1970.

38. Nehemiah Robinson Convention Relating to the status of Refugees, its history, Contents and Interpretation, A commentary, institute of Jewish Affairs, 195,p. 138

39. Ibid

Following this recourse some scholars have come up with an interpretation of article 33 of the UN Refugee Convention arguing that it is inclusive of rejection at the border. In this respect, Goodwin-Gill argues that an extension of the scope of refoulement had taken place through the host state practice to include rejection at the border.<sup>40</sup>

Davy, on the other hand, rejects the exclusionary reading for three reasons.<sup>41</sup> First, the drafting history of the UN Refugee Convention doesn't offer unambiguous support for the contention that rejection at the border is outside the scope of Art 33. The exceptions in article 33(2) of the UN Refugee Convention were included to meet the demands for a limitation of the prohibition of refoulement in later stages of the drafting. Moreover, the expression 'in any matter whatsoever' was included in the wording of article 33(1) of the Convention, supporting an inclusionary interpretation of this norm. Finally, delegations also complemented the English term 'return' with the broad French term "refouler" for the same purpose.<sup>42</sup>

Davy, to substantiate her claim also referred to Article 31(1) of the Convention, which exempts refugees from penalties on account of illegal entry or presence and traces the legislative history of the provision. She lays bare the hierarchy of interests of the refugee a position prior to those of the state. In the next step, she concludes that:

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40 Guy S. Goodwin-Gil, *The Refugee in international law* (second edition) oxford university press, New York (1996)p. 123

41. *Supra* note 1, 428

42. *Ibid*

*It would be an evaluative contradiction to exempt refugees entering illegally from penalties, while insisting on an unconditional state right to reject refugees at the border. On the contrary; if the Convention compels contracting states to refrain from penalizing the violation of entry regulations by refugees, it must be concluded a fortiori that the Convention does not allow that the observance of the same regulations is enforced extante by the means of refoulement.<sup>43</sup>*

Hence, taking Davy's convincing arguments, the question of whether non-rejection at the border is embraced by article 33 UN Refugee Convention must be answered in the affirmative.

It is remarkable and must be noted in this connection, that with respect to the question of admission and the granting of asylum too, the OAU Refugee Convention represents advancement on the universal Refugee Instrument. (i.e the UN Refugee Convention). Although of merely Regional scope, the OAU Convention on Refugees stipulates in its Article 11(1) that member states of the organization are to use "their best endeavors... to receive refugees and secure (their) settlement". Furthermore, regarding admission and non- refoulement, sub-article (3) of the same article provides that, "No person shall be subjected by a member state to measures such as rejection at the frontier, return or expulsion which would compel him to return to or remain in a territory where his life or liberty would be threatened. It thus makes it mandatory for the member states to admit prima facie refugees and thereby secures for them at least preliminary asylum.

Similarly UNHCR Executive Committee asserted that non-rejection at the frontier is part of the non-refoulement norm.<sup>44</sup> Hence, if non-rejection is a legal corollary of the prohibition of refoulement, then art 33 of the

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43. Ibid, p. 430

44. Report of the 28<sup>th</sup> session No. 6(XXVIII)-1977= UN doc A/Ac. 96/549, paragraph 53.4

Refugee Convention, article 3 of CAT and article 45 of the Fourth Geneva Convention would entail an implicit right to entry for their beneficiaries.

### **2.3.2 Access to Full- Fledged Asylum Procedures**

A determination of the refugee status is a matter of death or life to the asylum seeker as many of the rights are enjoyable after his refugeehood is established. That is in spite of the fact that “determination of refugee status can only be of declaratory nature, as opposed to a constitutive one.”<sup>45</sup> In respect to this fact then, status determination is a subsidiary to a refugee as it is meant only to declare the existence of the definition of a refugee.

The International Instruments concerning refugees until the First World War did little more in the matter of determination of refugee status than authorizing certain officials or committees to certify the refugee status of eligible persons. The Constitution of the IRO contained a provision for determining the eligibility of refugees in Annex 1. However, the eligibility provisions are omitted in the UNHCR Statute. The reason is that the work of the High Commissioner generally related to ‘groups and categories of refugees’ rather than to individuals. Thus, there are no set procedures in the Statute for status determination. Upon receipt of a petition, the UNHCR office makes the determination of the person’s eligibility for its assistance in a manner it thinks fit.<sup>46</sup>

The 1951 UN Refugee Convention and the 1967 Protocol, like the UNHCR Statute do not contain any provisions governing recognition of refugee status.<sup>47</sup> All member states, as they are under an obligation to observe

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45. Supra note 6,p.11

46. Ibid, 116

47. Art 9 of the Refugee Convention, however, impliedly recognizes determination of refugee status by stating.... Pending a determination by the contracting state the person is in fact a refugee...

the non-refoulement provision will then have two options either they conducted determination procedures to find out which claimants fall under the refugee definition and which do not-in principle, only the latter can be sent back –or they omit procedures and let all asylum seekers stay. If states rule out the last option as states interested in migration control do, they are actually under an obligation to conduct determination procedures. Denying a certain group of asylum seekers any form of procedures would only be acceptable under the convention if the whole group were allowed to stay.<sup>48</sup> Therefore; the competence of individual states which are parties to these instruments to accord refugee status is based on presumption.

On the other hand, the OAU Refugee Convention in its article 1.6 explicitly provides that ‘for the purpose of this convention, the contracting state of asylum shall determine whether an applicant is a refugee. In both Instruments, however, it is within the discretion of state parties to establish the procedure whether it is by presumption or explicit provision. Accordingly, globally, as well as regionally, asylum procedures differ widely depending on the constitutional and administrative structure of each state. In some states the determination of claims is carried out in two –tiered system by specific authorities, while others involve courts at the appeal stage, allowing for up to four tiers.<sup>49</sup> In yet other countries refugee status is determined under informal arrangements or ad hoc for specific purposes, such as the issuance of travel documents.<sup>50</sup>

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48. Supra note 19

49. Supra note 23.

50. Supra note 19, p 45

The fact that states employ a varied form of procedure may subject refugees to unpredictable treatment. Since protection is viewed in the individual Vs state conflict of interest, contracting states may have open gates to further restrict the status determination. In view of these and similar considerations, the Executive Committee of the High Commissioner's programs, at its twenty- eight sessions in October 1977, recommended that procedures should satisfy certain requirements. These basic requirements are:

- i. *The competent official (e.g immigration officer or border police officer) to whom the applicant addresses himself at the border or in the territory of a contracting state should have clear instructions for dealing with cases which might come within the purview of the relevant International Instruments. He should be required to act in accordance with the principle of non-refoulement and to refer such cases to a higher authority.*
- ii. *The applicant should receive the necessary guidance as to the procedure to be followed.*
- iii. *There should be a clearly identified authority - wherever possible a single central authority with responsibility for examining requests for refugee status and taking a decision in the first instance.*
- iv. *The applicant should be given the necessary facilities, including the services of a competent interpreter, for submitting his case to the authority concerned. Applicants should also be given the opportunity, of which they should be duly informed, to contact a representative of UNHCR.*
- v. *If the applicant is recognized as a refugee, he should be informed accordingly and issued with documentation certifying his refugee status.*

- vi. *If the applicant is not recognized, he should be given a reasonable time to appeal for a formal reconsideration of the decision, either to the same or to a different authority, whether administrative or judicial, according to the prevailing system.*
- vii. *The applicant should be permitted to remain in the country pending a decision on his initial request by the competent authority referred to in paragraph (iii) above, unless it has been established by that authority that his request is clearly abusive. He should also be permitted to remain in the country while an appeal to a higher administrative authority or to the courts is pending.*

Most of these basic requirements are reflections of the most fundamental human rights of individuals embodied in International Instruments and are in accordance with the general principle of due process of law. Most national Constitutions also embody such procedures and the right of parties to administrative tribunal or court. The right to remain in the host country before status determination and if status is refused thereafter, is also one facet of non-refoulement principle.

In consideration of such facts, it will be legitimate to argue that the recommendation of the Executive Committee is to be complied with by contracting states. One of the legal protections of the refugee is, thus, this entitlement to full –fledged procedure of status determination. The absence of a formal procedure for determination of refugee status may amount to denying to the refugee, in administrative practice, the actual status conferred upon him/ her by International Instruments.

### **2.3.3 Access to Protection**

As we described earlier legal protection is an elastic concept which covers all safeguards ranging from the recognition of refugeehood and an entitlement to travel document to the overall respect to human rights. This understanding may preclude us from the conventional classification we made in this section as regards access to territory and full-fledged procedures. The term access to protection can sufficiently be inclusive of the two rights previously discussed. However, the term as used in the present section should be understood to refer specifically to the different rights and freedoms the refugee enjoys after she/he secures his refugee status.

A refugee in exile is faced with a two fold problem; on the one hand, as inhabitant and on the other hand, as a foreigner bereft of protection by a state. To alleviate this problem of refugee the Refugee Convention includes a host of provisions benefiting them. In this section the different rights and their extent will be seen. But before hand, the required standard of treatment and the respective obligation imposed on refugees will be briefly described.

#### **2.3.3.1 Various Types of Treatment on Civil Rights**

The UN Refugee Convention provides for various standards of treatment for refugees with respect to their enjoyment of particular civil rights.

##### **a. National Treatment**

The Convention Provides Refugees the same treatment as is accorded to nationals with respect to artistic rights and industrial property (article 14); access to courts and legal assistance (article,16); wage earning employment subject to certain conditions (article 17(2) and (3); rationing (article 20); elementary education (article 2 (2) public relief (article 23);

labour legislation and social security (art 24); and fiscal charges (article 29(1)).

#### **b. Most Favored National Treatment**

The most favourable treatment as is accorded to nationals of other countries is to be accorded to refugees regarding the right of association (article 15) and wage earning employment in general (art 17(1)).

#### **c. Treatment not Less than Aliens**

Treatment not less favorable than aliens generally, but with a recommendation for an even better one for refugees are to be provided regarding: property rights (art 13); self –employment (art 18) ; the right to practice liberal professions (article 19) housing (article 21 ); higher education , recognition of foreign academic credentials, and the award of scholarships (article 22).

#### **d. Same Treatment as Aliens**

It is provided in general terms, in article 7(1) of the UN Refugee Convention that the contracting states are to accord the same treatment as is accorded to aliens except where more favorable treatment is provided for.

In respect to the implementation of these standards of treatment three points need to be remembered. First, the provisions of the Convention are designed to be applied with out discrimination as to race, religion or country of origin.<sup>51</sup> Further more, where the Convention doesn't provide for a more favorable treatment of refugees, a state party to the Convention, must accord to them the same treatment which is accorded to aliens generally.<sup>52</sup>

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51. The 1951 Refugee Convention, Article, 3.

52. Ibid, Article 7(1)

And finally, the Convention is not deemed to impair any rights and benefits accorded by the state apart from the Convention.<sup>53</sup>

### **2.3.3.2 Duties of Refugees**

Just as the countries of asylum that are parties to the Refugee Convention are duty bound to secure and implement the rights and benefits assigned to refugees by the terms of the Convention, refugees too, have certain duties to which they must abide, by the terms of the convention. Regarding this article 2 of the Convention states that:

*Every refugee has duties to the country in which he finds himself which require in particular that he conforms to its laws and regulations as well as measures taken for the maintenance of public order.*

This formulation of the duties of refugees is clearly broad enough to include restrictions on the basic human rights of refugees, in addition to a suspension of the rights, benefits and exemptions refugees enjoy by the terms of the convention but which a state on account of exceptional circumstances such as war and other emergency crisis situations may deem necessary to impose. We should also note that Article III (i) and (2), III (6) II (6) and I (4) (g) and (5) (c) of the OAU Refugee Convention are devoted to similar restrictions of the freedoms of refugees for similar reasons.

### **2.3.3.3 Rights accorded to refugees as inhabitants**

The 1951 Convention does not deal with all the rights which an inhabitant of a country enjoys. Indeed, nothing is said about freedom of the press, freedom of assembly, participation in election, acquisition of licenses, the right to war damage and so on. This neither means that the

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53. Ibid, Article 5.

refugee is prohibited from enjoying them nor that he is granted to the same rights as nationals.

The Convention, however, doesn't impair the enjoyment of rights granted to refugees by the state independently of the Convention. Thus, in relation to rights not expressly mentioned in the Convention, the rights of the refugee can be established from either human rights Conventions of which the country of refugee is party, from customary international law or the domestic law of the state.

If we consider the right to vote and participate in the political process of the country of refugee, the refugee has no such right. In contrast with the other rights in the ICCPR, which are held by all persons in the territory of jurisdiction of the state party, article 25 guaranteed the right of 'every citizen' to political participation. Thus, since a refugee is not a citizen of the host country, there is no protection with respect to political rights.

On the other hand, the right to freedom of expression of a refugee is guaranteed by Article 39 of the same Instrument. This right includes not only 'freedom to impart information and ideas of all kinds' but also freedom to 'seek' and 'receive' information and ideas. The HRC has stipulated that states must ensure aliens enjoy freedom of expression to the same extent as non-aliens.<sup>54</sup> Thus, a refugee has the freedom of expression while he is in the country of refugee. Nonetheless, the freedom carries with it special duties and responsibilities and that, as a consequence, certain restrictions are permitted in order to protect individuals or a community. These restrictions as set out in sub article 3

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54. Supra note 13, paragraph 7

of the same provision, must be provided by law and be necessary for the respect of the rights and reputation of others or for the protection of national security, public order, public health or morals. One can find similar restrictions, imposed on refugees in the form of the obligation in article 2 of the refugee convention and article iii (2) of the OAU Refugee Convention. The latter provision commits states “to undertake to prohibit refugees residing in their respective territories from attacking any state member, by activities likely to cause tension between member states and in particular by use of arms, through the press, or by radio.”

Regarding the protection of other civil, economic, social and cultural rights embodied in other instruments, refugees are entitled to full protection of these rights provided that the country of refugee is party to the respective International Instruments. In this respect, though not clearly mentioned in the Refugee Convention, Refugees are entitled to the right to life and physical integrity, equality, personal liberty, right to a fair trial and due process of law.

Some of these rights include the following:

- Freedom of religion
- Access to employment
- Education
- Freedom of movement
- Access to court

#### **2.3.3.4 Specific Rights of a Refugee**

The specific problems facing a refugee are manifold. He is a foreigner, but with no ties to a particular country. He often consequently possesses no passport or other identifying documents. Having left his country for political or similar reasons, he can often not obtain documents relating to his family and other status from the authorities of the state of which

he formerly was a citizen or resident. He has no home country and therefore no place to go if he has to give up his residence in the country of his refuge as he often entered the country of asylum illegally. For these and similar problems a solution must be found and the Refugee Convention established rules governing such situations. A brief account of these protections is described hereunder.

- **Personal Status:** broadly refers to the refugee's legal capacity, family rights, the matrimonial regime, succession and inheritance. The Convention in accordance with principles adapted by certain earlier Conventions, provides that the personal status of a refugee is to be governed by the law of the country of domicile or if he has no domicile, by the law of the country of residence.
- **Identity Papers and Travel Documents:** the contracting states undertake, under article 25 of the Refugee Convention to issue identity papers or documents certifying who the refugee is and travel documents to refugees residing in their respective territory.
- **Non Refoulement-** this principle prescribes, broadly, that no refugee should be returned to any country where he or she is likely to face persecution or torture. The right to non-refoulement includes non-return and non-rejection at the frontier.
- **Non-penalization for Unlawful Entry and Non- Expulsion:** pursuant to article 31 of the 1951 Refugee Convention, Contracting States are obliged to impose no penalties on refugees coming directly from the country of persecution, provided that they present themselves with out delay to the competent authorities and show good cause for their illegal entry in to or presence with in

the country of refuge. Similarly a refugee lawfully in the territory of a contracting state may not be expelled except on grounds of national security and public order. Expulsion shall not further occur except in pursuance of decision reached in accordance with due process of law.

- **Naturalization:** this is the final goal of international protection accorded to refugees, when their repatriation has proved impossible. Consequently, the Convention invites the Contracting States to facilitate as far as possible the naturalization of refugees by expediting proceedings and reducing the cost of such proceedings.

## **CHAPTER THREE**

### **Legal Protection of Refugees in Ethiopia**

#### **3.1 Legal Framework for Refugee Protection**

Ethiopia is party to both the UN and OAU Refugee Conventions. These Legal Instruments were the legal basis for all refugee protections in Ethiopia for more than 30 years. These laws, however, were not supported by any domestic law which elaborates the standards and the norms applicable. The hierarchy of the instruments was also different in the different regimes in the country. ARRA deals with refugee issues starting from determination of status to withdrawal and different rights and freedoms on the basis of mainly the 1951 Refugee Convention. This practice continued until 2004 when Ethiopia enacted its Refugee Proclamation with the aim of effectively implementing the Global and Regional Refugee Conventions. The proclamation is currently not only the sole primary domestic legal instrument on refugees but it is also one of the domesticated Human Rights Instruments.

#### **3.2 Definition and Legal Protection of Refugees in the Ethiopian Refugee Proclamation**

As described earlier, currently the Refugee Proclamation is the primary domestic legal instrument for the protection of refugees. The Proclamation, among other things, incorporates a host of provisions which deal with the definition of who a refugee is and the different legal protection and treatment accorded to refugees in Ethiopia.

In this section, the researcher will describe the substantive provisions of the proclamation and test whether the standards and principles provided

in it converge or diverge with the global and regional general and specific international instruments to which Ethiopia is a party.

### **3.2.1 Who is a refugee in Ethiopia?**

Definition may be used both as a basis for overseas selection and for the purposes of determining claims of asylum or refugee status raised by persons physically present or arriving in a state's territory in municipal law. States adopt different approaches to the problem to definition. In the majority of states, the criteria of the 1951 Refugee Convention are commonly adopted, with additional provisions often made for the benefit of others potentially excluded.

Ethiopia is no exception in this respect. The Refugee Proclamation gives definition to the term "refugee" to include those individuals who fulfill the inclusion, exclusion and cessation clauses contained in the global and regional Refugee Conventions. Let's consider the definition employed by the Refugee Proclamation.

#### **I. Inclusion clause**

Article 4 of the proclamation incorporates the definition of a refugee as defined in the 1951 UN Refugee Convention and the 1969 OAU Convention. In this provision the criteria of liability to persecution as the underlying rationale precluding return is incorporated. Thus, any person shall be considered as refugee where:

*"Owing to a well founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, he is out side the country of nationality( or in case of stateless person outside of his former habitual residence) and he is unable or, owing to such fear, is un willing to avail himself of the protection of that country"<sup>1</sup>.*

1. Refuge proclamation, proclamation no 409/2004, the FDRE House of peoples Representatives, 10<sup>th</sup> year no 54, 19<sup>th</sup> July 2004 Addis Ababa Art 4(1) and 4(2)

This definition is just a direct replica of the 1951 UN Refugee Convention. Thus, there is convergence between the proclamation and the global instrument which defines refugees in the individualized conception. On the other hand, as regards refugees in mass influx, we see that the proclamation diverges a bit from the 1969 OAU Refugee Convention.

Per article 4/3/ of the proclamation, any person shall also be considered a refugee where:

“Owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his country of origin or nationality, he is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality, in case of refugees coming from Africa /emphasis mine/”.

Though this provision aims to include the extended definition covering those asylum seekers whose flight is caused by generalized fear, it employs a slightly different application for group displacement which is not stated in the OAU convention. The last limb of the provision asserts that the term ‘refugee’ in group displacement is not applicable to refugees coming from non-African states. It expressly limited the case to refugees coming from Africa.

Even though the position taken by the Refugee Proclamation seems to reflect the overall intention of the OAU Refugee Convention, the latter doesn’t limit group displacement occurring within Africa. The intention the authors of the convention may be inferred from the convention’s object to meet “the specific needs of African refugees”. Moreover, the convention provides not only rights but also duties in some regard. This reciprocity could indicate an intention to limit application to refugees

coming from the territories of the contracting states. Yet, the terminology in the OAU convention like “every person” employed in the definition without any qualification unlike the case in the Refugee Proclamation doesn’t seem to have the intention to restrict its application in territorial terms.

In addition, as article VIII of the Convention describes, the convention is meant to serve as an effective supplement of the 1951 Refugee Convention. Therefore, restricting the OAU convention as applicable only to the African territories means creating two distinct classes of refugees within one convention.

In consideration of all these, then, Ethiopia’s definition of the term ‘refugee’ in group displacement is clearly a departure both from the UN and OAU Conventions on Refugees. It employs two classes of refugees—one for Africans only and another for any person from wherever. This also goes against the objective of creating effective implementation of the two conventions, which the preamble intended to accomplish<sup>2</sup>.

Practically speaking, however, Ethiopia has faced no mass displacement from non-African states. Thus, the poor drafting techniques will have no far-reaching negative effect. Instead, the incorporation of both the individualistic and extended notion of refugee hood has to be appreciated for it reflected the most developed definition in the international legal framework. The principle of non-refoulement which constitutes both non-return and non rejection at the frontiers can well protect those refugees who can be excluded by the territorially restrictive definition.

## **II. Exclusion clause**

This is governed under article 5 of the Proclamation. The provision is

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2. Ibid, preamble third paragraph

basically similar to those adopted under the UN and the OAU Refugee Conventions. However, sub-paragraph 3 excludes a person who has been guilty of acts contrary to the purposes and principles of the United Nations or the Organization of African Unity, the now African Union as embodied not only in the charters but also ‘resolutions or other relevant instruments of those bodies’. This very wide formulation of the Refugee Proclamation including non-binding resolutions opens the gate for extending the grounds of the exclusion clause. On the other hand, sub-paragraph 4 of this article, which deals with persons of more than one nationality, is legally speaking not an exclusion clause. It merely disqualifies those persons from refugee status insofar as they can avail themselves of the protection of another state. The wording of this provisions can be traced to an explanatory statement inserted under Article 1A (2) of the 1951 Refugee Convention, which the 1969 OAU convention incorporates under Article 1(3). The intention of that statement is to explain the meaning of the term ‘nationality’ only in so far as the term ‘refugee’ is concerned and it should have been changed in to the inclusive clause.

