



Addis Ababa University
College of Law and Governance Studies



**THE PROTECTION OF REFUGEE CHILDREN IN ETHIOPIA UNDER
ETHIOPIAN REFUGEE PROCLAMATION NO.1110/2019**

BY:

NAABEEK GIRMA CHEMEDA

ADDIS ABABA UNIVERSITY COLLEGE OF LAW AND GOVERNANCE STUDIES

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NAABEEK GIRMA CHEMEDA

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APPROVED BY BOARD OF EXAMINERS

NAME	DATE	SIGNATURE
1. MIZANIE ABATE ADVISOR	-----	-----
2. ----- CHAIRPERSON	-----	-----
3. ----- EXAMINER	-----	-----

Declaration

I hereby declare that except for acknowledged references, this work is the result of my research. It has not been presented anywhere either in part or in its entirety for the award of a degree at any higher institution or anywhere for whatever purpose.

Name: Naabeek Girma Chemed

Signature_____

Date:_____

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Thank you, God, for bringing me from the deepest slush to the highest knoll!

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Acronyms

FDRE: -----Federal Democratic Republic of Ethiopia
UNHCR: -----United Nations High Commissioner for Refugees
UNICEF: -----United Nations International Children's Emergency Fund
ECPAT: -----End Child Prostitution, Pornography, and Trafficking
ENOC: -----European Network of Ombudspersons for Children
CRC: -----Convention on the Rights of Child
UN: -----United Nations
UNGA: -----United Nations General Assembly
RC: -----Refugee Convention