Another point worth considering is article 5(1), an exclusion, which refers to crimes committed against peace, a war crime or crime against humanity in any international instrument to which Ethiopia is a party. The elements of this exclusion do also exist in Article 1(5) (a) and article 1(5) of the OAU and UN refugee conventions respectively. However, the proclamation includes the phrase ‘... to which Ethiopia is a party’ which may be subject to various interpretations. In fact, Ethiopia has ratified most of the international instruments, which prohibit such kinds of crimes like genocide, slavery. But at least, theoretically, what would have been the fate of those asylum seekers who commit such crimes specified in international instruments not ratified or acceded to by Ethiopia? Since, ratification of the instruments by Ethiopia is a condition precedent

for exclusion, s/he may not be excluded. Yet, since Ethiopia is party to the UN and OAU conventions, which exclude any refugee committing the crimes in any international instrument he may be excluded. Thus, it would have been better to directly adopt the wording of the two conventions.

### **III. Cessation clause**

In this regard the refugee proclamation (article 7) is perfectly in line with the 1951 convention. However after the Authority decides on cessation of status, the refugee is not given the right to appeal to the Appeal Hearing Council or a court. This will adversely affect the refugee's right as his fate is exclusively rested on the Authority.

#### **3.2.2 Who is Responsible for the Administration of Refugee Affairs?**

The organ responsible for the administration of refugees in Ethiopia is given due emphasis in that it was established prior to the enactment of the Refugee Proclamation. The Security, Immigration and Refugee Affairs Authority is established by proclamation no 6/1995, among other things, to deal with matters related to refugees. The same authority is also referred in the refugee proclamation for the implementation of the Refugee Proclamation. The authority was established with the following objectives.

- Executing policies, strategies and laws on state and public security, immigration and refugees<sup>3</sup>.

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3. Security Immigration and Refugee Affairs Authority Establishment Proclamation 4. 6/1995, Federal Negarit Gazeta 1 year Art 4 and 5(1)

- Take responsibility over matters relating to refugees in cooperation with appropriate organs and international organizations<sup>4</sup>.

To follow up its responsibilities over refugee related issues, the Authority established the Administration of Refugees and Returnees Affairs (ARRA). Since ARRA is established as a department to deal with refugee and returnees affairs, we can assert that ARRA has a legal backing, which is obtained from the proclamation establishing the Authority. However, ARRA is not legally independent of Ethiopia's security Authority.

ARRA has an overall responsibility on matters relating to refugees and returnees. It has the primary responsibility of implementing international protection and assistance. ARRA is the main body for determination of eligibility for refugees' status, issuance of identification card and travel documents for refugees; managing refugee camps and settlements and provision of health, education and other programs for refugees<sup>5</sup>.

UNHCR is ARRA's main partner. This international Agency assists ARRA in managing refugee camps and settlements. While ARRA takes the prime responsibility in registering and distributing food packages and delivering transporting allowances to repatriating refugees, UNHCR coordinates all field related activities on the ground. In addition UNHCR finances almost all activities of ARRA.

Apart from UNHCR, there are different agencies and non-governmental organizations that work with ARRA in the implementation of different programs.

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4. Ibid Art 5(1)

5. Interview with Ato Haileselassie G/Mariam protection Department ARRA, Addis Ababa October 10, 2008.

### **3.2.3 Access to Territory**

It is known that there is no clear right of aliens in international law to admission to a host state. It is the prerogative of the state to allow or not to allow, the crossing of borders to its territory. However, if a state has bound itself through a treaty to allow aliens (particularly refugees) on certain exceptional circumstances like that the HRC established on the basis of article 12 of the ICCPR, then it is possible to argue that the refusal of the state to allow entry into its territory amounts to a violation of its international obligations.

In the case of Ethiopia such a stance can well be established on the same way that we discussed the right to access to territory in chapter two. As Ethiopia is party to ICCPR, which provides for the right to leave and enter one's own country, and international instruments explicitly prohibiting refoulement like the 1951 refugee convention, CAT, the Fourth Geneva convention and the 1969 OAU convention on refugees, it can't in principle refuse any asylum seeker in search of safety from persecution to enter its territory. These instruments provide the principle of non-refoulement including non-rejection at the frontier, which impliedly recognizes the right to entry of refugees.

The refugee proclamation on the other hands protects the right to entry of asylum seekers as it accommodates an advanced formulation in this respect in a double manner. First, article 9 of the proclamation clearly provides that 'no person shall be refused entry into Ethiopia if such refusal subjects the person to return to a country where he suffers persecution'. This is more than prohibiting rejection at the frontier.

Secondly, once the asylum seeker crossed the Ethiopian territory, article 13/1/ allows any person who is at the frontier or any other entry point within Ethiopia, whether he has entered the country lawfully or

otherwise, to submit an application to those empowered for this purpose. Moreover, the Proclamation prohibits institution/ commencement/ or continual of criminal proceedings against a person who has applied or is about to apply for asylum pursuant to the proclamation on account of his illegal entry<sup>6</sup>. The latter provision asserts that there is no penalty to be imposed on an asylum seeker on the basis of the legality of his entry in the Ethiopian territory. This is in convergence with the non-penalization for illegal entry provided in article 31 (1) of the UN Refugee Convention.

Thus, the Ethiopian refugee proclamation allows any asylum seeker to enter the Ethiopian territory, for the purpose of seeking refugee. This is perfectly in line with the international human right instrument on the basis of which the right to entry is established. In practical terms, too, the different entry places at the borders serve as open doors for individuals coming from Rwanda, Congo and Burundi coming through Kenya and Uganda, and those directly coming to Ethiopia from Sudan, Somalia and Eritrea. As the ARRA protection officer in the head office asserted no single asylum seeker was precluded from access to Ethiopian territory<sup>7</sup>.

### **3.2.4 Access to Full Fledged Procedures**

The right to determine refugee status is left to contracting states in the 1951 UN and 1969 OAU Convention on refugees. A state which intends to effectively implement these conventions needs to design a mechanism for the determination of refugee status. In line with this the Ethiopian

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6. Supra note 1, Article 13 (5)

7. Supra note 5

Refugee Proclamation devised a detailed procedure for status determination and the withdrawal of the same. Part three of the proclamation provides the procedure including the different rights of the asylum seeker in the various stages of the determination including the right to appeal.

Status determination of refugees can be made in two different forms i.e. prima facie (group) determination and individual status determination. The refugee proclamation adopted both of these kinds. Concerning group refugees coming from Africa and which satisfy the OAU Convention causes of flight as provided in article 4/3/ of the proclamation, their status is recognized by declaration of the Authority<sup>8</sup>. Dealing with each individual case is not only impracticable but it also goes against the detriment of some refugees whose cause can not strictly be established on individual basis but who need actual protection. In practical terms, this primery facie determination in Ethiopia is applicable to group refugees coming from Sudan<sup>9</sup>. These refugees cross the Ethiopian border in large influxes, in hundreds as a result of the civil war and the political unrest that took place in their country of origin.

The refugee proclamation has no detailed procedure for group determination. It just provides that the Authority declares as refugee certain classes of persons which are deemed to satisfy the OAU convention requirements. However, practically, these refugees undergo a process called screening to assess whether an individual asylum seeker is indeed part of a group, which is declared as prima facia refugees<sup>10</sup>. The screening committee, which is composed of ARRA and UNHCR

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8. Supra note 1, article 19

9. Supra note 5

10. Ibid

members, sees the factual situations like whether the person is a member of that group (for instance, Sudanese or Somalia), he is affected because of the unrest, he actually came from the part of the country where there is unrest etc. The committee doesn't see whether an individual is subject to persecution because of his race, religion, political opinion... or not.

Determination in the legal sense of the word only occurs when ARRA has to deal with individual cases, which do not fall within the prima-facie category. In this regard, the Refugee Proclamation incorporates a host of provisions dealing with determination of status from the moment of entry into Ethiopian territory to the final stage where refugee hood is recognized.

To begin with, the proclamation clearly identifies the bodies which receive application of asylum seekers when refugees first cross into Ethiopian territory. The offices of the Authority or Police station are made eligible to accept an application for refugee hood<sup>11</sup>. Though one could doubt the knowledge of the police officers in relation to refugee affairs, the guidelines endorsed by the Executive Committee of UNHCR does include the possibility of accepting application of refugee status by border Police officers<sup>12</sup>. This option strengthens the geographical accessibility of the procedure to the asylum seekers and is pragmatic. In principle, in areas where ARRA's branch office is in the nearby the office would receive the applications. However, branch offices of ARRA are found only in few cities and towns of the country. Therefore, refugees

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11. Supra note 1. article 13 (1)

12. Handbook on procedures and criteria for determining status, office of the UNHCR, Re-edited Geneva, January 1992,

could use the second option and submit their case to the nearest police station (officer) within the period specified in the Refugees' Proclamation.

At this juncture we need to assess the time period by which the asylum seeker is expected to apply to the office of the authority or the police station. Article 13/1/ obliges the asylum seeker to apply to the said organs within fifteen days of the time the asylum seeker is at the frontier or any other entry point or within Ethiopia. While agreeing that asylum seekers should in principle not unreasonably delay the introduction of a Claim for refugee status, the potential problems with strict deadlines are great. For instance, if a person is late in filing a claim but is nevertheless protected from deportation (refoulement) under article 9 of the proclamation, what will be that person's status in Ethiopia? Thus, the strict deadline creates a limbo case of the status and protection of the asylum seeker. However, in practice ARRA accepts applications beyond this deadline.

Once the asylum seeker submitted his application to the aforementioned organs the applicant will be requested to fill relevant forms and vouch for the truth of the statement therein<sup>13</sup>. The Authority is obligated to provide the applicant with an identity card attesting to his status as asylum seeker<sup>14</sup>. This has a two fold advantage. First, he will be protected from arrest or detention by his mere presence in Ethiopia as the protection exempting detention exists for asylum seekers. Secondly the identity card will facilitate the right to remain and reside in Ethiopia and the provision of food, transportation etc by UNHCR and other NGO's up until his status is finally determined by the Authority. In practice, ARRA issues

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13. Supra note 1, Art 13(3)

14. Ibid, Article 13/(4)

identity card for individual asylum seekers so called ‘urban refuges and not to those whose status is determined by prima facia determination.

In completing the form, the asylum seeker is expected to provide information regarding the circumstances that necessitated flight in addition to general background history of his situation in his country of origin or habitual residence. Most of the questions, interviews and ultimately the decision of the authority are based on the facts stated by the asylum seeker. Following this, the applicant is brought before the authority for decision.

In this respect article 14 of the refugee proclamation just provides that decision will be made by the Authority. It doesn’t incorporate procedural provisions outlining the decision making process by the Authority. While it is clear that “there should be a hearing of asylum seeker during which he should be given sufficient time to present his case, that a qualified interpreter should be present, that decisions should be made in writing and within a reasonable time”<sup>15</sup>, there is no indication whether there will be a single decision maker or a panel, the qualifications of the decision maker/s/ or how the burden of proof will be distributed among the applicant and the decision maker. In practice, however, the applicant is brought before an Eligibility Committee comprising officials of both ARRA immigration office and the UNHCR<sup>16</sup>. The onus then rests on the applicant to prove his case and to provide documentary evidence, where available, to support his claim. It is in determining the merits of each case that practical considerations are taken into account.

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15 Ibid , Article 14/2/(a-d)

16. Supra note 5

Taking the special vulnerability of the asylum seeker, the applicant may not be able to produce proof for each and every claim. In such instances, then the Eligibility committee weights the applicant's claim against commonly known facts of the situation in the country of origin or former domicile using channels of UNHCR and other voluntary and humanitarian organizations in the country. Where both the application and the objective facts cohere and there are no intervening exclusion clauses, the applicant is adjudged genuine and is given a refugee status along with the requisite identification card.

The role UNHCR play in the Eligibility Committee is just as an observer capacity<sup>17</sup>. This derives sensibly from UNHCR's supervisory role and from the obligation of state parties to co-operate with the office, and it allows UNHCR to monitor closely matter of status and the entry and removal of asylum seekers. However, in Ethiopia, the observer capacity of UNHCR doesn't extend in cases of the withdrawal procedure, at which point the interest of asylum seekers would be at stake.

The UNHCR representative neither has a decision making power nor give a binding opinion as some other states opt to give<sup>18</sup>. However, an observer capacity has also a great deal to influence and contribute to the proper safeguard and protection of refugees. Good will-gill in this respect asserted that UNHCR's procedural responsibilities may be summarized as contributing to the effective identification of refugees in need of protection. He further identified four roles of UNHCR<sup>19</sup>. These are:

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17. Supra note 1, Article 14(2) (e)

18. Guy S. Goodwin-Gil. *The Refugee in International law* (second edition) oxford University Press, New York (1996).

19. Ibid

- a. *Offering an assessment of the applicant's credibility in light of the claim and conditions known to exist in his or her country of origin.*
- b. *Providing information on the treatment of similar cases or similar legal points in other jurisdictions.*
- c. *Representing the international community's interest by providing authoritative interpretations of fundamental concepts, such as 'well founded fear' and 'persecution', and*
- d. *Promoting an application of the 1951 convention and 1967 protocol that best agrees with their humanitarian objectives.*

In practice UNHCR is a very active member of the Eligibility Committee to play the aforementioned roles due to the weakness of ARRA's structures, which UNHCR help to improve.

An asylum seeker who is dissatisfied by the decision of the Authority has a right to appeal to the Appeal Hearing Council within 30 days of being notified of such decision<sup>20</sup>. This council is composed of six individuals including representatives from the Authority as a chairman. The other members of the council come from the Ministry of Foreign Affairs, the Ministry of Justice and the Federal Affairs, the last office being represented by two personnel.<sup>21</sup> Even though the composition of the council is fair as it includes most institutions which have a genuine link with refugee affairs, the fact that the chairman belongs to the authority, which already saw and decided the case in the first instance, makes the impartiality of the council questionable.

From the practical perspective, on the other hand, the fact that the council constitutes individuals from different offices precluded quick entertainment of appeal cases. The researcher is informed that since the establishment of the council by the refugee proclamation, no single appeal case has been entertained for the same reason<sup>22</sup>.

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20. Supra note 1 Article 14 (2)

21. Ibid article 16(1)

22. Supra note 5

Since, the handbook issued by the executive committee leaves open both the identity and composition of the re-examining body, Ethiopia has opted for an administrative tribunal and procedure to deal with refugee status determination. However, taking the provisions of the FDRE constitution one can pose a strong argument in favour of the right to appeal to the judiciary. Article 37 of the FDRE constitution states that “every one (including a refugee or asylum seeker) has the right to bring a justifiable matter to, and to obtain a decision or judgment by, a court of law or any other competent body with judicial power”. On the basis of this provision a refugee (asylum seeker) could, arguably have recourse to Ethiopian courts by way of appeal. However, since the refugee proclamation doesn’t explicitly recognize the right to appeal from the Appeal Hearing Council, like for instance the labour proclamation allowing appeal from the Labour Relations Board to the Federal High Court<sup>23</sup>, and due to the existence of refugee insensitive judges, it is hard for asylum seekers to enforce their right in a court of law.

The jurisdiction of the Appeal Hearing Council, as per article 17 (1) of the proclamation, extends to status determination and withdrawal thereof. However, as far as the right to appeal is set for the benefit of the refugee there are other sensitive areas where appeal would have been justified. In this regard the refugee proclamation is silent as regards the introduction of appeal to the council on decisions concerning cessation of status, a finding that a refugee is a danger to national security, expulsion and temporary detention. The fact that the authority can cease status, expel and order detention without any higher administrative or judicial supervision subject the refugee to violation of his most basic rights protected in the refugee proclamation and the different international instruments.

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23. Labour proclamation, proc no 377 /2003, Federal of FDRE 10<sup>th</sup> year no 12 A/A 26<sup>th</sup> Feb.2004-Art 154 (1)

To sum up this part it can be said that the procedure of status determination in the refugee proclamation is generally fair and exhaustive. It is also in line with the due process of law and reflects the guiding principles set by UNHCR which we also discussed in the previous chapter. Nevertheless, the strict deadline for application, absence of appeal for the determination of danger to national security, expulsion and temporary detention restrict the human rights of refugees. Moreover, the procedures say nothing about the way evidence is produced and weighted. Even though the proclamation has a general provision protecting vulnerables particularly children and women, it is not reflected either in the definition or in the design of the procedure.

### **3.2.5 Specific Rights Granted to Refugees Under the Refugee Proclamation**

Part four of the refugee proclamation describes the rights and obligations of asylum seekers and recognized refugees. Discussing all the rights and freedoms granted to refugees will be redundant as we discussed them in the second chapter. Thus, the researcher opts to describe and analyze, in this and subsequent section, the explicitly enumerated rights and some selected ones, which are often controversial.

#### **3.2.5.1 Non -Refoulement**

The corresponding provision protecting refugees in Ethiopia from refoulement in the Refugee Proclamation is article 9. This provision states that:

*No person shall be refused entry in to Ethiopia or expelled or returned from Ethiopia to any other country or be subject to any similar measure if as a result of such refusal, expulsion or turn or any other measure, such person is compelled to return to or remain in a country where:-*

- a. *He may be subject to persecution or torture on account of his race, religion, nationality membership of a particular social group or political opinion,<sup>24</sup> or*
- b. *His life, physical integrity or liberty would be threatened on account of external aggression, occupation, foreign domination or of events seriously disturbing public order in part or whole of the country.<sup>25</sup>*

While this article is generally in line with the provisions of the 1951 UN and 1969 OAU refugee conventions it incorporated an advancement and a short coming from the conventions. It is advanced from the 1951 convention in that it clearly accommodates non rejection at the frontier in the principle of non-refoulement. The term “no person shall be refused entry....” at the beginning of the provision sufficiently indicate the non-rejection element. Nevertheless, when we closely see the wording of sub-paragraph 1(a) of the provision, it contains a bit contradictory illustration with CAT.

Even though one can understand the inclusion of the term ‘torture’ is meant to give effect to article 3 of CAT, the way it is linked by the proclamation to the five specific grounds of race, religion, nationality, membership of a particular social group or political opinion makes the application of torture restrictive. It is clear that article 3 of CAT is absolute and has no limiting grounds. Thus, the wording of article 9 of the proclamation alters the protection under the non-refoulement provision of CAT.

On the other hand, though article 12(1) (b) of the proclamation aims to give effect to non-refoulement provision of the OAU convention by protecting refugees fleeing generalized harm, the mere fact that the same

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24. *Supra note 1, Article 9(1) (a)*

25. *Ibid, Article 9(1) (b)*

provision, in its paragraph 2, subjects it to the limitation clause diverges from the OAU convention Art 11(3) which provides non-refoulement without any exception.

Although the language of Article 9/a/ of the proclamation almost identically states the exceptions to the non-refoulement principle, the question remains as to whether this provision, read in light of the provision of paragraph 3 of article 9 of the proclamation adequately reflects the restrictive application and interpretation of article 33/a/ of the 1951 Refugee Convention.

There are two exceptional circumstances where a refugee could not avail himself of the protection afforded to him under article 9/1/. The first is where a refugee who found himself in Ethiopia is regarded as a danger to the security of the country. Neither the Convention nor the Refugee Proclamation provides definition or rules where we can say that a given refugee is a danger to the security of the country. According to the proclamation such determination has to be made 'in line with the spirit of this proclamation and existing law'. This juxtaposition of the 'spirit' and 'existing law' is legally speaking not very clear, and article 9/3/ is open to interpretation where by it could be invoked to expel a refugee under provisions of the proclamation other than article 9/2/. It must be further noted that in the absence of clear definition, the exceptions should be applied in extreme circumstances and as a last resort. The strict standard implied in the phrase 'serious reasons' regarding as danger to the national security, used in the refugee proclamation than the less strict phrase 'reasonable ground' in the Refugee Convention should be construed narrowly to apply only to protect the legitimate interest of Ethiopia as a last resort.

The second instance where it is possible to return a refugee to his country of origin or former habitual residence without breaching the non-refoulement principle is where having been convicted by a final judgment of a particular serious crime, he constitutes a danger to the community of the country.

Again, neither the Convention nor the Refugee Proclamation defines the term 'serious crime'. However, the Authority when determining the return of the refugee in question, may if it thinks fit, interpret the term as an offence that carries death penalty or rigorous imprisonment for fifteen years or more or where there is possibility of the person in respect of whom the offence is committed dying. This is the interpretation rendered whenever an Ethiopian court defines the term 'serious crime'<sup>26</sup>.

It has been noted that no single refoulement case of refugees is ever reported to the UNHCR in Ethiopia. However, one could reasonably speculate a possibility that the refugees might be returned to the territory they came from when the defense force catch them. The members of the defense force usually direct them to one of the branches of ARRA. But due to lack of knowledge about refugee issues or absence of appropriate body for the protection of refugees, they may reject them at the frontier, which in effect is refoulement. This is very likely to happen.

### **3.2.5.2 Non-Expulsion**

One basic protection available to refugees under the 1951 Refugee Convention is prevention of expulsion from the country of refugee except on the grounds of national security and public order. The Ethiopia Refugee Proclamation is also a direct replica of this right. It is further in

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26. Criminal procedure code of Ethiopia, Article 63(1)

conformity with article 32 of the 1951 convention, guaranteeing the procedural safeguards of the refugee in the determination and execution of an expulsion order.

It obligates the Head of the Authority to allow the concerned refugee to present his case before making an expulsion order<sup>27</sup>. Thus this protection entitles each refugee to a decision in his own case and thus, like article 13 of the ICCPR, it would not be satisfied with laws or decisions providing for collective or mass expulsions. The order needs to be communicated in writing to the refugee together with the reasons for the order.<sup>28</sup> However, this written communication serves no purpose since the Appeal Hearing Council is not empowered to review the order by way of appeal. The fate of the refugee is exclusively left to the Head of the Authority. The HRC, in this particular issue, asserted that this basic right is confirmed by further provisions concerning the right to submit reasons against expulsion and to have the decision reviewed by authority or some one designated by it<sup>29</sup>. Thus, the absence of any organ reviewing expulsion order denies the full facilities to pursue a refugee's remedy against expulsion order.

On the other hand, the majority of cases in relation to 'national security' and 'public order' to justify expulsion may be established by a court of law which may order expulsion in its judgment. This is impliedly prescribed in article 150 of the criminal code of the FDRE entitled, 'prohibition from residing in territory; expulsion', which reads:

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27. Supra note 1, Article 10 (2)

28. Ibid, Article 10 (3)

29. HRC General comment 15, paragraph 10

*If the convicted person is an alien and proves to be undesirable or dangerous the court may order expulsion from the territory of the state either temporarily or permanently.*

*This measure may always be ordered in respect to a convicted person who has been sentenced to a term of simple imprisonment of three years or more, or to an irresponsible or partially responsible criminal recognized by expert opinion as danger to public order<sup>30</sup>.*

Thus, if the case is entertained by the court then the right to appeal will be assured of with no question at all since the different tiers of courts exist, amongst other things, to guarantee the right to appeal of individuals. The second paragraph of the quoted provision, however, prescribes a broad interpretation to 'national security' and 'public order' as 'simple imprisonment more than three years' may suffice to order expulsion by a court.

A close look at sub-article 2 of Article 150 of the criminal code makes the application of this provision maintain the enforcement of international conventions intact. Thus, at least as regards the protection of refugees the provision of the criminal code should be read in light of the 1951 UN refugee convention. Accordingly, the grounds justifying expulsion must be interpreted very restrictively. More over, the reference to international convention warrants the procedural safeguards to be respected.

As regards the execution of an expulsion order sub article 4 of article 10 provides that:

*The execution of any expulsion order may, if the refugee concerned requests, be delayed for a reasonable period to enable such refugee, to seek admission to a country other than the country to which he is to be expelled.*

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30. The FDRE Criminal Code, Article 150

This paragraph is in line with article 32, paragraph 3 of the 1951 Convention. This provision further reserved to the contracting states the right to apply during the period such internal measures as they may deem necessary. The Ethiopian government in this respect opts temporary detention of the refugee pending the expulsion order for the purpose of affecting the order and to ensure that s/he doesn't endanger the security or public order of Ethiopia. This competence of states to detain non-nationals pending removal is confirmed in judicial decisions and the practice of states<sup>31</sup>. Detention may also constitute one of the permitted internal measures in so far as it is necessary for reasons of national security and public order.

While detention of undesirable aliens is permitted under most legal systems, it is generally felt that there should be some form of safeguard against wrongful detention. The ICCPR, for instance, provides in its article 9 paragraph 4 that “ any one who is deprived of his liberty by arrest or detention shall be entitled to take judicial proceedings before a court, in order that the court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful”. However, the refugee proclamation has employed no review procedure of detention. Thus, it would be better that detained aliens (refugees) be provided to a review procedure, be it the regular courts of Ethiopia or perhaps the Appeal Hearing Council established under the Proclamation for proper safeguard of their right during expulsion.

### **3.2.5.3 Family Unity or Family Reunification**

One of the multiple risks refugees face in the process of fleeing from persecution is separation from their families. Even through the right to

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31. Supra note 18

seek and enjoy asylum in another country is an individual right, the individual refugee should not be seen in isolation from his or her family. The refugee needs to be assured of his right to family unity to restore to him something approximate to a normal life. Basically, the rights to family unity are inherent in the right to family life. This right applies to all human beings, regardless of their status. However, when it comes to the situation of refugees few human rights instruments are explicit about how and where this right is to be affected in relation to families that have been separated across international borders. For refugees and those who seek to protect them, the right to family unity implies a right to family reunification in a country of asylum, because of return to their countries of origin in order to enjoy the right to family life there.

Let us see first the refugee's right to family unity in the international normative framework briefly and then assess the case of Ethiopia.

The right to family to live as an integral whole is protected by a variety of internationally recognized rights under both international human rights law and international humanitarian law. As a foundation, there is universal consensus that, as the fundamental unit of society the family is entitled to respect and protection. The UDHR, in this respect, states that 'the family is the natural and fundamental group unit of society and is entitled to protection by society and the state'<sup>32</sup>. A right to family unity is, thus, inherent in recognizing the family as a 'group' unit. If members of the family did not have right to live together, there would not be a 'group' to respect or protect. In addition, the right to marry and found a family includes the right to maintain a family life together<sup>33</sup>. The right to

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32. UDHR, Article 16 /3/

33. HRC General Comment (1990) no 19

shared family life is also drawn from the prohibition against arbitrary interference with the family<sup>34</sup> and from the special family rights accorded to children under international law.

In the same manner as UDHR, states have undertaken a duty, for example, not only to protect but also to assist and support the family by International and Regional Human Right Instruments<sup>35</sup>. More specific formulation to family unity and reunification is further incorporated in the 1949 Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War and The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. The latter Convention, in its article 44(1) provides that:

*State parties, recognizing that the family is the natural and fundamental group unit of society and is entitled to protection by society and the state, shall take appropriate measures to ensure the protection of the unity of migrant workers.*

Though this provision addresses the issue of migrant worker, one could, for stronger reason, allege that similar protection should be extended to refugees. On the other hand, in the Fourth Geneva Convention states have agreed to special provisions protecting family unity and promoting the reunification of families affected by armed conflict.

The core of the right to family unity and reunification in international human rights law is found in the CRC, article 10(1) which codifies the right to family reunification for minor children and their parents as follows:

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34. UDHR Article 12, ICCPR, Article 17, CRC, Article 16,

35. ICESCR, Article 10(1), African Charter on Human & Peoples Rights, , Article 18/2/

*In accordance with the obligations of states parties under article 9 paragraph 1 (a child shall not be separated from his or her parents against their will) applications by a child or his or her parents to enter and leave a state party for the purpose of family reunification shall be dealt with by states parties in a positive, humane and expeditious manner. (Emphasis mine)*

Several elements of this provision are worthy to note. First, the explicit link to article 9 of the Convention means that the obligation there imposed to ensure the unity of families within the state also determines the state's action regarding families divided by its borders. Secondly, while the obligation to allow departure draws on the well established right to leave any country, one of the Convention's achievements is the recognition of the common sense corollary of departure: that family reunification may require a corresponding duty to allow entry. Moreover, the obligation of states to deal with family reunification requests in a 'positive' manner in effect means affirmative action<sup>36</sup>. This formulation is considerably stronger than language commonly used to allow significant state discretion, such as "consider favorably" take appropriate measures" or "in accordance with national law."

All the aforementioned instruments, one way or another, show that the right to family unity of a refugee is both a legal right and a humanitarian principle. The implementation of the right in the refugee context requires not only that the state refrain from actions that would disrupt an intact family, but also that it takes action to allow a dispersed family to reunite without returning to a country where they would face danger.

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36. Erika Feller, Volker Turk and Frances Nicholson (Eds, Refugee protection in international law, UNHCR's Global Consultations on International protection, Cambridge: Cambridge University Press, 2003.

The 1951 Refugee Convention does not incorporate the principle of family unity either in the definition of the term “refugee” or its substantive rights. However, the absence from the 1951 Convention of a specific provision on family unity does not mean that the drafter failed to see protection of the refugee family as an obligation. It should be noted at the outset that the 1951 Convention does provide protection for the refugee family in a number of articles<sup>37</sup>. In addition, refugees’ ‘essential right’ to family unity was the subject of a recommendation approved unanimously by the conference of plenipotentiaries that adopted the final text of the 1951 Convention. This reads:

*“Recommends Governments to take the necessary measures for the protection of the refugee’s family, especially with a view to:*

- a. Ensuring that the unity of the refugee’s family is maintained particularly in cases where the head of the family has fulfilled the necessary conditions for admission to a particular country.*
- b. The protection of refugees who are minors, in particular unaccompanied children and girls, with special reference to guardianship and adoption’<sup>38</sup>.*

While the recommendation is non-binding, its characterization of family unity as an ‘essential right’ is evidence of the drafters’ object and purpose to extend the widest possible exercise of refugees’ rights and freedoms as promised in the preamble of the Convention.

Executive committee conclusions have also repeatedly emphasized the importance of state action to maintain or re-establish refugee family unity<sup>39</sup>.

Refugee family unity in practice means that states should not separate

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37. The 1951 Refugee Convention, Articles 4, Article 12 (2), Article 22, Article 24

38. Final Act of the UN Conference on Plenipotentiaries on the status of Refugees and Stateless persons, 1951 Recommendation B

39. See executive Committee Conclusions No 1 (XXVI, 1975) No 9 (XXVIII, 1977) 24 (XXXII, 1981, 84) (XLVIII, 1997, 85).

an intact family and should take measures to maintain the family as a unit. At the point of refugee status determination, it means that accompanying family members of a recognized refugee should as a result also receive refugee status, sometimes called derivative status, or a similarly secured status with the same rights.

At the regional level the OAU Refugee Convention doesn't make specific reference to family unity or reunification. The body of African Human Rights law, however, is a rich source for family rights, including the only regional convention on the rights of the child. With respect to situation of mass influx, one could easily note that there should not be an issue of derivative or other status. All family members, whether together or separated, should be and in the normal course are, extended recognition on a prima facie basis.

When we consider Ethiopia's approach to the refugee's right to family unity resort needs to be made to most of the aforementioned Conventions and domestic laws. Ethiopia is party to most of the international human rights and humanitarian laws protecting individuals' (refugee's) right to family unity and reunification. In this regard the UDHR, the ICCPR, the ICESCR, the CRC and the Geneva conventions, which elaborate this basic right, are ratified or acceded to by Ethiopia. Thus, Ethiopia owes international obligation to protect the right to family unity of any individual, particularly refugees in Ethiopian territory. On the other hand, the FDRE constitution, which declares these international instruments as integral parts of the law of the land, provides protection to the family as an institution. Article, 34 (3) of the constitution, in conformity with the UDHR and the other Conventions, states that "the family is the natural and fundamental unit of society and is entitled to protection by society and the state". This provision serves as a spring

board for the respect of the family for any individual in general and the refugee in Ethiopian territory, in particular.

Nevertheless, the Refugee Proclamation is unprecedented either by the refugee specific conventions or the Constitution in specifically dealing with refugee's right to family unity. The Refugee Proclamation provides that:

*“A member of the family of a recognized Refugee, as provided for in this Proclamation, shall be permitted to enter and remain in Ethiopia”<sup>40</sup>*

This provision clearly recognizes the family unity principle for refugees in Ethiopia since the family members are eligible to enter and reside in Ethiopia. The same protection is also extended to family members of an asylum seeker<sup>41</sup>. It further acknowledges specifically the equal right and duty of the family members with the recognized refugee or asylum seeker<sup>42</sup>. This shows the fact that the right to family unity is a human right to be granted to whosoever enters the Ethiopian territory seeking asylum.

The beneficiaries of the right to family unity are not specifically dealt with in any of the human right instruments. However, it is usually alleged that those who are close to the refugee particularly the spouse, minor children and elderly dependants are recognized as beneficiaries. The Handbook on Procedures and Criteria for determining refugee status, also states that the inclusion of the spouse and minor children are minimum requirements<sup>43</sup>. In conformity with this, the Refugee

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40 Supra note 1, Article 12/3/

41. Ibid, Article 12/1/

42. Ibid , Article 12 /2/ and 12/4/

43. Supra note 13 p.43

Proclamation defines the 'family members, who can benefit out of the principle of family unity as constituting 'any spouse of the refugee and unmarried child of the refugee under the age of eighteen years'<sup>44</sup>. Thus, it can be noted that the right to family unity in Ethiopian context applies for members of the nuclear family of the refugee, unless the member has an independent life.

As regards the status of the family members, the Refugee Proclamation says not much more than assimilating them to the rights and duties of the refugee. However, it can be convincingly argued that the family members will have a derivative status in which case if the head of the family meets the criteria of the definition; his dependants are normally granted refugee status according to the principle of family unity. If one argues otherwise to request the family members to undergo an independent procedure, it would make the principle of family unity useless. The practice also confirms with this line of argument and the office of ARRA automatically issue an identify card to the family members when status of the head is determined<sup>45</sup>.

On the other hand, if the head of the family is not a refugee, there is nothing to prevent any of his dependents, if they can invoke reasons on their own account, from applying for recognition as refugees under the 1951 convention or the 1967 protocol. As the Handbook clearly points out the principle of family unity operates in favour of dependants and not against them<sup>46</sup>. Regarding refugees hosted in refugee camps, the implementation of family unity is not constrained by the above conditions. Since status is given by prima-facie determination, all

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44. Supra note 1, Article 2/8/

45. Supra note 5

46. Supra note 13, p. 44

members of the refugee separated or together will be extended the same status without the need to establish the degree of relationship.

#### **3.2.5.4 Travel Document and Identity Paper**

The Ethiopian government is under international obligation to issue travel documents to refugees in Ethiopia who are lawfully staying in the territory of the country, unless compelling reasons for national security or public order require otherwise. The government can refuse to issue travel document if it considers a given refugee as a danger to public order or national security. However, that person must have to be given identify paper in lieu of travel document which only applies to internal use.

The main purposes of travel documents or identity paper is to facilitate the refugee's freedom of movement guaranteed by the Convention in general and to equip the refugees with documents so that they can travel for the purposes of study, training or resettlement to other countries.

The Ethiopian government, in order to realize this benefit, has issued a proclamation that lays down the rules for issuing travel document<sup>47</sup>. Similarly, the Refugee Proclamation expressly recognizes this right of the refugee under article 21(1) (C). In the previous regime the state organ that was responsible for matters relating to refugees was the Ministry of interior, which was among other things, entrusted with the power of issuing travel documents<sup>48</sup>. At present, the Authority with the consent of the Ministry of Foreign Affairs can issue travel documents to refugees in Ethiopia. Prior to the issuance of travel document to refugees, however,

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47. Issuance of Travel Documents and visa Regulation 1971

48. Ibid

the travel forms to refugees issued by UNHCR have to be complied with. In Ethiopia, a travel document issued to a refugee is valid for 1 year only<sup>49</sup>. As regards identity cards attesting to refugees' status; though the refugee proclamation expressly entitles all refugees in Ethiopia, it is only to urban refugees that ARRA is issuing the identity card.

### **3.2.5.5 Voluntary Repatriation**

Repatriation is, whenever possible, the most desirable solution for a refugee problem. A particular legal context for protection in repatriation is offered by article v of the 1969 OAU Convention; which stresses its essentially voluntary character, the importance of country of origin and country of refuge collaboration, of amnesties and non-penalization, as well as, assistance to those returning. In fact repatriation can squarely be seen from the right to return to one's own country.

However, any repatriation program has to be seen in light of the OAU Convention which prescribes repatriation, if any, to be based on the will of the refugee himself that means to be voluntary. Moreover, it should only be resorted to alleviate the suffering of refugee when new circumstances prevailing in their home country enable them to return, without risk and to take up a normal or peaceful life without fear of being disturbed or punished

The Ethiopian Refugee Proclamation, in conformity with the OAU convention, provides voluntary repatriation as a right of the refugee. It states that:

*“Every recognized refugee has the right to his own volition to seek to repatriate from Ethiopia to his country of nationality or former habitual residence in safety and dignity”<sup>50</sup>.*

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49. Supra note 5

50. Supra note 1, article 23/1/

This right expresses the human right aspect of repatriation which need necessarily be based on the free will of the refugee. The institutional dimension of voluntary repatriation expectedly will be taken care of by UNHCR.

The fact that the Refugee Proclamation recognizes and ensures this basic right is advantageous in two aspects. First as a matter of principle it is the right of the refugee to return. There is no better protection for the refugee than reinstating in the position he was in prior to his flight from the country of origin.

As the well known refugee scholar, Cole, clearly asserted “a human rights vision of refugee law requires a reformation to focus squarely on the effectuation of the refugee’s right to re-join his/her community of origin”<sup>51</sup>, secondly, from the perspective of the self-interest of states, which normally prefer to limit their obligation to refugees, it is advantageous as it minimizes the number of refugees to whom the state owes obligation.

However, the mere fact that the right is recognized does not ensure the refugee the full exercise of the right and his/ her safe return. The success of voluntary repatriation will depend on political factors, including the clearly expressed wish of the country of origin that the refugees should return and on the personal choice of refugees themselves. Regarding the refugees residing in Ethiopian territory, there have been a series of efforts by ARRA and UNHCR to repatriate Sudanese and Somalia refugees. After the enactment of the Refugee Proclamation many Sudanese Refugees have been repatriated to their country of origin.

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51. James C. Hathaway, *Preconceiving Refugee law as Human Rights protection* , *Journal of Refugee Studies*, Vol 4, No 2, 1991 p. 116.

### **3.2.5.6 Special Protection**

One of the better advancements of the Ethiopian Refugee Proclamation, when compared to the Regional and Global Refugee Instruments, is its being sensitive to vulnerable groups. It clearly recognizes the right to special protection or we can call it “affirmative action’ to be extended to vulnerable refugees. Article 22 of the proclamation states that:

*The Authority shall take measures to ensure the protection of women refugees, refugee children, elderly refugees, and handicapped who need special protection.*

Such a formulation reflects the human right aspect of the legal protection of refugees. The codification of women’s and children’s rights has substantially advanced understandings of equal treatment and equal rights within the international refugee protection framework. The Refugee Proclamation, thus, can be viewed as an instrument aimed at implementing special conventions (CEDAW, CRC) protecting women and children to which Ethiopia is a party. Even though the proclamation doesn’t indicate the possible area of application and the extent of the protection to be extended to vulnerable groups, it can generally be said that the provision requires the different procedural and substantive rights embodied in the proclamation be interpreted and applied in a non-discriminatory way and taking the special situation of these groups. In this understanding, then, gender and age related persecutions like female genital Mutilation /FGM forcible or under age recruitment in the military service, domestic violence, forced labour etc may be included in the criteria of refugee status. Further more, these groups may be granted special protection in substantive rights in relation to the exercise of their civil, political, social economic and cultural rights particularly in relation to physical security and the provision of food, health and education facilities.

### **3.2.6 Rights Specified in the 1951 Refugee Convention and the 1969 OAU Convention**

The refugee proclamation has expressly granted the rights we previously discussed in section 3.2.5. Apart from that, the proclamation recognizes the rights and obligations of refugees in the international legal framework. Article 12 makes general reference in paragraph 1(d) to those rights and freedoms set under the 1951 Refugee Convention and the 1969 OAU Convention. In this section, we will briefly see some of these basic rights and the extent of their recognition in the Ethiopian context.

#### **3.2.6.1 Freedom of Movement**

The right of the refugees to freedom of movement as expressed in article 26 of the Refugee Convention and article 12 of the ICCPR, includes the right to choose their place of residence and the right to leave and to return to the country of refuge. Pursuant to article 21(1) (d) of the Refugee Proclamation, these rights are recognized for refugees in Ethiopia. However, sub-paragraph 2 of article 21 of the proclamation restricts the refugee's right to choose his/her place of residence in conformity with the OAU Refugee Convention. Accordingly, the Head of the Authority may designate places and areas in Ethiopia within which recognized refugees, persons who have applied for recognition as refugees and family members thereof shall live, provided that the areas designated shall be located at a reasonable distance from the border of their country of origin or former habitual residence.

Thus, in Ethiopia refugee's right to choose their place of residence is denied for security consideration. To the researcher, the restriction is legitimate and justified if it is only applicable to refugees in mass influx. In case where a large influx of refugees cross borders, it will create a

chaos and tension to allow them to choose their place of residence and allow to settle dispersed in the country of refugee.

However, as regards individual refugees whose status is determined through individual status determination denying the right to choose their residence will be a violation of this right unless the same is justified by Article 13/3/ of the ICCPR which requires restrictions to be provided by law in accordance with other rights in the ICCPR and necessary to protect national security, public order, public health or morals or the rights and freedoms of others. The same restrictions, usually interpreted restrictively, also can serve to limit the right to movement of the refugee in Ethiopia on the basis of the general reference made on Art 22(1) (d) to the 1951 refugee convention.

It can be, thus, argued that though not explicit, recognized refugees shall have freedom of movement in Ethiopia, especially for the purpose of study, professional training, gainful employment, voluntary repatriation and resettlement to another country. The FDRE constitution, in similar terms, guarantees the rights to choose residence and to liberty to movement for any individual be it can Ethiopian or a foreigner<sup>52</sup>.

### **3.2.6.2 The Right to Education**

Education is a basic human right of all individuals in general and refugees in particular. The 1951 Refugee Convention and the CRC entitles any individual refugee the right to free and compulsory elementary education as Ethiopian nationals. Differing treatment and that is as favorable as possible and, in any event not less favorable than that accorded to aliens generally in the same circumstance is applicable

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52. FDRE Constitution Proclamation No 1, 1995, Art -32(1)

only with respect to education other than elementary education, and in particular as regards access to studies, the recognition of foreign school certificates, diplomas and degrees, the remission of fees and charges and the awards of scholar ships. Taking the vital importance of education for the exercise of other rights and particularly for the empowerment of women and safeguarding children from exploitative practices, contracting states including Ethiopia are expected to progressively achieve the right on the basis of equality of opportunity.

Ethiopia, however, recognizing the right to education in general has made a reservation to article 22 (1) of the 1951 Refugee Convention, which entitles refugees the same treatment as nationals as regards primary education and the Refugee Proclamation in Article 21(2) subjects refugees to the same rights and duties as ordinary aliens residing in Ethiopia regarding education. In relation to the right to education of refugees in Ethiopia an important issue needs to be raised at this juncture and that is whether the reservation Ethiopia made to primary education of refugees is tenable?

To begin with, while ratifying to the 1951 Refugee Convention, Ethiopia made a reservation to articles 8, 17/2/ and 22/1/. Thus, as one of the reservations, article 22/1/ of the Refugee Convention is related to primary education, refugees in Ethiopia, at least are not given the same treatment as nationals in this basic level of education. However, it is a known fact that reservations should not in any way minimize or detract rights of individuals accepted or recognized by another treaty the state ratified. Above all, the 1951 Refugee Convention only lays the minimum standard of treatment. It clearly provided in the Convention that it

shouldn't be deemed to impair any rights and benefits granted by a contracting state to refugees apart from the Convention<sup>53</sup>.

On the basis of this premise, if one assesses the UDHR, the CRC and African Child Charter (ACRWC), it can easily be noted that the reservation made by Ethiopia regarding primary education is not tenable.

The UDHR basically recognizes and claims that primary education should be compulsory and free. In conformity with this universal declaration, the CRC, in article 28 (1) (a) provides that:

*States parties recognize the right of the child to education and with a view to achieving this right progressively and on the basis of equal opportunity, they, shall in particular ... make primary education compulsory and available free to all.*

It is obvious that in compulsory and free education, refugees can not be treated differently from nationals. The term "Compulsory and available free to all" is applicable to any children in the jurisdiction of Ethiopian territory. The non-discrimination provision in the same instrument strengthens the same stance i.e the application of "free and compulsory education" to aliens and nationals, article 2, paragraph 1 states that:

*... State parties shall respect and ensure the rights set forth in the present Convention to each child with in their jurisdiction with out discrimination of any kind, irrespective of the Child's or his or her parent's or legal guardian's race, colour, Sex, language, religion, political or other opinion, non-national, ethnic or social origin, property, disability or other status.*

In elaborating this provision the committee on economic social and cultural rights in its general comment confirms that the principle of

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53. The 1951 Convention Relating to the Status of Refugees, Article 5

Discrimination extends to all persons of school age residing in the territory of a state party, including non-nationals, and irrespective of their legal states<sup>54</sup>.

Thus, on the basis of this provision treating nationals and aliens (particularly refugees) differently within the same territory of state parties to the CRC is against the right to education pursuant to article 28/1/ and the non-discrimination provision article 2(1) of the same. The African Charter on the Rights and Welfare of the Child (ACRWC) also contains similar provisions asserting the right to free and compulsory education for all.<sup>55</sup>

From the consideration of the above provisions on the instruments Ethiopia ratified, one can easily conclude that the reservation made to primary education is in violation of Ethiopians international commitment in the CRC and the ACRWC. Thus, the reservation is not tenable. Nevertheless, with respect to the right of refugees other than primary education the refugee proclamation converges with the 1951 Refugee Convention.

### **3.2.6.3 Wage – earning Employment**

Wage-earning employment, as provided in the 1951 Refugees Convention, is one of the most crucial solutions which assure refugees their economic strength and the exercise of some other refugee rights. While ratifying this convention, however, as we earlier indicated, Ethiopia has made a reservation to article 17 (2). This provision basically guarantees refugees' equal rights to work like nationals on the conditions set there under. This reservation could be justified by Ethiopia's failure

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54. Report of the Committee on Economic, Social and Cultural Rights (Twenty first session 1999) Paragraph 34.

55. African Charter on the Rights and Welfare of the Child, Article 11(2) (a)

to provide sufficient employment for its own citizens let alone other foreigners including refugees.

The Refugee Proclamation, on the other hand, has a different formulation on wage – earning employment. It, under article 21 (3), subjects refugees to the same rights and restrictions conferred or imposed generally by relevant laws on persons who are not citizens of Ethiopia. In this respect, all foreigners are required to have a work permit. No foreigner is allowed to be employed in Ethiopia without a work permit issued by the Ministry of Labour and Social Affairs. Further more, according to Ethiopian law, work permit can be issued to aliens for a specific type of work for three years<sup>56</sup>. Thus the refugee is expected to have a work permit and can have it for three years for a specific type of work, as he is totally assimilated to ordinary aliens.

It must be noted, here, that Ethiopia has made reservations to article 17(2) of the 1951 Refugee Convention, but not to Article 17 (1), dealing with the right to wage earning employment. Even with respect to this right mentioned in this provision, article 21 (3) of the proclamation, as worded, appears to take a minimalist view of Ethiopia's Obligations. Regarding wage – earning employment, Article 17(1) of the 1951 Refugee Convention requires Ethiopia to “accord refugees lawfully staying in (its) territory the most favorable treatment accorded to nationals of a foreign country in the same circumstances”. The effect of Article 21 (3) of the proclamation in contrast, is to place refugees exactly in the same category of ordinary aliens and this is a contradiction with Ethiopia's reservation on the same right in the said convention.

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<sup>56</sup>. Supra note 23 Article 174

#### **3.2.6.4 Other Rights and Freedoms as Directly Envisaged (Guaranteed) in the 1951 Refugee Convention.**

The following rights are also guaranteed to all refugees in Ethiopia in the same standard as provided in the 1951 Refugee Convention

- Freedom of religion
- Access to court
- Personal status
- Naturalization
- Right of Association
- Non – discrimination

#### **3.2.7 Rights Provided in Other Ethiopian Laws**

According to Art 21 (1) (e) of the Refugee proclamation a refugee, like any other lawful resident in Ethiopia enjoys a number of rights, which are conferred on “every person” physically present in Ethiopia. These rights are embodied in the FDRE constitution (mainly in chapter three articles 14-44), the Ethiopian Civil code, Criminal code, commercial code and many other proclamations and regulations enacted in Ethiopia.

## **CHAPTER FOUR**

### **Practical Realities of Refugee Protection in Sherkole Camp-Assossa**

#### **4.1 General Background**

##### **4.1.1 The Benishangul – Gumuz Regional State**

The Benishangul – Gumuz regional state (BGRS) is one of the nine federal constituents of Ethiopia. The level of development of social and economic infrastructure in the region is very low. Nevertheless, BGRS has a substantial and varied natural resource base, with suitable agricultural land and a considerable number of investment resources, although not fully utilized to the expected levels.

The Region is situated in the Blue Nile River Basin, located in the North Western part of Ethiopia, with Assossa as the capital of the Regional state based on various sources, the land mass of the region is estimated to be 50,380 km<sup>2</sup>. The Region borders Amhara, Oromia, and Gambella Regional states, having the republic of the Sudan in the North, South and West respectively. These regions of southern Sudan bordering the BGRS have in the past been characterized by armed conflict between the Government of the Sudan and SPLA, causing the influx of thousands of southern Sudanese Refugees to flee to Sherkole camp.

The security situation in the BGRS can generally be described as peaceful with few reported security incidents in the recent past. Likewise, Sherkole Refugee Camp and its surroundings are peaceful, with the exception of trifle skirmishes between refugees from different communities and groups in the camp. The differences are normally resolved on the basis of the traditional justice system by the refugee

leaders under the supervision of ARRA/ UNHCR at field level. Most of the security incidents and / or crimes are resolved through the legal system of Ethiopia.

## **4.1.2 Characteristics of the Refugee Situation in Sherkole**

### **4.1.2.1 Geographical Location**

One of the most characteristics of Africa's protracted refugee situations is that refugees are usually to be found in peripheral border areas of asylum countries: places which are insecure, where the climatic conditions are harsh, which are not a high priority for the central government and for development actors, and which are consequently very poor. Sherkole in this respect is located 45 km from North west of Assossa, which is 720 km far from Addis Ababa and 50 km away from the Ethiopia/ Sudan border of Kurmuk. Though peripheral the area may be, it is relatively secured and has moderate climatic conditions. Though the distance from the Federal capital to the camp is far the refugees are settled together with the local people.

Sherkole camp is also characterized by the availability of isolated market, transport & government institutions (Kebele, Police, Court) in the vicinity. The availability of isolated market helps refugees not only to buy and sale items but also to intermingle with the local communities and amongst themselves. The Bertha's Arabic language has also facilitated the smooth transaction and assimilation of the refugees (especially the Sudanese) with the local population.

#### **4.1.2.2 A Protracted Refugee Situation**

Like many of the refugee camps in Africa, Sherkole hosts refugees who have lived in exile for more than five years. The camp is established in 1997 and hosts refugees collected from the Bonga, fugido and Dimma refugee camps. Most of the Sudanese refugees except those coming from Darfur have stayed in Ethiopia for more than 10 years. These groups of refugees are also the majority in the camp constituting 3,888 which covers 80 % of the whole refugees' population. The majority of respondents of this study are also from this category of refugees 65 % (79 out of 120) stated that they fled from their country of origin around 1995 (1994-1999) those refugees coming from the Great lakes and Darfur, however, have come to Ethiopia recently.

#### **4.1.2.3 Cause of Flight from the Country of Origin and Problems the Asylum Seekers Faced During Flight**

Most of the refugees have been in exile for long because of the armed conflict and civil war in the Sudan and the Great lakes. The conflicts which originally forced people to leave their own country have dragged on for so many years making it impossible for them to return to their homeland. In this respect it should be recalled that almost all the wars that have affected the continent in recent years – Burundi, DRC, Rwanda, Somalia, for example – have been characterized by intense Ethnic and communal antagonisms, high levels of organized violence and destruction as well as the deliberate targeting and displacement of civilian populations.

The situation is the same for the refugees in Sherkole. Almost all attribute their cause of flight to the instability & Security arising out of the civil war in their respective countries. A Burundian<sup>1</sup> in the camp described her cause of flight as follows:

*The government militia killed my father and my brother when I was 16. Following this incident I was totally unconscious for months. Staying in my village made me feel in secured thinking that I will be killed soon. Because of this I was forced to come here with my mother seeking asylum.*

It is a known fact that asylum seekers face different problems in their long journey from home land to country of asylum. The refugees in Sherkole similarly responded that they have faced problems during flight and while crossing the Ethiopian borders. The problems identified by the respondents include hunger, rape, robbery, misguiding, beating, harassment and detention. However, no single respondent attributed the cause of the danger / problem to the Ethiopian soldiers or border police officers. The problems were caused by unknown individuals and colleagues in the long trip from the country of origin to Ethiopia. The aforementioned Burundian lady, for instance, stated that she was raped more than twice by unknown individuals.

#### **4.1.2.4 Demographic Structure**

Sherkole refugee camp is populated by a large proportion of Sudanese and people with special needs, such as children and adolescents, women and the elderly. As regards the tribal composition Meban followed by Dinka and Fur are regarded as the dominant ones; while Hutu/Tutsi constitute the minority in the camp.

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1. Interview with a Refugee on August 10, 2007 (The respondent did not want to tell her name)

**Table 1. Refugee population by country of origin and ethnicity.**

Country	Tribal Composition	
	Ethnicity	Total number of individuals
Sudan	Meben	2,047
Sudan	Funj	377
Sudan	Dinka	916
Sudan	Fur	540
Congo/ Burundi	Hutu/tutsi	187
Others *		957
	Total	4820

- Others include all the minority ethnic groups from Sudan, Congo Rwanda & Uganda.

Sherkole camp currently accommodates around 4,820 refugees mainly from the Sudan consisting 3, 888. The camp is divided in six zones (Zone A – G) in such a way that two antagonistic refugee tribes are made to settle in a distant manner. women, children, adolescents, the elderly and disabled constitute the largest number in the refugee population. Thus, the demography of the refugee camp is dominated by the so-called vulnerable groups. This should not be a surprise considering the overall demography of Africa showing the same trend. At the same time, however, there are reasons to believe that in protracted refugee situations refugees with special needs are generally “over – represented”. This is because the able – bodied men are most likely to leave the camp for work or education else where and they usually repatriate first. As the researcher observed in the camp most of the children were born and brought up in exile and as revealed in the FGD most have never seen the “home land” to which they are eventually expected to return.

## 4.2 Legal protection Accorded to Refugees in the Camp

Most of the asylum seekers have come to Ethiopia in a mass – influx. The Sudanese particularly, had crossed the Ethiopian border with out any resistance and threat from the border police officers. Describing the situation of the Sudanese refugees from Darfur, the community leader, stated that

*“... when we were first determined to leave Sudan, we were organized in groups and we were well – prepared for the trip since we were previously informed by the refuges in Sherkole about the Situation. We had our clothing, documents and some food items. At the border of Ethiopia the police officers asked our case and we told them that we felt insecure and wanted to seek asylum in Ethiopia. The police officers, then, Making sure we had no weapons and explaining where to settle and who would extend us assistance facilitated our trip to Sherkole.”<sup>2</sup>*

Similar treatment was also given to those asylum seekers from the Great lakes who crossed Ethiopia, through moyale.

Thus, the right to access to territories was not at all an issue for the refugee situation at sherkole. One reason which could be mentioned is Ethiopia’s open-door policy in the border areas which puts no restriction for entry. Besides, some of the refugees were even transported from the border by UNHCR and ARRA to the camps showing how the government of Ethiopia was hospitable to host the refugees . The UNHCR protection officer has also confirmed that there was no single incident of non-refoulement including rejection at the frontier ever since the camp has been established.<sup>3</sup>

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2. Interview with Esam Ibrahim, leader of zone C, on October 15, 2008

3. Interview with Ato Dereje Wubshet, UNHCR field protection Assistant on October 16, 2008

Accordingly, the right of the asylum seekers to cross the Ethiopian border is practically respected.

Establishing respect for access to territories to refugees, let's see and analyze the RSD and the different legal protection extended to the asylum seekers and refugees once they have crossed the border and settled at Sherkole. The methods used for data collection included personal observation of the camp, Questionnaires, interviews and focus group discussions. The researcher's visit to the camp took place in December 2006, August 2007 and recently in October 2008 each visit trip took a week long as to have a thorough observation and analysis).

#### **4.2.1 Access to Full-Fledged Asylum Procedures**

Refugee status determination (RSD) is made in two forms i.e. by group recognition and individual determination. In sherkole the status of most of the Sudanese refugees is determined by group recognition. This is because they have come in mass- influx for reasons of persecution as a result of the conflict in southern Sudan and Darfur. However, those who came to the camp recently in a few groups were asked to undergo individual status determination. In the latter case the asylum seeker is given a form to apply for asylum explaining when how and why she/he came to Ethiopia.

The Eligibility committee, which is composed of ARRA and UNHCR field protection officers, will then look in to the case and interview the asylum seeker. Some of the respondents were subject to individual RSD. All state that they were given the opportunity to be heard, to be provided with an interpreter and that they had sufficient time to explain their case. However, the duration of the processes of status determination differed from 2 days to 1 year depending on the case. In this respect some have

complained about the prolonged duration of the determination. A 40 year Sudanese community leader at zone C alleged that he was not given refugee status and assistance for five months.<sup>4</sup>

The RSD for those coming from the Great Lakes takes a different form. All have crossed the Ethiopian border through Moyale and were sent to Addis Ababa. It is in Addis Ababa, then that their status is determined. The community leader at zone, G, Joel Kabanda Gabriel, in this respect described the procedure as fair but prolonged and arbitrary. He argirily stated his case as follows.

*“I have come from Congo passing through Uganda and Kenya for fear of persecution in my country of origin and the neighboring states. In Addis Ababa, ARRA and UNHCR protection officers informed me that I must fill an application form for asylum and had filled the form explaining my reasons for asylum. The Eligibility committee from ARRA and UNHCR, accepting the application interviewed me for 3 hours. My case was pending for 1 year while I was residing in Addis Ababa with the assistance extended from ARRA. After 1 year, I was informed that I was given a refugee status and I was ordered, to my surprise, to go to sherkole for reasons of budget constraints. I was shocked but I had no option than adjusting myself to the new situation”<sup>5</sup>.*

The ARRA field protection Officer doesn't accept the allegation that the duration of the procedure is prolonged. He asserted that RSD takes 15 days on average. Unless there is some fraudulent cases, the committee does not request for strict evidences. It does not even conduct normal (proper) hearings. “RSD generally is done on humanitarian approach”, he reiterates.

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4. Supra note 2

5. Interview with Joel kabanda Gabriesl, community leader at zone G- on October 15, 2008

As regards the forced transfer of Great lakes refugees, the protection officer accepts the existence of budget constraint. The transfer was made on the basis of a policy and procedural guideline by UNHCR regarding assistance to urban refugees in August 2006. This guideline restricts the right to settle in Addis Ababa as an 'urban refugee' unless there is medical and security ground. It specifically orders refugees coming from the great lakes to reside in Sherkole.

The fact that there is an Eligibility Committee which permanently sees asylum cases in the camp, and the fact that the right of the asylum seeker to be heard and helped through interpreter gives one the courage to say the procedure is fair. The procedure is also humanitarian in so far as hard evidences other than the flight history of the asylum seeker are not requested. However, the long period taken for RSD and the absence of an Appeal Hearing Council at the camp level need to be wisely considered as the determination of status could mean a life and death situation for the asylum seeker.

Another point worth considering at this juncture is issues related to cessation of status. It is known that the Government of Ethiopia (ARRA) is duty bound to check the existence of grounds (circumstances) for secession of status. As we have seen in the proceeding chapter the cessation clause is applicable, inter alia, when there is 'voluntary re-availment of national protection' and 'voluntary re-establishment' in the country where persecution was feared' ARRA and UNHCR, to the researcher's conviction, have not been exerting efforts to check all refugees (after status is determined) remain genuine.

A case at hand in this respect is the existence of spontaneous returnees. Refugees in the Southern Sudan are frequently seen traveling to and from Sudan while they are still in the camp without losing their status as

a refugee. A Sudanese refugee stated such incidents of his colleagues as follows:

*“... I see some Sudanese going home and coming back frequently. At times of holidays and for some business transactions they will stay in Sudan and come back when the time of distribution of ration approaches. These refugees lose nothing by being at the camp. They go to visit their country of origin and at the same time benefit from UNHCR assistance <sup>6</sup>”.*

The ex-coordinator of the UNHCR field office at Assosa, admitting the case, attributes the cause to ARRA'S reluctance to control the number of refugee in the camps<sup>7</sup>. She alleged that even though UNHCR has frequently informed the ARRA protection Officers to cease their status or at least to inform the refugees of the possibility of cassation, they have kept silent.

The issue, Which must be resolved in this respect is, are those spontaneous returnees really genuine refugees. If we see the grounds of secession of a refugee status, it would be arguable. Where a refugee visits his former home country not with a national passport, but, for example, with a travel document issued by his country of residence, he has been considered by some states to have re-availed himself of the protection of his former home country and to have lost his refugee status<sup>8</sup>. On the other hand, the UNHCR Executive committee advices that cases of this kind should be judged on their individual merits. Accordingly, it illustrates that

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6. Interview with Joseph Shita, A Sudanise Refugee in Sherkole on October 15, 2008
  7. Interview with Kyi Kyi Mymt, UNHCR Head of field office, Assosa on December 4, 2007.
  8. Hand book on procedures and criteria for determining refugee status, UNHCR, 1979 (Reedited, Geneva, January 1992) paragraph 125 (page 29)

*“Visiting an old or sick parent will have a different bearing on the refugee’s relation to his former home country than regular visits to that country during holidays or for the purpose of establishing business relations<sup>9</sup>”.*

The ground of ‘voluntary re-establishment’ doesn’t work for this case because this clause is understood as return to the country of nationality with a view to permanently residing there and the Sudanese refugees do not want to permanently reside there, at least, until circumstances in Sudan change to the better.

In consideration of the former ground of cessations then, the case of spontaneous returnees in Sherkole for reason of business transaction or holiday celebration can fall on the cessation clause. However, UNHCR advocates for open- door policy to complicate the matter. In light of the open-door policy, the UNHCR field protection officer, argues that examination of cessation clause is ignored at camp level. Rather UNHCR announces those who have been lost to report. The officer explained this saying:

*“We always inform the refugees that return to their homeland is possible only through repatriation. However, there are still cases of spontaneous returnees especially with Sudanese refugees. When we are informed that some have gone to their country of origin, we announce that they should report if they are not in the camp for three months. Even in such a case, the sanction is not denial of status. It is rather restriction in the grant of pass-permit<sup>10</sup>”.*

Thus, it can be deduced that the revision of a refugee status is not carried out in sherkole and ‘ three months’ period of ‘visit’ complicates the case for revision. To the conviction of the researcher, however, there do exist some refugees whose status would have effectively ceased, had ARRA together with UNHCR examined for the existence of secession grounds.

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9. Ibid

10. Supra note 3

## **4.2.2 Access to Protection in the Camp**

‘Access to protection’ as we have defined in the previous chapters, relates to rights and freedoms refugees enjoy in the country of asylum (in this case at Sherkole camp). We will have a look at some refugees’ rights in the camp and the scope of exercise of the rights in the subsequent part.

### **4.2.2.1 Identity Paper**

The refugee proclamation entitles every refugee to have an identification card showing his identity and his detail information. All the respondents of this study except two said that they have not been given an identity card. ARRA normally gives ration card to all refugees. The ration card doesn’t express the identity and detailed information of the holder as it is designed for the distribution of food items. On the other hand, two of the respondents have an identity card which contains their photograph and detail personal information.

In the focus group discussion the researcher had in the camp<sup>11</sup>, two justifications were identified why some have identity cards. The first justification is that some have identity cards since they used to enjoy an ‘urban’ status in Addis Ababa before coming to Sherkole. These groups of refugees belonged to the Great Lakes and came to the camp with their identity paper. The second justification related to grounds of education out of Assossa some refugees possess identity paper when they continue their secondary or higher Education else where outside Assossa. For example, students in Mettu Teacher Training College have the identity paper. The researcher comes across with some Sudanese refugees in

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11. Focus Group Discussion held at Sherkole October 17, 2008.

Assossa using the identity card given by the Shashemenie Adventist College. Other than such small and rare instances, Refugees in the camp are denied of their right to an identity paper as per the Refugee Conventions or the proclamation.

The UNHCR protection officer asserted that UNHCR frequently demanded for the issuance of an identity paper promising ARRA to cover all the costs for the preparation and distribution of the identity cards. In response to this the ARRA protection Officers at sherkole and in Addis Ababa, however, strictly allege that giving identify papers for the whole refugees in the camp is against the camp policy<sup>12</sup>. In this respect, the Officers argue that the prohibition of the identity cards is for reasons of security. They further allege, denying the Id is in line with other refugee rights in Ethiopia. Since refugees have restricted freedom of movement and, accordingly are denied of their right to work, the ARRA Officers argue it is useless to assert their right to an identity paper.”

The researcher, however, doesn't see the reasons identified by ARRA as sufficient for denying the right. In the first place, the right to have an identity card is clearly stipulated in the proclamation without any qualification. So, it is the duty of ARRA to comply with it whatever convincing reasons that it could have. Secondly giving identity papers for refugees has its own advantages. If refugees have Identity cards, any organ can properly manage to know how many refugees are found in the camp. This helps ARRA and UNHCR to plan activities and budget different assistance and repatriation programs. Thirdly, the reason of ARRA for denying issuance of an identity paper doesn't seem to be valid.

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12. Interview with Ato Hailessellassie G/Mariam-Head legal and Protection Department ARRA and Ato Eshetu W/Mariam ARRA field protection officer on October 10 and 16 2008 respectively

On the one hand, issuing an identify paper for refugees doesn't in any way affect the security of the state or the camp. In the contrary, it helps to secure the refugees from those who don't legitimately reside in the camp.

On the other hand, the restricted freedom of movement is for travel outside the comp. not with in the camp. The identity paper is of great help in the latter case. Also while refugees go out side the camp the pass- permit together with identity paper could effectively help supervise the restriction of the freedom.

#### **4.2.2.2 The Right to Freedom of Religion**

The Refugee Conventions and the Refugee Proclamation guarantees the right to religion of refugees in the same way as the nationals. All the respondents, interviewee and discussants revealed that refugees are exercising their freedom of religion with out any restriction. There are Catholics, Protestants, 7<sup>th</sup> day Adventists and Muslim refugees in the camp and the researcher observed that there is at least one place of worship for each religion. Some Congolese refugees, however, mentioned that despite the similarity in religion, language barrier while worshipping has been a challenge.

These refugees do not communicate in worship with the others since they don't well know Arabic and English, which are the frequent languages of worship. Similar problems have also prevented these refugees from attending their schools in the camp and Assossa. However, efforts are made to assist the refugees by the project ARRA is now to implement in cooperation with the French Embassy.

#### **4.2.2.3 The Right to Freedom of Movement**

The Refugee Proclamation doesn't allow full exercise of freedom of movement of refugees. Refugees do not have the right to either choose their place of residence or move freely within Ethiopia. The restriction is for security reasons. All the respondents and interviewees asserted that they have freedom of movement within the camp. As regards freedom of movement to Assosa, Addis Ababa or other areas in Ethiopia, it is conditioned to having a pass permit. A pass-permit is granted by ARRA for some reasons considered sufficient by ARRA. The reasons include taking money from banks, making calls to relatives, for education and medical purposes and for shopping<sup>13</sup>. A refugee is allowed to stay in Assosa from four to seven days and in Addis Ababa for 30 days, with possible extension depending on reasons given. When the permit is granted for education purposes it will be conditioned to the duration of the education.

However, some refugees complained the discretion and conditions of ARRA. The community leader of zone G, for instance, stated that he is prevented from visiting his relatives and friends in Addis Ababa for the reason is not considered "sufficient" by ARRA. He described the camp life as 'a dark cave with no hope for light'. Another Sudanese refugee<sup>14</sup> also identified some problems in the way the pass-permit is issued. He said that the ARRA protection officer issued pass-permit for four persons per zone. Thus, if the quota limit (about 28 per a week for a pass-permit to Assosa) is full, he said, you may not be able to have a pass-permit to Assosa whatever convening reasons you may have.

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13. Interview with Ato Eshetu W/Mariam-ARRA field protection officer at Sherkole, on October 16 2008.

14. Interview with Gedion Kedir, Sudanese refugee, on Oct 14. 2008

#### **4.2.2.4 Access to Employment**

This right of the refugee is one of the most crucial solutions which assures refugees their economic strength and the exercise of some other refugee rights. The standard of treatment of refugees with respect to employment in Ethiopia is as any foreigner. Refugees need a work-permit to work on specific activities determined by Ministry of Labour and Social Affairs for a limited period of time.

The camp situation is at spare from the normative framework. Refugees are not entitled to be employed in any of the institutions in the camp. Thus, most of the refugees earn their livelihood by different means. The respondents disclosed that they depend on assistance given to them by UNHCR and WFP. The assistance includes 16 kg wheat (which was recently changed in to 13 <sup>1/2</sup> kg wheat flour), around a killo of beans, 10gm of salt, 1 litter oil, 1 1/2kg famix and a soup per month. All the respondents and refugee discussants complained that the assistance doesn't relate to non food items. It is also inadequate in terms of quality and quantity.

Other than the assistance, most are helped by remittance benefits from their relatives in Europe and America. Some have small shops, restaurants, Kuwoquis, and TV-show house shoe polishing and some sale traditional and customary items in open markets.

Some of the refugees, particularly those who have completed their high school or college, work in the school. ZOA, IRC, UNHCR and ARRA as teachers, social workers, translators, laborers, food distributors, VCT Officers and so on. The refugees, however, are paid less than nationals who work same activities. In this respect, for example, a refugee teacher of the primary school is paid birr 310 while other Ethiopian colleagues are paid more than birr 1500.

In response to the inadequate assistance and the denial of the right to work, ARRA and UNHCR field officers assert that refugees are given sufficient assistance for their livelihood and their right to employment is not recognized under Ethiopian laws. As regards, the insufficiency of the food assistance the officers alleged, that food items are distributed on the basis of kilo calorie, which is acceptable in UNHCR operation (100kcal),. Additional assistance (especially non-food assistance) is not available due to the budget crisis UNHCR is facing at the international level. They say 'it is not unique to the camp'.

In relation to employment benefits, the officers, argue that there is no discrimination in so far as refugees are not employees in a formal employment arrangement. Refugees are paid, the officers say, incentives or stipend; rather than salary. The reason is that the refugees are not only unqualified but there is also lack of policy to allow them to be hired.

The responses of the ARRA and UNHCR, as regards the terms of employment, don't seem to be valid. For one thing, as far as the of refugees are given work-permit and the Ministry of Labour and Social affairs allows the activities to be undertaken by the refugees, there is no reason for denying job opportunity. Instead ARRA should play an active role in facilitating the work permit rather than denying them of their right without legitimate justification. Considering the fact that the refugees are aliens (speak a different language) and the right of students to be thought in their own language, it may not affect Ethiopians if the work permit is granted the refugees. Primary consideration should have been given to the quality of the workers rather than paying inequitable remuneration.

On the other hand, the Refugee Proclamation doesn't prohibit wage-earning and self-employment. It is the level of treatment with nationals that is different. Had ARRA allowed the refugees to work on different activities without restriction, they would have developed an independent way of life in the refugee camp. As the researcher observed, the refugees in the camp have become assistant-dependant and they resort to a variety of survival strategies in order to make ends meet and to come to terms with the difficult conditions in which they find themselves. These strategies often have adverse consequences, both for the refugees and for their local hosts. These survival strategies include:

- Exploitative sexual relationships example- commercial prostitution or through forms of concubinage in which a woman or a girl receives goods and gifts from a regular sexual partner.
- Exploitative employment- ploughing the farms of the local population with minimum rewards.
- Illegal and unsustainable farming
- Manipulating and maximizing assistance (ration card fraud and sales, obstructing re-registration exercises that might lead to a reduction of relief entitlements, splitting households into smaller groups so as to qualify for additional rations.)
- Remittances- which might have the effect of increasing the socio-economic inequalities to be found in refugee population.

#### **4.2.2.5 The Right to Education**

The Refugee Proclamation doesn't guarantee free and compulsory primary education for refugees in contradiction to the Refugee Conventions and the CRC. However, the practical reality is at variance with the normative framework. The Ethiopian government provides free primary education from pre-school to grade 8. Most of the respondents

and the FGD refugee participants, however, complain about the quality of the teachers and the student - class ratio, which is more than 80 on the average. Taking the realities in Ethiopia, however, the problem should not be exaggerated. The researcher has come across local people who drop out their education for reason of distance and inability to afford cost of transportation. Thus, refugees are given most favorable treatment with respect to primary education. The factual situation in the camp is in line with Ethiopia's international commitment for free and compulsory education for all.

As regards the secondary education ARRA, sponsored by EOC-DIACAC, allows refugees to continue their education in Assossa. These refugees reside in Assossa and EOC-DIACAC give them money for their accommodation, uniform and living. The refugees from the Great Lakes, however, can't pursue their education due to language problem. The UNHCR field protection officer, asserts that francophone schools are rare and expensive in Ethiopia. UNHCR however, is trying its level best to establish a francophone school with the assistance of the French Embassy. In permitting who should join college or university the ARRA officers argue, there is problem to establish (directly or indirectly) the fact that the refugees have completed their secondary education at the country of origin. To resolve this problem ARRA agrees with some of the colleges (example Mettu Teachers College) to allow the refugees to join the college if they are successful in passing entrance examination. However it is reported that only few could apply and succeed in this regard. Those refugees having a certificate from their home country, however, are given recognition to join college. Yet the right of refugees to continue their education is constrained by UNHCR's lack of sponsorship and insufficient budget<sup>15</sup>.

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15. Supra note 3

#### **4.2.2.6 The Right to Access to Ethiopian Courts**

Refugees are entitled to have access to Ethiopian courts in the Refugee Convention and the Refugee Proclamation. Since the language of Ethiopian courts is not understandable to the refugees this right is well guaranteed only when the refugees are assisted by an interpreter.

All the respondents of this study have never been to Ethiopian courts. However, during FGD the researcher has come to understand that conflicts (Crimes) committed in the camp are reported to the shurtas<sup>16</sup> and the shurtas, then report the case to ARRA. If ARRA, examining the case, thinks that the case should be proceeded with, it will refer it to the woreda police at Homosha. In cases of grave crimes like rape and robbery, the Zonal Police and Prosecution Office will carry on the investigation and prosecution respectively. Though the researcher was unable to get a recorded statistics on the volume of the case presented and decided in courts, some decided cases are found in Assossa High Court.

In one case (Public Prosecutor Vs Lina Abdulahi), the Sudanese defendant was accused of raping a 6 year old refugee-girl. The court tried the case and made the defendant liable. He was sentenced to 15 years imprisonment. It was stated in the judgment that the court had provided the defendant with an interpreter for the whole case. In another case, the court had written a letter to ARRA to bring an interpreter for a refugee defendant. Thus, the right of the refugee to be assisted by an interpreter was well-guaranteed, in both of the cases. The High Court judge has also confirmed the existence of such a facility<sup>17</sup>.

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16. Also called Umdas are community leaders of refugees

17. Interview with Ato Minaye Zegeye , Assossa High Court Judge, October 18, 2008

Nevertheless, the researcher has observed the following problems in the criminal justice system in the BGRS.

First, the refugee community has no access to Ethiopian laws. In the FGD, all the representatives from the Central Committee, the refugee, ARRA and UNHCR agreed with this fact. It is not, thus, fair (Just) to hold refugees liable and punish in laws which they don't know (or which they have no access to know)

Secondly, the jurisdiction of the Assossa High Court is not legitimate. Criminal cases involving foreigners falls under the jurisdiction of the Federal High Courts<sup>18</sup>. It is only through delegation that State (Regional) Supreme Court can entertain such cases. Since refugees are foreigners, their cases in Assossa should have been tried by the BGRS Supreme Court. To our dismay, even the power delegated to the BGRS Supreme Court to see federal matters was withdrawn by proclamation 322/95,<sup>19</sup> which established a Federal High Court in the Region. Thus from 8 April 2003 onwards the Regional state has no legal base to see and try cases involving refugees.

Thirdly, investigation of crimes in the refugee camp is entrusted to the umdas and shurtas who are community police. These individuals are guided by their respective cultural and religious values and not modern Ethiopian laws in investigating complaints. Due to this, they sometimes compromise some violence against women to cultural norms. In one case, the researcher was informed that a Meban (one of the tribes in

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<sup>18</sup>. Proclamation No 25/961 Proclamation to Provide for the Establishment of Federal Courts

<sup>19</sup>. Proclamation no 322/2003. a Proclamation to Provide for the Establishment of Federal High Court in some Regions, 9<sup>th</sup> year no 42 AA of -8<sup>th</sup> April 2003 Article 1

Sudan) raped a girl with the intention to marry her. The shurtas, while investigating the case proved the rape, however, since the rapist had promised to marry the girl, the case was not referred to ARRA. Thus, this trend will definitely perpetuate discrimination and gender Based violence in the refugee camp.

#### **4.2.2.7 Durable Solutions**

Refugee hood is a temporary status. The Ethiopian government has the duty to search for durable solutions for refugees UNHCR always facilitates the conditions in which refugees could return to their country of origin or permanently settle in the host community or third states.

The durable solutions for refugees, accordingly, may be voluntary repatriation, local integration and resettlement.

Both the OAU Refugee Convention and the Refugee Proclamation state that refugees may request willingly to repatriate to their country of origin. UNHCR has been planning the voluntary repatriation of Sudanese refugees from Ethiopia to South Western Sudan since the Comprehensive Peace Agreement is signed. Most Sudanese refugees are being repatriated to their country in different times. The Bonga refugees camp , for example, as been closed following repatriation. In Sherkole camp most of the Sudanese refugees are expressing their willingness to repatriate to Sudan. All the Sudanese respondents of this study have expressed their eagerness to return home as soon as safety and sustainable livelihood is secured.

However, as the researcher observes in the last visit to the camp reverse movements from Sudan to Ethiopia has been increasing. This is the failure of the repatriation programs. Even through the Peace Agreement was signed between the warring factions, implementation is retarded.

There are no schools and health facilities in the areas. The land mines are also still not cleared.

The UNHCR field protection officer accepting the reverse movements alleged that the problem is attributable to the refugees. He stated that:

*“After the reverse movements we are not facilitating repatriation. We are just promoting it only when the infrastructure is excellent. We inform the refugees the situations in Sudan, invite the officials in Sudan to tell them what is happening there and arrange “go and see” visit. All visitors told them that every thing is good. However, the life of refugee hood has made them so dependant that they don’t want to start an earned life”<sup>20</sup>.*

Responding to the reverse movements, ARRA officers asserted that they are studying the case to give them final decisions<sup>21</sup>. The officers do recognize that reverse movements create a limbo case to protection since ARRA is not planning to give them status again in the absence of persecution. It is further asserted that they can’t be treated as economic refugees (migrants) since migrants can’t settle in refugee camps with assistance.

With respect to local integration, UNHCR and ARRA view that it is not possible in Ethiopia for there is no room for naturalization in the treatment of refugees. However, the researcher thinks that the problem lies in the fulfillment of the conditions for naturalization. Had the right of refugees to wage- earning employment been respected, some refugees could have effectively applied for local integration. As per the nationality

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20. Supra note 3

21. Supra note 12

law, an alien can apply for Ethiopian citizenship, *inter alia*, if she/he attains age of majority, establish domicile in Ethiopia (live at least for four years), be able to communicate in any one of the languages of the nations of Ethiopia and have sufficient and lawful source of income.<sup>22</sup>

In this respect some Sudanese refugees who speak Gumuz and who have similar culture with local population could effectively utilize the scheme of local integration through naturalization. However, the pros and cons and the political effects of local integration need an independent study.

It can, however, be stated that UNHCR's approach of choosing 'repatriation rather than integration' doesn't help to promote self-reliance amongst refugees or fails to facilitate positive interaction between the exiled and local population. 'Care- and -maintenance' is a cause of lack of self-reliance. One can also wisely ask whether UNHCR, government and non-government agencies have vested interest in perpetuating the 'relief-model' of refugee assistance.

Resettlement is the third durable solution which most of the refugees, specially the youth preferred. UNHCR has facilitated the resettlement of refugees to third states (usually Sweden, Australia, England, USA etc). It was also learned that most refugees consider resettlement as their rights. Some even complain lack of feedback on their resettlement application.<sup>23</sup> However; resettlement is totally the task of UNHCR, which reviews applications with the donor countries. UNHCR has detailed guidelines for the selection and facilitation of resettlement. In Ethiopia UNHCR plans 1,000 refugee resettlement in a year. Most Eritreans are beneficiaries of recent resettlement programs.

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22. Proclamation no 378/2003- Ethiopian Nationality Proclamation A.A 2<sup>nd</sup> Dec 2003 10<sup>th</sup> year No 13-Article 5

23. Supra note 6

## **Conclusions and Recommendations**

In this study an attempt has been made to assess the level of the legal protection of refugees in Ethiopia, particularly Sherkole Refugee camp at Assossa. The legal protection of refugees refers to the act of upholding the fundamental human rights of refugees in another state. Though international attention to forced population movements dates back to the League of Nations era, it was in the early 1950's in connection with the adoption of the IRO, the Statue of UNHCR and the 1951 UN Refugee Convention that the protection has become more articulated. These legal developments do not only define who a refugee is but also expressly guaranteed the civil, political, socio-economic and cultural rights of refugees.

Ethiopia is party to the UN and OAU Refugee Conventions, which are the most authoritative refugee protection Instruments. It has also enacted the Refugee Proclamation in 2004 to implement the basic standards contained in the Global and Regional Instruments. This Proclamation is believed to have cleared the blurred rights and freedoms as well as duties of refugees. The definition given for the term refugee in the Proclamation contains the elements of both the UN and OAU Refugee Conventions. It includes the individual conception of the term and accepts the African contribution of broadening the term in group situations i.e generalized causes of flight like foreign domination, aggression etc, is recognized. However, the extended definition in the Proclamation is restricted geographically to 'refugees coming only from Africa'. This is a departure from the OAU refugee definition which contains no geographical limitation in this regard.

The 1951 Refugee Convention supported by the different human rights Instruments guarantee the rights of asylum seekers to cross the

territories of state parties. It was noted that states parties to the Refugee Convention, ICCPR and CAT give individuals the right to leave and enter one's own territory and protect them from non-refoulement including rejection at the frontier. These protections are basis for the asylum seekers to have access to the territories of hosting states. Once in the territories of another state, asylum seekers have the right to access to full-fledged asylum procedures and different protections as inhabitants and aliens pre and post RSD.

The 1951 Convention doesn't hold specific provisions on the RSD procedures and is thus left to the discretion of State Parties. Yet it has been noted that the RSD must satisfy the elements of the due process of law including the rights to be heard in an administrative or judicial body, to be assisted by an interpreter and the right to appeal.

The assessment of the legal framework and the practical reality favours asylum seekers right to cross the Ethiopian border and regarding the RSD, Ethiopia opted for an administrative organ - The Security, Immigration and Refugee Affairs Authority to process and determine asylum cases. The Appeal Hearing Council is also established to see appeal on the decision of the Authority. The power of granting and withdrawing refugee status is practically given to ARRA, which is not clearly referred in the Proclamation nor established in an independent Proclamation or Regulation.

The study has shown that refugeehood in Sherkole is determined in two forms i.e individual determination and group determination. The latter form of determination has been dominantly applicable to many of the camp refugees and the individual RSD has applied for Great Lakes refugees in Sherkole. It was noted in the study that the Eligibility Committee at camp level gives asylum seekers the right to be heard and

assisted by an interpreter. The Committee does not request asylum seekers to present hard evidences other than the history and cause of flight. Thus the procedure can generally be considered as fair and recognize the special conditions of asylum seekers.

However, prolonged duration for RSD has been observed. This might arise from lack of developed skill, understaffing or case overload on the side of ARRA. The Appeal Hearing Council has not still seen any appeal case presented to it since it was established. The fact that the members of the Council are composed from different offices is described as the cause for the problem.

Once refugee hood is determined, grounds of cessation should have been considered with the aim to give proper protection for genuine refugees. The practical reality in this respect, however, shows the existence of spontaneous returnees in the camp who travel from and to Sudan for holy day celebrations and personal business. This is due to Ethiopia's reluctance to control the refugees and the open door policy in the border.

With respect to legal rights and freedoms of refugees, the Proclamation guarantees most of them in a similar manner as incorporated in the 1951 Refugee Convention. Some rights (Eg. the right to family unity or reunification, special protection and voluntary repatriation) are spelled out specifically as additions to the Global Refugee Convention, However Ethiopia has made reservations on the right to freedom of movement and the right to education. The former restriction, which is supported by the OAU Refugee Convention, could convincingly be justified on security reasons, particularly in a mass- influx refugee situation. Where as the reservation on free and compulsory education is, a contradiction to other international obligations Ethiopia assumed in the UDHR, CRC, CEDAW

and ICESCR. The study has also shown that the reservation serves no purpose since refugees are practically provided with primary education.

Another similar concern relates to refugees' right to wage earning employment, which refugees shall enjoy in similar treatment with aliens under the proclamation. The proclamation takes minimalist view in totally assimilating refugees with aliens. It has been noted in the study that refugees do not engage in wage-earning employment and some resort to immoral and illegal survival strategies like exploitative sexual relations and ration card fraud and sales.

Other rights of refugees are well-respected in the Proclamation. The right to an identity card, religion, access to court, family unity and voluntary repatriation are stated in the same way as in the Global and Regional Instruments. The assessment of the legal protection at camp level, however, has identified the following problems.

- The right of refugees to an identity paper is not practically respected for many refugees in Sherkole camp. This puts an obstacle for re-registration efforts and for proper management of the refugee population.
- Though freedom of religion is practically respected, language barriers while worshipping has affected some refugees, particularly the Great Lakes. Similar problems exist with respect to the means of instruction in schools.
- There is restricted freedom of movement. The quota system for movement from camp to Assossa town is proved to be rigid.
- Refugees have no access to Ethiopian laws. It is unfair to make refugees responsible and liable on the basis of Ethiopian laws, without giving them opportunity to know the laws. It is also observed that the BGRS High Court, which entertains criminal cases involving refugees, lacks material jurisdiction. The shurtas, the

involving refugees, lacks material jurisdiction. The shurtas, the traditional law –enforcement bodies, show gender insensitivity while they investigate criminal cases.

- The repatriation programs of Sudanese refugees do not seem to be successful. This is due to the reverse movements of the repatriated refugees to the camp. The fact that development programs in Sudan are retarded and the refugees' dependence on camp life are causes to this problem.

To solve the problem identified in the study the researcher, recommends the following.

### **1. Legal Amendment**

Even though the Ethiopian normative framework is in many terms in conformity with the international standards, some legal gaps are observed which need amendment.

#### **i. Withdrawal of reservation.**

Ethiopia needs to withdraw its reservation on primary education. The reservation is not only against Ethiopia's commitment in other International Human Rights Instruments, but it is also not relevant. ARRA is providing primary education in the same manner as nationals in the camp. Thus, the proclamation should accordingly be amended.

#### **ii. Scaling up the standard of treatment**

The standard of treatment of refugees in wage earning employment is not consistent with the 1951 Refugee Convention. Neither has Ethiopia made reservation on the standard of treatment on this right. Thus, with respect to wage-earning employment, the standard should be lifted to "most

favorable treatment than aliens” through amendment of the Proclamation.

**iii. Enacting an Enabling Law**

A regulation establishing ARRA is important so that it has clear responsibilities and function. The Authority should be represented by ARRA in all issues involving refugees. This is accomplished if the legal base is made clear to third parties.

**iv. Adopting definition for group refugees in accordance with the OAU Refugee Convention**

The restriction of the definition of “refugee” during a mass influx refugee situation to “cases of refugees coming from Africa” under article 4(3) of the Proclamation should be deleted to make the law consistent with the OAU Refugee Convention.

**2. Capacity building, Awareness Raising and Financial Assistance**

Some of the problems identified in the study arise from the lack of commitment on the side of ARRA, lack of refugees’ awareness on their basic rights and due to financial constraints. Thus, with a view to help ARRA implement the fundamental rights to refugees and extending protection to genuine refugees, the following activities need to be done.

- The capacity of ARRA needs to be strengthened. ARRA should have adequate and skilled man- power to facilitate some of the protection. UNHCR should also help ARRA in financing and extending technical support to fill the technical and commitment gap.

- Awareness raising activities are necessary to refugees regarding their basic rights and duties under different laws. Community leaders, students, shurtas, Youth and Women associations should be given short-term training on laws, human rights, income generating activities, conflict resolution and so on, so that the knowledge gap of the different sections of the refugee society be filled.
- UNHCR should try its level best to secure more funds from the donor countries and should also facilitate implementation of Tri-partite Agreements between Country of Origin, Ethiopia and UNHCR. The Socio-economic development of the country of origin should be studied and proved good before advocating for repatriation. UNHCR should also devise a mechanism which makes refugees not ration dependents. This may be achieved by UNHCR's dialogue with the Ethiopian government for extending some of the protection in relation to wage- earning employment and freedom of movement, at least at camp level.

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### **Interview**

Interview with Ato Haileselassie G/Mariam protection Department ARRA,  
Addis Ababa .

Interview with Esam Ibrahim, leader of zone C Sherkole refugee camp.

Interview with Ato Dereje Wubshet, UNHCR field protection Assistant.

Interview with Joel kabanda Gabriesl, community leader at zone G Sherkole  
refugee camp.

Interview with Joseph Shita, A Sudanise Refugee in Sherkole.

Interview with Kyi Kyi Mymt, UNHCR Head of field office, Assossa.

Interview with Ato Eshetu W/Mariam-ARRA field protection officer at Sherkole.

Interview with Gedion Kedir, Sudanese refugee, Sherkole refugee camp.

Interview with Ato Minaye Zegeye , Assossa High Court Judge.

### **Interview Questions (For Refugees)**

1. Why did you flee to Ethiopia? What problems did you face while crossing the Ethiopian border?
2. How was your refugee status determined? were you been given the opportunity to explain your case? What problems did you face in the process of status determination?
3. Are your rights respected in the refugee camp? (right to an identity paper, Freedom of religion, freedom of movement, access to court, wage earning employment, right to education). What problems do you face while exercising your basic rights?
4. Do you want to return to your home land? What problems do you face to benefit from repatriation and resettlement programs?
5. What are the problems you face or observe in the assistance rendered from ARRA or UNHCR? Would you suggest some solutions to the problems

### **Interview Questions (for ARRA and UNHCR officers)**

1. What are the roles ARRA and UNHCR play in the protection of refugees at camp level?
2. Do you think refugees adequately enjoy with their rights and freedoms in the camp?
3. What problems do you think refugees face in the camp? What are the cause for these problems?
4. Did you plan for durable situations (repatriation, resettlement and local integration) for the problems of refugees? Are the solutions workable? What are the shortcomings in the implementation of the solutions?
5. What should be done to better protect the legal protection of refugees in sherkole?

**Question for**  
**Focus Group Discussion**

1. What are the problems observed in the process of Determination of Refugee status?
2. Are there spontaneous returnees (refugees frequently going home and coming back to camp)? Does this cause any problem?
3. Can we properly manage to know the total number of the Refugee population? Why don't refugees be given identify cards?
4. Do refugees have freedom of movement? What problems are refugees facing in the exercise of this right?
5. How are refugees right to education, wage earning employment, access to court and religion respected in the camp? What problems are observed in the respect of these rights?
6. What are the problems in relation to voluntary repatriation and resettlement?
7. Would you suggest some solutions to the problems raised earlier?

# QUESTIONNAIRE

This is a questionnaire prepared to assess the scope and extent of the legal protection extended to refugees in the camp. It is essentially designed to check whether the internationally recognized right of refugees are respected or fulfilled. Hence, I request you to respond to the questions, that follow with honesty and due diligence.

Thank you for your cooperation!

## I. Instruction

The questionnaire includes 42 questions, some multiple choices and some open ended. You may underline the answer/s you deem appropriate as regards the multiple choices. The open-ended questions, however, must be responded in the space provided.

## II. General Information

Sex \_\_\_\_\_ Age \_\_\_\_\_ Nationality \_\_\_\_\_ clan \_\_\_\_\_

Marital status: married /single \_\_\_\_\_ No of children \_\_\_\_\_

Educational Background \_\_\_\_\_

## III. Protection

1. When did you flee to Ethiopia? \_\_\_\_\_
2. Did you face problems while crossing the Ethiopian border? Yes/ No
3. If yes, what problems did you face?
  - A. Detention
  - B. Sexual harassment (Rape etc)
  - C. Torture
  - D. Other (Mention) \_\_\_\_\_
4. Who caused the problems in N<sup>o</sup> 3 above?
  - A. Boarder police officers
  - B. Immigration officers
  - C. Unknown individuals
  - D. Others \_\_\_\_\_
5. Have you been given refugee status? Yes/ No
6. If your answer in Q. No 5 above is yes, how is your status determined?
  - A. On individual basis
  - B. By group recognition
  - C. Other means (mention) \_\_\_\_\_

7. If your status is determined individually, then respond to the questions that follow.
- A. Who determined your status? \_\_\_\_\_
  - B. Have you been given opportunity to be heard? Yes/ No
  - C. Did you have enough time to respond to the person/s determining your case? Yes/No
  - D. Did the organ determining status provide you with interpreter? Yes/ No/
  - E. Did you have a chance for appeal? Yes/No
  - F. If yes, what problems did you face in the appellate organ? \_\_\_\_\_  
\_\_\_\_\_
  - G. How long did the procedure take to finalize your case? \_\_\_\_\_
8. Where have you been until your status is determined? \_\_\_\_\_  
Were you been given an identification of an asylum seeker? Yes/No
9. Have you been provided with individual identify card since you became a refugee? Yes/ No
10. If you are engaged in marriage, is your status recognized in the camp? Yes/No
11. If yes, do you have the right attached to marriage (like power over children and rights on property) respected? Yes/No
12. If your answer in Q. No. 11 is "No", what are the problems? \_\_\_\_\_  
\_\_\_\_\_
13. If you are engaged after your coming to Ethiopia, what are the requirements you were requested to fulfill? \_\_\_\_\_
14. Do you have freedom to practice your religion in the camp? Yes/No  
Do you have freedom as regards the religious education of you children, if any? Yes/No
15. Mention the problems you are facing with respect to your freedom to practice your religion? \_\_\_\_\_
16. Do you have land to cultivate? Yes/ No
17. If your answer to Q. No 16 is yes, what were the conditions you fulfilled to have the land? \_\_\_\_\_
18. Do you have associations or trade unions in the camp? Yes/No
19. What is the purpose of the association if it exists? \_\_\_\_\_
20. Do you have access to Ethiopian courts?
- A. Yes
  - B. No
  - C. Conditionally (in criminal cases)
  - D. Any other answer \_\_\_\_\_

21. If yes, and if you have ever been to Ethiopian Court, respond to the following questions.
- A. Is the court geographically accessible? Yes/No \_\_\_\_\_
  - B. Was there an interpreter? Yes/No \_\_\_\_\_
  - C. Have you been provided with a legal counsel? Yes/No \_\_\_\_\_
  - D. Do you know the laws of the country? Yes/No \_\_\_\_\_
22. If your answer to Q. No 20 above is "No", then how do you resolve disputes arising
- a) Between and amongst the refugee community? \_\_\_\_\_
  - b) Between a refugee and the local inhabitants? \_\_\_\_\_
23. How are criminal cases entertained?
- a. Who investigates? \_\_\_\_\_
  - b. Who prosecutes? \_\_\_\_\_
  - c. Is the suspect provided with the rights in the laws? (like the right to remain silent, to be provided with a lawyer, interpreter, a bail etc)
24. How are you earning your livelihood?
- a. From UNHCR grant
  - b. From NGO's working in the area
  - c. Working in government agencies
  - d. By my own account in agriculture, handicrafts and commerce etc.
  - e. Another source \_\_\_\_\_
25. If your answer to Q. No. 24 is "A" what are the grant/ assistance UNHCR give to you?
- \_\_\_\_\_
- \_\_\_\_\_
26. Mention problems you face in the service of UNHCR? \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_
27. If your answer to Q. No 24 is "B", then
- A. What are the NGOs providing assistance? \_\_\_\_\_
  - B. In what terms are your getting income/ or grants? \_\_\_\_\_
  - C. What are the problems your are facing in the service? \_\_\_\_\_

28. If you are employed in a governmental office/agency, outline
- A. The place of work \_\_\_\_\_
  - B. The area of work \_\_\_\_\_
  - C. Monthly salary \_\_\_\_\_
  - D. Problems you are facing in working? \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_
29. If you are self-employed, mention the problems you are facing in undertaking your activities? \_\_\_\_\_  
 \_\_\_\_\_
30. Do/es your child/ren have access to a public school for his/her/ their elementary education? Yes/No
31. If yes, then
- A. In what languages are they learning? \_\_\_\_\_
  - B. Are the teachers qualified? \_\_\_\_\_
  - C. How much students are in a class? \_\_\_\_\_
  - D. Identify the problems in the different services? \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_
32. If there are no public schools for primary education, who is providing the school education?
- A. UNHCR
  - B. NGO's (name the concerned ones) \_\_\_\_\_
33. Where do the children continue their education after finishing elementary education?
- A. High school/s established in the camp
  - B. In the nearby cities e.g Assossa
  - C. They have no chance to continue
34. If your answer to Q. No. 32 is "A" or "B" provide the problems with respect to the education service? (if any) \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

35. Are you provided with a travel document for the purpose of traveling outside Ethiopia?  
Yes/No/ I don't need any

36. If your answer to Q. 35 is "No", what/ are the reason/s for the refusal? \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

37. Have you choose the existing place of residence? Yes/No

38. Can you move freely

A. with in the territory of the camp? Yes/No

B. with in the city in the nearby? Yes/No

C. out side Assossa (e.g to Addis Ababa) Yes/No/ with permission

39. If you are allowed to go to A.A and other cities out side Assossa with permission, what are the grounds the camp administration or ARRA permit to move?

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

How long do you stay there? \_\_\_\_\_

40. Do you want to return to your homeland? Yes/No

41. If yes, what are the reasons which prevented your from going? \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

42. If you are a woman/child/handicapped or /disabled/ elderly (of age greater than 60), what special protection are extended to you in the camp? \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Thank you!

# QUESTIONNAIRE

4

This is a questionnaire prepared to assess the scope and extent of the legal protection extended to refugees in the camp. It is essentially designed to check whether the internationally recognized right of refugees are respected or fulfilled. Hence, I request you to respond to the questions, that follow with honesty and due diligence.

Thank you for your cooperation!

## I. Instruction

The questionnaire includes 42 questions, some multiple choices and some open ended. You may underline the answer/s you deem appropriate as regards the multiple choices. The open-ended questions, however, must be responded in the space provided.

## II. General Information

Sex \_\_\_\_\_ Age \_\_\_\_\_ Nationality \_\_\_\_\_ clan \_\_\_\_\_

Marital status: married /single \_\_\_\_\_ No of children \_\_\_\_\_

Educational Background \_\_\_\_\_

## III. Protection

1. When did you flee to Ethiopia? \_\_\_\_\_
2. Did you face problems while crossing the Ethiopian border? Yes/ No
3. If yes, what problems did you face?
  - A. Detention
  - B. Sexual harassment (Rape etc)
  - C. Torture
  - D. Other (Mention) \_\_\_\_\_
4. Who caused the problems in N<sup>o</sup> 3 above?
  - A. Boarder police officers
  - B. Immigration officers
  - C. Unknown individuals
  - D. Others \_\_\_\_\_
5. Have you been given refugee status? Yes/ No
6. If your answer in Q. No 5 above is yes, how is your status determined?
  - A. On individual basis
  - B. By group recognition
  - C. Other means (mention) \_\_\_\_\_

7. If your status is determined individually, then respond to the questions that follow.
- A. Who determined your status? \_\_\_\_\_
  - B. Have you been given opportunity to be heard? Yes/ No
  - C. Did you have enough time to respond to the person/s determining your case? Yes/No
  - D. Did the organ determining status provide you with interpreter? Yes/ No/
  - E. Did you have a chance for appeal? Yes/No
  - F. If yes, what problems did you face in the appellate organ? \_\_\_\_\_  
\_\_\_\_\_
  - G. How long did the procedure take to finalize your case? \_\_\_\_\_
8. Where have you been up until your status is determined? \_\_\_\_\_  
Were you been given an identification of an asylum seeker? Yes/No
9. Have you been provided with individual identify card since you became a refugee? Yes/ No
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19. What is the purpose of the association if it exists? \_\_\_\_\_
20. Do you have access to Ethiopian courts?
- A. Yes
  - B. No
  - C. Conditionally (in criminal cases)
  - D. Any other answer \_\_\_\_\_

21. If yes, and if you have ever been to Ethiopian Court, respond to the following questions.
- A. Is the court geographically accessible? Yes/No \_\_\_\_\_
  - B. Was there an interpreter? Yes/No \_\_\_\_\_
  - C. Have you been provided with a legal counsel? Yes/No \_\_\_\_\_
  - D. Do you know the laws of the country? Yes/No \_\_\_\_\_
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  - b. From NGO's working in the area
  - c. Working in government agencies
  - d. By my own account in agriculture, handicrafts and commerce etc.
  - e. Another source \_\_\_\_\_
25. If your answer to Q. No. 24 is "A" what are the grant/ assistance UNHCR give to you?
- \_\_\_\_\_
- \_\_\_\_\_
26. Mention problems you face in the service of UNHCR? \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_
27. If your answer to Q. No 24 is "B", then
- A. What are the NGOs providing assistance? \_\_\_\_\_
  - B. In what terms are your getting income/ or grants? \_\_\_\_\_
  - C. What are the problems your are facing in the service? \_\_\_\_\_

28. If you are employed in a governmental office/agency, outline
- A. The place of work \_\_\_\_\_
  - B. The area of work \_\_\_\_\_
  - C. Monthly salary \_\_\_\_\_
  - D. Problems you are facing in working? \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_
29. If you are self-employed, mention the problems you are facing in undertaking your activities? \_\_\_\_\_  
 \_\_\_\_\_
30. Do/es your child/ren have access to a public school for his/her/ their elementary education? Yes/No
31. If yes, then
- A. In what languages are they learning? \_\_\_\_\_
  - B. Are the teachers qualified? \_\_\_\_\_
  - C. How much students are in a class? \_\_\_\_\_
  - D. Identify the problems in the different services? \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_
32. If there are no public schools for primary education, who is providing the school education?
- A. UNHCR
  - B. NGO's (name the concerned ones) \_\_\_\_\_
33. Where do the children continue their education after finishing elementary education?
- A. High school/s established in the camp
  - B. In the nearby cities e.g Assossa
  - C. They have no chance to continue
34. If your answer to Q. No. 32 is "A" or "B" provide the problems with respect to the education service? (if any) \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

35. Are you provided with a travel document for the purpose of traveling outside Ethiopia?  
Yes/No/ I don't need any

36. If your answer to Q. 35 is "No", what/ are the reason/s for the refusal? \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

37. Have you choose the existing place of residence? Yes/No

38. Can you move freely

A. with in the territory of the camp? Yes/No

B. with in the city in the nearby? Yes/No

C. out side Assossa (e.g to Addis Ababa) Yes/No/ with permission

39. If you are allowed to go to A.A and other cities out side Assossa with permission, what are the grounds the camp administration or ARRA permit to move?

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

How long do you stay there? \_\_\_\_\_

40. Do you want to return to your homeland? Yes/No

41. If yes, what are the reasons which prevented your from going? \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

42. If you are a woman/child/handicapped or /disabled/ elderly (of age greater than 60), what special protection are extended to you in the camp? \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Thank you!



የኢትዮጵያ ፌዴራላዊ ዲሞክራሲያዊ ሪፐብሊክ

# ፌዴራል ነጋሪት ጋዜጣ

## FEDERAL NEGARITGAZETA

OF THE FEDERAL DEMOCRATIC REPUBLIC OF ETHIOPIA

1002

አሥረኛ ዓመት ቁጥር 58  
እዲስ አበባ ሐምሌ ፲፱፻፺፮

በኢትዮጵያ ፌዴራላዊ ዲሞክራሲያዊ ሪፐብሊክ  
የሕገብ ተወካዮች ምክር ቤት ጠባቂነት የወጣ

10<sup>th</sup> Year No. 54  
ADDIS ABABA- 19<sup>th</sup> July, 2004

**ማውጫ**  
አዋጅ ቁጥር ፬፻፱/፲፱፻፺፮ ዓ.ም  
የሰደተኞች ጉዳይ አዋጅ...ገጽ ፪ሺ፲፻፷

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**አዋጅ ቁጥር ፬፻፱/፲፱፻፺፮**  
**የሰደተኞች ጉዳይ አዋጅ**

**PROCLAMATION NO. 409/2004**  
**REFUGEE PROCLAMATION**

ኢትዮጵያ ለሰደተኞች መጠጊያና ከለላን የምትሰጥ ሁኔታዎች በፈቀዱ ጊዜ ሁሉ ደህንነታቸውንና ክብራቸውን ተጠብቆ በራሳቸው ፈቃድ ወደሀገራቸው እንዲመለሱ የምታበረታታ በመሆኑ፤

WHEREAS, Ethiopia is providing asylum and protection to refugees and promoting their voluntary repatriation in safety and dignity whenever conditions permit,

ኢትዮጵያ እ.ኤ.አ ጁላይ ፳፰ ቀን ፲፱፻፶፩ በጆን ሻ የፀደቀው የሰደተኞች ኮንቬንሽን፣ እ.ኤ.አ. ጃንዋሪ ፳፩ ቀን ፲፱፻፶፯ የፀደቀው የሰደተኞች ፕሮቶኮልና እ.ኤ.አ. ሴፕቴምበር ፲ ቀን ፲፱፻፷፱ በአዲስ አበባ የፀደቀው የአፍሪካ ሰደተኞችን ችግር የተወሰኑ ገፅታዎች የሚገዛው የአፍሪካ አንድነት ድርጅት ኮንቬንሽን አባል በመሆኗ፤

WHEREAS, Ethiopia is a party to the Convention Relating to the Status of Refugees done at Geneva on 28 July 1951, the Protocol Relating to the Status of Refugees of 31 January 1967 and the OAU Convention Governing the Specific Aspects of Refugee Problem in Africa, done at Addis Ababa on 10 September 1969.

ከላይ የተገለፁ ዓለም አቀፍ የሕግ ሰነዶችን በሚገባ ስራ ላይ ለማዋል ብሔራዊ ሕግ በማውጣት ሕጋዊና አስተዳዳሪዊ መዋቅር በመመስረት ሰደተኞችን መቀበል፣ ደህንነታቸውን መንከባከብና በተቻለ መጠን የዘለቄታ መፍትሔ የሚያገኙበትን ሁኔታ ማመቻቸት አስፈላጊ ሆኖ በመገኘቱ፤

WHEREAS, it is desirous to enact national legislation for the effective implementation of the aforesaid international legal instruments, establish a legislative and management framework for the reception of refugees, ensure their protection, and promote durable solutions whenever condition permit;

በኢትዮጵያ ፌዴራላዊ ዲሞክራሲያዊ ሪፐብሊክ ሕገ መንግሥት አንቀጽ 5፮/፩/ መሠረት የሚከተለው ታውጇል፡፡

NOW, THEREFORE, in accordance with Article 55(1) of the Constitution of the Federal Democratic Republic of Ethiopia, it is hereby proclaimed as follows:

ያንዱ ዋጋ 4.80  
Unit Price

ነጋሪት ጋዜጣ ፖ.ሣ.ቁ ፹ ሺ ፩  
Negarit G. P.O.Box 80001

ከፍል አንድ  
ጠ ፶. ለ. ላ

PART ONE  
GENERAL

፩. አጭር ርዕስ

1. Short Title

ይህ አዋጅ “የሰደተኞች ጉዳይ አዋጅ ቁጥር ፴፱/፩፱፻፺፯” ተብሎ ሊጠቀስ ይችላል።

This Proclamation may be cited as “Refugee Proclamation No. 409/2004.”

፪. ትርጓሜ

2. Definition

የቃሉ ወይም የሐረጉ አገባብ ሌላ ትርጉም የሚያሰጠው ካልሆነ በስተቀር፤ በዚህ አዋጅ፤

In this Proclamation, unless the context otherwise requires:-

፩/ “ባለሥልጣን” ማለት በአዋጅ ቁጥር ፮ ፲፱፻፹፯ አንቀጽ ፮/፩/ መሠረት የተቋቋመው የደህንነት፣ የኢሚግሬሽንና የሰደተኞች ጉዳይ ባለሥልጣን ነው።

1) “Authority” means the Security, Immigration and Refugee Affairs Authority established by Proclamation No. 6/1995 Article 6(1)

፪/ “የተባበሩት መንግሥታት የሰደተኞች ጉዳይ ከፍተኛ ኮሚሽን” ማለት በኢትዮጵያ የሚገኘው የተባበሩት መንግሥታት የሰደተኞች ጉዳይ ከፍተኛ ኮሚሽን ጽሕፈት ቤት ነው።

2) “United Nations High Commissioner for Refugees” means the Office in Ethiopia of the United Nations High Commissioner for Refugees.

፫/ “የሰደተኞች ኮንቬንሽን” ማለት እ.ኤ.አ ጁላይ ፳፰ ቀን ፲፱፻፶፩ በጄነቫ የፀደቀው የሰደተኞች ኮንቬንሽን እና እንደ እ.ኤ.አ ጁንዋሪ ፴፩ ቀን ፲፱፻፷፯ የፀደቀው ፕሮቶኮል ማለት ነው።

3) “The Refugee Convention” means the Convention Relating to the Status of Refugees done at Geneva on 28 July 1951 and the protocol ratified on 31<sup>st</sup> January, 1967

፬/ “የአፍሪካ አንድነት ድርጅት የሰደተኞች ኮንቬንሽን እና እንደ እ.ኤ.አ ጁንዋሪ ፴፩ ቀን ፲፱፻፷፯ የፀደቀው ፕሮቶኮል” ማለት እ.ኤ.አ ሴፕቴምበር ፲ ቀን ፲፱፻፷፱ በአዲስ አበባ የፀደቀውና የአፍሪካ ሰደተኞችን ችግር የተወሰኑ ገፅታዎች የሚገዛው የአፍሪካ አንድነት ድርጅት ኮንቬንሽን ማለት ነው።

4) “The OAU Refugee Convention” means the OAU Convention Governing the Specific Aspects of Refugee Problems in Africa, done at Addis Ababa on 10 September 1969

፭/ “የዜግነት አገር” ማለት ስደተኛው ዜጋ የሆነበት አገር ማለት ነው።

5) “Country of Nationality” means a country, which the refugee is a national.

፮/ “የቀድሞ መደበኛ መኖሪያ አገር” ማለት አንድ ሰው በቋሚነት ይኖርበትና ጥበቃውንም ያገኛበት የነበረ አገር ማለት ነው።

6) “Country of former habitual residence” means the country where a person established himself permanently and which enjoyed its protection.

፯/ “ሰደተኛ” ማለት በዚህ አዋጅ አንቀጽ ፬ ወይም አንቀጽ ፲፱ የተጠቀሰውን መስፈርት የሚያሟላ ሰው ነው።

7) “Refugee” means any person or group of persons who full fills the criteria under the Provisions of Article 4 or Article 19 of this Proclamation

፮/ “የቤተሰብ አባል” ማለት፤

- /ሀ/ የስደተኛው ባል ወይም ሚስት፤
- /ለ/ ከአስራ ስምንት ዓመት በታች የሆነ የላገባ የስደተኛው ልጅ ማለት ነው፤

፯/ “እውቅና ያገኝ ስደተኛ” ማለት፤

- /ሀ/ በዚህ አዋጅ አንቀጽ ፬ መሠረት በስደተኝነት እውቅና ያገኘ ወይም፤
- /ለ/ በዚህ አዋጅ አንቀጽ ፲፱ ድን ጋጌዎች መሠረት ስደተኛ ናቸው የተባሉ ሰዎች ቡድን አባል የሆነ ነው፤

፲/ “ጥገኝነት ጠያቂ” ማለት በድንበር ወይም በጠረፍ ላይ ሆኖ ጥገኝነት ጠያቂ መሆኑን ያስታወቀ ወይም አገደብ ውስጥ ሆኖ የስደተኝነት እውቅና እንዲሰጠው ሥልጣን ላለው አካል አመልክቶ የመጨረሻ ውሳኔ የሚጠበቅ ማንኛውም ሰው ነው።

ክፍል ሁለት  
ጠቅላላ መርሆዎች

፫. ልዩነት ስለሌለ መደረጉ

ይህ አዋጅ በዘር፣ በኃይማኖት፣ በዜግነት፣ በእንድ የህብረተሰብ ክፍል አባልነት ወይም በፖለቲካ እስተሰበሰቡ ምክንያት ልዩነት ሳይደረግ ተፈፃሚ ይሆናል።

፬. የስደተኝነት መስፈርት

ማንኛውም ሰው፤

፩/ በዘር፣ በኃይማኖት፣ በዜግነት፣ በእንድ የህብረተሰብ ቡድን አባል በመሆኑ ወይም በፖለቲካ እምነቱ ምክንያት በእርግጥ /በተጨማሪ/ ማሳደድ ወይም አደጋ ወይም እንግልት ወይም ስቃይ ይደርስብኛል ብሎ በመስጋቱ ምክንያት ከዜግነት አገሩ የተሰደደና በነዚህ ክስተቶች ምክንያት የዜግነት አገሩን ጥበቃ ለማግኘት ያልቻለ ወይም ያልፈለገ እንደሆነ፤

፪/ የዜግነት የሌለው ከሆነ በዘር፣ በኃይማኖት፣ በእንድ የተወሰነ ቡድን አባል በመሆኑ ወይም በፖለቲካ እምነቱ ምክንያት በእርግጥ /በተጨማሪ/ ማሳደድ ወይም አደጋ ወይም እንግልትና ስቃይ ይደርስብኛል ብሎ በመስጋት ከቀድሞ መደበኛ የመኖሪያ ሥፍራው ለቆ የተሰደደና እና ወደቀ ድሞ መደበኛ የመኖሪያ ሥፍራው መመለስ ያልቻለ ወይም ያልፈለገ እንደሆነ፤ ወይም

8) “The Family Members” means:-

- a) any spouse of the refugee, and
- b) any unmarried child of the refugee under the age of eighteen years.

9) “Recognized Refugee” means a person who:-

- a) has been recognized as a refugee in terms of Article 4 of this Proclamation or
- b) is a member of group of persons declared to be refugees in terms of Article 19 of this Proclamation.

10) “Asylum-seeker” means any person who presents himself at the border or frontier claiming to be a refugee or any person is in Ethiopia and who has lodged an application with the competent authorities for recognition as a refugee and is awaiting a final decision on his application.

Part Two  
General Principles

3. Non-discrimination

This Proclamation shall be applied without discrimination as to race, religion, nationality, membership of a particular social group, or political opinion.

4. Refugee Criteria

Any person shall be considered as refugee where:

- 1) owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion he is outside his country of nationality and is unable or, owing to such fear, is unwilling, to avail himself of the protection of that country;
- 2) not having a nationality and being outside of his former habitual residence, he is unable, or owing to a well-founded fear of being persecuted for reasons of race, religion, membership of a particular social group or political opinion, he is unwilling to return to it; or

፫/ ከአፍሪካ አገሮች የሚመጣ ስደተኛ በሆነ ጊዜ በውጭ ወረራ፣ በግዛት መያዝ፣ የቱወልድ ወይም የዜግነት አገሩን ሕዝባዊ ሥርዓት በከፊልም ሆነ በሙሉ በሚያናጋ ከባድ ክስተት ምክንያት ከትውልድ ወይም ከዜግነት አገሩ ውጭ ጥገኝነት ለመጠየቅ ሲል መደበኛ መኖሪያ ሥፍራውን ለመልቀቅ የተገደደ እንደሆነ፣ እንደ ስደተኛ ይቆጠራል።

፭. እንደስደተኛ ስላለመቆጠር

በዚህ አዋጅ አንቀጽ ፬ የተደነገገው ቢኖርም ማንኛውም ሰው፣

፩/ ኢትዮጵያ በተቀበለቻቸው ዓለም አቀፍ ሰነድ ውስጥ እንደተደነገገው በሰላምና በስብዕና ላይ ወንጀል ወይም የጦርነት ወንጀል ስለመፈጸሙ፣

፪/ ወደ ኢትዮጵያ ከመግባቱ በፊት የፖለቲካ ወንጀል ላይሆን ሌላ ከባድ ወንጀል ስለመፈፀሙ፣

፫/ የተባበሩት መንግሥታት ወይም የአፍሪካ አንድነት ድርጅት፣ የአሁኑ የአፍሪካ ሀብረት ቻርተር ስር ውሳኔዎች ወይም አግባብነት ያላቸው ሌሎች ሰነዶቻቸው ውስጥ የተካተቱ ዓላማዎችንና መርሆዎችን በመጣስ ጥፋተኛ ስለ መሆኑ አላማኝ ምክንያቶች የተገኙ እንደሆነ፣ ወይም

፬/ ከአንድ ዜግነት በላይ ኖሮት በነዚህ የዜግነት አገሮች በሚሰጠው ጥበቃ በአንዱ አገር ተጠቃሚ ያልሆነና በዚህም ጥበቃ ላለመጠቀም በቂና ተገቢ ምክንያት የሌለው እንደሆነ፣ እንደስደተኛ አይቆጠርም።

፮. በስደተኛነት የተሰጠ እውቅናን ስለማንሳት

፩/ ባለሥልጣኑ በማንኛውም ጊዜ ቢሆን አንድ በስደተኛነት እውቅና ያገኘ ሰው እውቅናውን ማግኘት ያልነበረበት ወይም ስደተኛነቱ ቀሪ መሆኑን ጥብቅ በሆነ ሁኔታ የተገነዘበ እንደሆነ ስለሁኔታው ለስደተኛው በጽሁፍ በማስታወቅና ጉዳዩን አቅርቦ እንዲያስረዳ በመፍቀድ አስፈላጊ ሆኖ ሲያገኘው ለስደተኛው ተሰጥቶት የነበረውን ዕውቅና ሊሠርዝ ይችላል።

3) owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his country of origin or nationality, he is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality, in case of refugees coming from Africa.

5. Exclusion from Refugee Status

Notwithstanding the provision of Article 4 of this Proclamation a person shall not be considered as a refugee for the purposes of this Proclamation if there are serious reasons to believe that:

- 1) he has committed a crime against peace, a war crime or a crime against humanity as defined in any international instrument to which Ethiopia is a party and which has been drawn up to make provision in respect of such crimes;
- 2) he has committed a serious, non-political crime outside Ethiopia prior to his entry into Ethiopia;
- 3) he has been guilty of acts contrary to the purposes and principles of the United Nations or the Organization of African the now African Unity as embodied in the charter, resolutions or other relevant instruments of those bodies; or;
- 4) having more than one nationality, he has not availed himself of the protection of one of the countries of which he is a national and has no valid reason, for not having availed himself of its protection.

6. Withdrawal of Recognition of Refugees

1) If at any time the Authority considers that there are serious ground for believing that a person who has been recognized as a refugee should not have been recognized or has ceased to be a refugee, it may cancel the refugee status given after notifying the refugee concerned in writing and giving him the opportunity to explain about the issue.;

፪/ ዕውቅናው የተሰረዘበት ስደተኛ ውሳኔውን በሰማ በፀብ ቀናት ውስጥ በዚህ አዋጅ አንቀጽ ፲፮ መሠረት ለተቋቋመው ይግባኝ ስሚ ጉባዔ ይግባኝ ማቅረብ ይችላል።

**፯. እንደስደተኛ መቆጠር ስለሚያበቃበት ሁኔታ**

ማንኛውም ሰው፤

፩/ በራሱ ፍላጎት በዜግነት አገሩ በሚሰጥ ጥበቃ መልሶ ተጠቃሚ የሆነ እንደሆነ፤

፪/ የሚደርስበትን መሰደድ በመፍራት ለቆቅ በወጣው አገር ወይም በቋሚነት በሚኖርበት አገር ውስጥ ራሱን መልሶ ያቋቋመ እንደሆነ፤

፫/ የኢትዮጵያን ወይም የሌላ አገር ዜግነት አግኝቶ በዚህ በአዲሱ የዜግነት አገሩ በሚሰጥ ጥበቃ ተጠቃሚ የሆነ እንደሆነ፤

፬/ በስደተኛነት እውቅና እንዲያገኝ ምክንያት የነበሩ ሁኔታዎች የቀሩ ወይም የተለወጡ ሆኑ፤

ሀ/ በዜግነት አገሩ የሚሰጠውን ጥበቃ ባለመጠቀም አቋሙ የቀጠለ እንደሆነ፤ ወይም

ለ/ ዜግነቱን አጥቶ ከሆነ ወደ ቀድሞ መደበኛ መኖሪያ አገሩ አልመለሰም ለማለት የሚያስችል ሁኔታ የሌለ እንደሆነ፤ እንደስደተኛ መቆጠሩ ቀሪ ይሆናል።

፭/ የዚህ አንቀጽ ንዑስ አንቀጽ ፱ ድንጋጌዎች በዚህ አዋጅ በአንቀጽ ፱ ስር በተገለጹ ምክንያቶች ለደህንነቱ በመፍራት በዜግነት አገሩ ወይም በቀድሞ መደበኛ መኖሪያ አገሩ በሚሰጥ ጥበቃ ለመጠቀም ካለመፈለግ የሚመነጨ አስገዳጅ ምክንያቶችን ማቅረብ በሚችል ስደተኛ ላይ ተፈፃሚ አይሆኑም።

2) Any person aggrieved by the decision of the Authority can appeal within 30 days of receiving the decision to appeal hearing council, established in accordance with Article 15 of this Proclamation.

**7. Cessation of Refugee Status**

Any person shall cease to be considered as refugee if:

1) he has voluntarily re-avails himself of the protection of the country of his nationality;

2) he has voluntarily re-establishes himself in the country which he left or outside of which he remained owing to fear of persecution;

3) he has acquired the nationality of Ethiopia, or that of another country and enjoys the protection of Ethiopia or the country of his new nationality: or

4) Despite the circumstances in connection with which he was recognized as a refugee, have ceased to exist:

(a) continue to refuse to avail himself of the protection of the country of his nationality: or

(b) if he has lost his nationality or has no nationality, and is able to return to the country of his country of former habitual residence, but continue to refuse to do so.

5) The provisions of this Article shall not apply, however, to a refugee falling under Article 4 of this Proclamation who is able to invoke compelling reasons arising out of previous persecution or fear for his safety for the reasons set out in Article 4, for refusing to avail himself of the protection of the country of his nationality or country of his former habitual residence.

፮. የሁኔታዎች መሠረታዊ ለውጥ

፩/ በዚህ አዋጅ አንቀጽ ፮ የተመለከቱት መሠረታዊ ለውጦች በዚህ አዋጅ መሠረት የሰደተኛነት እውቅና ባገኘው ሰው ወይም ሰዎች የዜግነት አገር ወይም የቀድሞ መደበኛ መኖሪያ ቦታቸው መከሰቱ ከታመነ የባለሥልጣኑ ኃላፊ ከተባበሩት መንግሥታት የሰደተኞች ጉዳይ ከፍተኛ ኮሚሽነር ጋር በመተባበር ለዚህ ተግባር አፈፃፀም ሲባል የሚዘጋጀውን ልዩ ሥነሥርዓት መሠረት በማድረግ እንዲሁም በመጀመሪያ የሰደተኛነት እውቅና ለመስጠት ምክንያት የሆኑ ሁኔታዎችን ከግምት ውስጥ በማስገባት በተከሰተው ለውጥ ጠባይና በቆይታው ላይ ምርመራና ማጣራት እንዲካሄድ ያደርጋል፤

፪/ ከዚህ ምርመራና ማጣራት በኋላ ባለሥልጣኑ ከተባበሩት መንግሥታት የሰደተኞች ጉዳይ ከፍተኛ ኮሚሽነር ጋር በመተባበር ለሰውየው ወይም ለሰዎቹ ቡድን የተሰጠው እውቅና መቅረት አለመቅረቱን ይወስናል፤

፫/ በዚህ አንቀጽ ንዑስ አንቀጽ ፪ መሠረት ሰደተኛነት ቀሪ እንዲሆን የሚሰጥ ውሳኔ የሰደተኛነት ቀሪ መሆን በሰደተኛው ወይም በሰደተኞቹ ላይ ስለሚያሰከትለው ውጤት እንዲሁም እያንዳንዱ ሰደተኛ ስላለው ይግባኝ የማቅረብ መብት እንዳለው ማመልከት አለበት፡፡

፯ ተገደ ስላለ መመለስ

፩/ ማንኛውም ሰው ወደ ኢትዮጵያ እንዳይገባ በመከልከል ወይም ከኢትዮጵያ እንዲባረር ወይም ወደመጣባት እንዲመለስ በመደረጉ ወይም በማንኛውም ሌላ እርምጃ ምክንያት፤

ሀ/ ዘሩን፣ ሃይማኖቱን፣ ዜግነቱን፣ የአንድ ማህበራዊ ቡድን አባልነቱን ወይም የፖለቲካ እምነቱን ምክንያት በማድረግ ማሳደድ፣ መሰቃየት ወይም መንገሳታት ወደሚደርስበት አገር ወይም፤

8. Fundamental Change of Circumstances

1) Where the fundamental changes referred to in Article 7 (4) of this article are considered to have taken place in a country of nationality or of former place of habitual residence of a person or persons recognized as refugees under this Proclamation, the Head of the Authority, working in collaboration and co-ordination with the United Nations High Commissioner for Refugees, or its substitute and subject to such other special procedures as may be established for this purpose, initiate an assessment and verification of the nature and durability of the changes having regard to the circumstances which justified the grant of refugee status in the first place.

2) Following such assessment and verification, the Authority shall, in collaboration with the United Nations High Commissioner for Refugees, make a decision as to whether the refugee status of the person or group of persons concerned shall be declared to have ceased.

3) The decision made pursuant to Sub-Article (2) of this Article shall also set out the consequences and implications for the refugee or refugees affected by the cessation of refugee status, including the right of individual refugees to have their individual claim for continuing refugee status examined.

9. Non - refoulement

1) No person shall be refused entry in to Ethiopia or expelled or returned from Ethiopia to any other country or be subject to any similar measure if as a result of such refusal, expulsion or turn or any other measure, such person is compelled to return to or remain in a country where:-

a) he may be subject to persecution or torture on account of his race, religion, nationality, membership of a particular social group or political opinion: or

ለ/ በውጭ ወረራ ወይም የግዛት መያዝ በውጭ የአገዛዝ ሥልጣን ወይም የአገሪቱን ሕዝባዊ ሥርዓት ወይም ፀጥታ በከፊል ወይም ሙሉ በሙሉ በከባድ ሁኔታ በሚያናጋ ሁኔታ ሀይወቱን አካሉን ሰብአዊነቱ ወይም ነፃነቱ አደጋ ላይ ወደሚወድቅበት አገር፤

እንዲመለስ ወይም በዚያው እንዲቆይ የሚያስገድደው ከሆነ ወይ ኢትዮጵያ እንደ ይጣ አይከለከልም ወይም ከኢትዮጵያ እንደ ዲሳረር ወይም እንዲመለስ አይደረግም፤

፪/ ለአገር ደህንነት አስጊ ወይም ለሕብረተሰቡ አደገኛ ሆኖ ለተገኘ ወይም ከባድ ወንጀል ፈጽሞ በፍርድ ቤት የመጨረሻ ውሳኔ ጥፋተኛ የተሰኘ ማንኛውም ስደተኛ በዚህ አንቀጽ ንዑስ አንቀጽ /፩/ ድንጋጌ ተጠቃሚ አይሆንም።

፫/ የዚህ አዋጅና የሌሎች ሕጎችን መንፈስ መሠረት በማድረግ የባለሥልጣኑ ኃላፊ እንድ ስደተኛ ለአገር ደህንነት አስጊ መሆኑን ይወስናል።

I. ከአገር ስለማስወጣት

፩/ በሕጋዊ መንገድ በኢትዮጵያ ውስጥ ነዋሪ የሆነ ስደተኛ በብሔራዊ ፀጥታና በሕዝብ ሰላም ምክንያት ካልሆነ በስተቀር ከአገር እንዲወጣ አይደረግም።

፪/ በዚህ አንቀጽ ንዑስ አንቀጽ /፩/ መሠረት የማስወጣቱ ትዕዛዝ የሚሰጠው በባለሥልጣኑ ኃላፊ ነው። ይሁን እንጂ ኃላፊው ይህንን ትዕዛዝ ከመስጠቱ በፊት ስደተኛው ጉዳዩን አቅርቦ እንዲያስረዳ ይፈቅድለታል።

፫/ ማንኛውም የማስወጣት ትዕዛዝ ከነምክንያቱ ለስደተኛው በጽሁፍ እንዲደርሰው ይደረጋል።

፬/ ከአገር እንዲወጣ በታዘዘ ስደተኛ ጥያቄ ሲቀርብ የማስወጣቱ ትዕዛዝ ስደተኛው በሌላ አገር ለመኖር እንዲፈቀድለት ለማመልከት እንዲያስችለው በቂ ለሆነ ጊዜ ሊዘገይ ይችላል።

b) his life, physical integrity or liberty would be threatened on account of external aggression, occupation, foreign domination or of events seriously disturbing public order in part or whole of the country.

2) The benefit of this provision may not, however, be claimed by a refugee whom there are serious reasons for regarding as a danger to the national security, or who having been convicted by a final judgment of a particularly serious crime, constitute a danger to the community.

3) The Head of the Authority shall in line with the spirit of this Proclamation and existing Law determine whether serious grounds exist for regarding a refugee as a danger to national security.

10. Expulsion

1) A refugee who is lawfully resident in Ethiopia shall not be expelled except on the ground of national security and public order.

2) An order to expel, pursuant to Sub Article /1/ of this Article shall be made by the Head of the Authority. However, before making such an order, the Head shall allow the concerned refugee to present his case.

3) Any expulsion order shall be communicated in writing to the refugee together with the reasons for the order.

4) The execution of any expulsion order may, if the concerned refugee requests, be delayed for a reasonable period to enable such refugee, to seek admission to a country other than the country to which he is to be expelled.

**፲፩. ለጊዜው በእስር ስለሚቆዩት**

በዚህ አዋጅ አንቀጽ ፲ መሠረት ከአገር እንዲወጣ የታዘዘው ሰው ትዕዛዙ እስኪፈጸም ወይም ከአገር እስኪወጣ ድረስ የኢትዮጵያን ደህንነት ወይም የሕዝቡን ሰላም እንዳያውክ ወይም ትዕዛዝን ለመፈፀም አስፈላጊ ሆኖ ከተገኘ በባለሥልጣኑ ኃላፊ ትዕዛዝ ሊያዝና ለጊዜው ሊታሰር ይችላል።

**፲፪. የቤተሰብ አንድነት**

፩/ በዚህ አዋጅ በተደነገገው መሠረት የጥገኛነት ጠያቂው ቤተሰቦች ወይም የቤተሰብ አባል የጥገኛነት ጥያቄው ጉዳይ ውሳኔ እስኪያገኝ ድረስ ኢትዮጵያ ውስጥ ለመግባትና ለመቆየት ይፈቀድላቸዋል።

፪/ የጥገኛነት ጠያቂው ቤተሰቦች ኢትዮጵያ ውስጥ ባሉበት ጊዜ ጥገኛነት ጠያቂው ያለው መብት ተጠቃሚ እና ለግዴታ ምቹም ተገዥ ነው።

፫/ እውቅና ያገኘ የስደተኛ ቤተሰብ አባል የሆነ ሰው በዚህ አዋጅ መሠረት ወደ ኢትዮጵያ መግባትና መቆየት ይፈቀድለታል።

፬/ እውቅና ያገኘው ስደተኛ ቤተሰብ አባል ኢትዮጵያ ውስጥ ባሉበት ጊዜ ሁሉ ስደተኛው ያለው መብት ተጠቃሚና ለግዴታ ምቹም ተገዥ ነው።

፭/ ይህ አንቀጽ የጥገኛነት ጠያቂና እውቅና ያገኘ ስደተኛ ቤተሰብ አባል ኢትዮጵያ ውስጥ ባለ ጊዜ በዚህ አዋጅ አንቀጽ ፬ መሠረት የስደተኛነት ማመልከቻ ከማቅረብ አይከለክለውም።

**ክፍል ሦስት  
የስደተኛነት እውቅና አንዲሰጥ ስለሚቀርብ  
አቤቱታና የስደተኛነት ሁኔታ አወሳሰን  
ሥነሥርዓት**

**፲፫. የስደተኛነት እውቅና አንዲሰጥ ስለሚቀርብ አቤቱታ**

፩/ በዚህ አዋጅ አንቀጽ ፲፱ የተመለከተው እንደተጠበቀ ሆኖ በድንበር ላይ ሆኖ ወይም በማንኛውም መግቢያ በር በሕጋዊም ሆነ ሕጋዊ ባልሆነ ሁኔታ ወደ ኢትዮጵያ የገባ እና ኢትዮጵያ ውስጥ በዚህ አዋጅ መሠረት በስደተኛነት ለመቆየት የፈለገ ማንኛውም ሰው በአስራ አምስት ቀናት ውስጥ በቅርብ ለሚገኝ፤

**11. Temporary Detention**

A person whose expulsion has been ordered under Article 10 of this proclamation may be arrested or detained upon the order of the Head of the Authority pending his expulsion if such detention is necessary for purposes of effecting the expulsion order or to ensure that he does not endanger the security or public order of Ethiopia pending the expulsion.

**12. Unity of the Family**

1/ A member of the family of an asylum-seeker as provided for in this Proclamation shall be permitted to enter and remain in Ethiopia until his case is finally decided.

2/ Once the family of an asylum-seeker are in Ethiopia, they shall be entitled to all the rights and be subject to all the duties of an asylum-seeker.

3/ A member of the family of a recognized refugee, as provided for in this Proclamation, shall be permitted to enter and remain in Ethiopia.

4/ Once the family of a recognized refugee is in Ethiopia, they shall be entitled to all the rights and be subject to all the duties of a recognized refugee.

5/ Nothing in this Article shall prevent a member of the family of an asylum-seeker or recognized refugee from himself applying for recognition and being recognized as a refugee in terms of Article 4 of this Proclamation.

**Part Three  
Application for Recognition of Refugee  
Status and Procedures for Determination of  
Refugee Status**

**13. Application for recognition of Refugee Status**

1/ Without prejudices to Article 19 of this Proclamation, any person who is at the frontier or any other entry point or within Ethiopia, whether he has entered the country lawfully or otherwise, and who wish to remain within the country as a refugee in terms of this Proclamation, shall, within fifteen days apply to the nearest:-

- ሀ/ በባለሥልጣኑ ጽ/ቤት፣ ወይም ገለገሎት ጣቢያ ማመልከቻውን ማቅረብ አለበት።
- ፪/ በዚህ አንቀጽ መሠረት ማመልከቻ የተቀበለ ፖሊስ ጣቢያ ማመልከቻውን ወዲያውኑ ለባለስልጣኑ ማስተላለፍ አለበት።
- ፫/ አመልካቹ በባለሥልጣኑ የሚዘጋጀውን ቅጽ በመሙላት የሰጠው መግለጫ እውነት መሆኑን ማረጋገጥ አለበት።
- ፬/ ባለሥልጣኑ ለአመልካቹ ጥገናነት ጠያቂ መሆኑን የሚገልጹ የመታወቂያ ወረቀት መስጠት አለበት።
- ፭/ በሌላ ሕግ ተቃራኒ ድንጋጌ ቢኖርም ለስደተኛነት ለመልከት ወይም በማመልከት ላይ በሚገኝ ሰው ላይ ሀገር ውስጥ በመግባት ወይም በሀገር ውስጥ በመገኘቱ ምክንያት የወንጀል ክስ አይቀርብም ወይም ክስ አይቀጥልም።

**፲፬. በባለሥልጣኑ ስለሚሰጥ ውሳኔ**

- ፩/ ባለሥልጣኑ በዚህ አዋጅ አንቀጽ ፲፫ መሠረት የሚቀርብ አቤቱታን መርምሮ በዚህ አዋጅ አንቀጽ ፬ የተደነገገው መስፈርት መሟላቱን ሲያረጋግጥ ለአመልካቹ የስደተኛነት እውቅና ይሰጣል።
- ፪/ ባለሥልጣኑ የቀረበለትን አቤቱታ መርምሮ ውሳኔ ከመስጠቱ በፊት፦
  - ሀ/ አመልካቹ ጉዳዩን ጽቅርብ ለማስረዳት በቂ ጊዜ የተሰጠው መሆኑን ማረጋገጥ አለበት።
  - ለ/ ጉዳዩ በሚሰማበት ጊዜ ለአቤቱታ አቅራቢው በቁ አስተርጓሚ መመደብ አለበት።
  - ሐ/ የሚሰጠውን ውሳኔ ከምክንያቱ አቤቱታ አቅራቢው በጽሁፍ እንዲያውቅ ማድረግ አለበት።
  - መ/ እያንዳንዱን የቀረበለትን ጉዳይ በተገቢው ጊዜ ውሳኔ እንዲያገኝ ማድረግ አለበት።
  - ሠ/ በምርመራውና በውሳኔ አሰጣጥ ሂደት የተባበሩት መንግሥታት የስደተኞች ጉዳይ ኮሚሽን በታዛቢነት እንዲገኝ መጋበዝ አለበት።
- ፫/ በባለሥልጣኑ ውሳኔ ቅር የተሰኘ አቤቱታ አቅራቢ ውሳኔውን በሰማ በሰላላ ቀናት ውስጥ በዚህ አዋጅ አንቀጽ ፲፮ መሠረት ለተቋቋመው የይግባኝ ሰሚ ጉባዔ ይግባኝን በጽሁፍ ማቅረብ ይችላል።

- a) office of the Authority; or
- b) police station.

- 2/ The police station receiving the application shall, as soon as possible forward the application to the Authority.
- 3/ The applicant shall fill relevant forms and vouch for the truth of the statement therein.
- 4/ The Authority shall provide the applicant with identity card attesting to his status as asylum-seeker.
- 5/ Notwithstanding the provisions of any other law to the contrary, no criminal proceedings shall be commenced or continued against a person who has applied or is about to apply pursuant to this Proclamation on the account of his illegal entry and presence in the country.

**14. Decision by the Authority**

- 1) The Authority shall decide on the application presented to it in accordance with Article 13 of this proclamation.
- 2) In deciding asylum application, the Authority shall:-
  - a) ensure that every applicant is given reasonable time to present his case;
  - b) ensure the presence of qualified interpreter during all the stages of the hearing;
  - c) cause the person concerned to be notified of its decision and the reason thereof in writing;
  - d) decide on every application or case referred to it within reasonable period of time; and
  - e) invite the United Nations High Commissioner for Refugees to participate as an observer.
- 3/ Any asylum-seeker, who is aggrieved by the decision of the Authority, may within thirty days of being notified of such a decision, appeal in writing to the Appeal Hearing Council established under Article 15 of this Proclamation



**፲፱ ለተወሰኑ የሰዎች ቡድን የሰደተኛነት እውቅና ስለመስጠት**

የባለሥልጣኑ ኃላፊ በዚህ አዋጅ አንቀጽ ፬/፫/ የተደነገገውን መስፈርት የሚያሟሉ የአንድ የሰዎች ቡድን ስደተኞች ናቸው ሊል ይችላል።

**ከፍላ አራት**

የሰደተኛነት እውቅና ጠየቂዎች እና እውቅና ያገኙ ስደተኞች መብቶችና ግዴታዎች

**፩/ የጥገንነት ጠየቂዎች መብቶችና ግዴታዎች**

፩/ በዚህ አዋጅ አንቀጽ ፲፫ እና አንቀጽ ፲፱ መሠረት የሰደተኛነት እውቅና እንዲሰጠው ያመለክተ ማንኛውም ሰው፣

ሀ/ ባለሥልጣኑ በጉዳዩ ላይ ውሳኔ እስከ ሲሰጥ ድረስ፣ ወይም

ለ/ ማመልከቻው ተቀባይነት ሳያገኝ የቀረ እንደሆነ የይግባኝ መብቱ እስኪያበቃ ድረስ ኢትዮጵያ ውስጥ እንዲቆይ ይፈቀድለታል።

፪/ የሌሎች ሕጎች ድንጋጌዎች ከዚህ አዋጅ ዓላማ ጋር እስካልተቃረኑ ድረስ በኢትዮጵያ ውስጥ በሥራ ላይ ያሉ ሕጎች በዚህ አንቀጽ ንዑስ አንቀጽ ፩ ስር በተገለፀ ማንኛውም ሰው ላይ ተፈፃሚነት ይኖራቸዋል።

**፳፩/ እውቅና ያገኙ ስደተኞች መብቶችና ግዴታዎች**

፩/ ማንኛውም እውቅና ያገኘ ስደተኛ፣

ሀ/ በዚህ አዋጅ ድንጋጌዎች መሠረት ኢትዮጵያ ውስጥ ለመኖር ይፈቀድለታል፣

ለ/ ስደተኛነቱን የሚገልጽ የመታወቂያ ወረቀት ይሰጠዋል፣

ሐ/ የሰደተኞች የጉዞ ሰነድን በሚመለከት በተደረገ አለምአቀፍ ስምምነት መሠረት ወደውጭ አገር ለመጓገብ የሚያስችል የጉዞ ሰነድ ይሰጠዋል፣

**19. Declaration of class of Persons as Refugees**

If the Head of the Authority considers that any class of persons met the criteria under Article 4(3) of this Proclamation, he may declare such class of persons to be refugees.

**Part Four**

**Rights and Obligations of Asylum-seekers and Recognized Refugees**

**20. Rights and Obligations of an Asylum-seeker**

1) Any person who has applied pursuant to Article 13 and Article 19 of this Proclamation for recognition of his status as a refugee shall be allowed to remain in Ethiopia:-

- a) until the Authority decides on his application; or
- b) if his application is unsuccessful, until he exhausts his right of appeal.

2) Any person stated under Sub-Article (1) of this Article shall, except to the extent that the provisions of any other law may be inconsistent with the purposes of this Proclamation, be subject to laws in force within Ethiopia.

**21. Rights and Obligations of Recognized Refugees**

1) Every recognized refugee shall:-

- a) be permitted to remain within Ethiopia in accordance with the provision of this Proclamation;
- b) be issued with identity card attesting to his refugee status;
- c) be issued with a travel document for the purpose of traveling outside Ethiopia in accordance with international agreement;

መ/ በሰደተኛ ኮንቪንሽንና በአፍሪካ አንድነት ድርጅት የሰደተኞች ኮንቪንሽን በተደነገጉ ሌሎች መብቶች ሁሉ ይጠቀማል፣ ግዴታዎችንም ያከብራል፣

ሠ/ ከዚህ አዋጅ ዓላማዎች የሚቃረን ካልሆነ በስተቀር በኢትዮጵያ ውስጥ በሥራ ላይ ባሉ በማናቸውም ሕጎችና ድንጋጌዎች ይገዛል።

፪/ በዚህ አንቀጽ ንዑስ አንቀጽ ፲፩/ መ/ የተደነገገው ቢኖርም የባለሥልጣኑ ጋላሬ በኢትዮጵያ ውስጥ እውቅና ያገኙ ሰደተኞችና ቤተሰቦች፣ በሰደተኛነት እውቅና ለማግኘት ያመለክቱ ሰዎችና ቤተሰቦች የሚኖሩባቸውን ቦታዎችና አካባቢዎች ሊወሰን ይችላል። ሆኖም የሚወሰነው የመኖሪያ ቦታ ጥገኝነት ጠያቂዎች ከመጡበት ሥፍራ ወይም ከቀድሞው መደበኛ መኖሪያ አገራቸው ተገቢው ርቀት እንዲኖረው በማድረግ መወሰን አለበት።

፫/ በዚህ አንቀጽ ንዑስ አንቀጽ ፲፩/ መ/ የተደነገገው ቢኖርም እያንዳንዱ እውቅና ያገኘ ሰደተኛ፣ በሰደተኛነት እውቅና ለማግኘት ያመለክቱ ሰዎች እና ቤተሰቦቻቸው በምንጻ መቀጠርንና ትምህርትን በተመለከተ አግባብነት ባላቸው ሕጎች መሠረት የኢትዮጵያ ዜጎች ላልሆኑ ሰዎች በተሰጡ ተመሳሳይ መብቶች ይጠቀማሉ። በተጣሉባቸው ግዴታዎችም ይገዛሉ።

፳፪/ ለጥቃት ለሚጋለጡ ልዩ ጥበቃ ስለመደረጉ

ባለሥልጣኑ ለጥቃት ለሚጋለጡ ሰደተኛ ሴቶች፣ ሰደተኛ ህፃናት፣ ሰደተኛ አረጋው ያንና የአካል ጉዳተኞች ልዩ ጥበቃ ማድረግ አለበት።

፳፫/ በፈቃደኝነት ወደ አገር ስለመመለስ

፩/ እያንዳንዱ እውቅና ያገኘ ሰደተኛ በራሱ ምርጫ ከኢትዮጵያ ወደዜግነት አገሩ ወይም ወደ ቀድሞ መደበኛ መኖሪያ ቦታው ደህንነቱና ከብሩ ተጠብቆለት ለመመለስ የመጠየቅ መብት አለው።

d) be entitled to other rights and be subject to the duties contained in the Refugee Convention and the OAU Refugee Convention;

e) except to the extent that the provisions of any other law may be inconsistent with the purposes of this Proclamation, be subject to the laws in force within Ethiopia; and

2/ Notwithstanding the provisions of Sub-Article (1) (d) of this Article, the Head of the Authority may designate places and areas in Ethiopia within which recognized refugees, persons who have applied for recognition as refugees, and family members thereof shall live, provided that the areas designated shall be located at a reasonable distance from the border of their country of origin or of former habitual residence.

3/ Notwithstanding the provisions of Sub-Article (1) (d) of this Article, Every recognized, refugee, and family members thereof shall, in respect to wage earning employment and education, be entitled to the same rights and be subjected to the same restrictions as are conferred or imposed generally by the relevant laws on persons who are not citizens of Ethiopia.

22. Special Protection to Vulnerable Groups

The Authority shall take measures to ensure the protection of women refugees, refugee children elderly refugees and handicap who needs special protection.

23. Voluntary repatriation

1) Every recognized refugee has the right, of his own volition, to seek to repatriate from Ethiopia to his country of nationality or former habitual residence in safety and dignity.

፪/ እውቅና ያገኘ ስደተኛ ቤተሰብ አባል ወደዜግነት አገሩ ወይም ወደቀድሞ መደበኛ መኖሪያው ቢመለስ በዚህ አዋጅ አንቀጽ ፬ በተመለከቱት ምክንያቶች መሰደድ ይደርስበታል ወይም እደጋ ያጋጥመዋል የሚያስብል በቀጣይ ምክንያቶች ከሌላ በስተቀር እውቅና ያገኘው ስደተኛ በዚህ አንቀጽ ንዑስ አንቀጽ ፩ መሠረት በራሱ ፈቃድ ወደ አገሩ ለመመለስ ከወሰነ ይኸው ውሳኔ ከሱ ጋር ያሉ ሁሉም የቤተሰብ አባላት ውሳኔ እንደሆነ ይቆጠራል።

**ከፍል አምስት**  
**ልዩ ልዩ ድንጋጌዎች**

**፳፱/ ተፈጻሚነት ስለማይኖራቸው ሕጎች**

ማንኛውም ከዚህ አዋጅ ጋር የሚቃረን አዋጅ፣ ደንብ፣ ትዕዛዝ ወይም መመሪያ በዚህ አዋጅ በተሸፈኑ ጉዳዮች ላይ ተፈጻሚነት አይኖረውም።

**፳፻/ ስለቅጣት**

የዚህን አዋጅ ድንጋጌዎች የጣሰ ማንኛውም ሰው በወንጀለኛ መቅጫ ሕግ መሠረት ይቀጣል።

**፳፻/ ደንብ የማውጣት ሥልጣን**

የሚኒስትሮች ምክር ቤት ይህንን አዋጅ በሚገባ ሥራ ላይ ለማዋል ደንቦችን ሊያወጣ ይችላል።

**፳፺/ አዋጁ የሚጸናበት ጊዜ**

ይህ አዋጅ በፌዴራል ነጋሪት ጋዜጣ ታትሞ ከወጣበት ቀን ጀምሮ የፀና ይሆናል።

እዲስ አበባ ሰኔ ፳ ቀን ፲፱፻፺፮ ዓ.ም

ገርማ ወልደጊዮርጊስ  
የኢትዮጵያ ፌዴራላዊ ዲሞክራሲያዊ ሪፐብሊክ  
ፕሬዚዳንት

2) A voluntary decision by a refugee to repatriate in terms of Sub-Article (1) of this Article shall be deemed to be a decision of all members of his family accompanying him, save where it appears that such family member of family members is or are likely, upon return to the country of nationality or former habitual residence, to be persecuted or be placed in danger for the reasons set out in Article 4.

**Part Five**  
**Miscellaneous Provisions**

**24. Inapplicable Laws**

Any Proclamation, regulation, order or directive which is inconsistent with this Proclamation shall not apply to matters provided for in this Proclamation.

**25. Penalty**

Whosoever violates or obstructs the implementation of this Proclamation shall be punishable in accordance with the Penal Code of Ethiopia.

**26. Power to issue Regulations**

The Council of Ministers may issue regulations for the proper implementation of this Proclamation.

**27. Effective date**

This Proclamation shall come into force on the date of its Publication in the Federal Negarit Gazette.

Done at Addis Ababa, 15<sup>th</sup> day of June, 2004.

GIRMA WOLDEGIORGIS  
PRESIDENT OF THE FEDERAL  
DEMOCRATIC REPUBLIC OF ETHIOPIA

ብርሃንና ሰላም ማተሚያ ድርጅት

## Declaration

I, the undersigned, declare that this thesis is my original work, and has not been presented for a degree in any other university, and that all source of materials used for the thesis have been fully acknowledged.

Declared by

Name Getahun Worku

Signature  \_\_\_\_\_

Date Nov 14 2009

Confirmed by Advisor

Name Ato Tilahun Teshome (Associate Professor)

Signature  \_\_\_\_\_

Date 18/11/09

Place & Date of Submission: - Addis Ababa University, Faculty of  
Law November 14, 2009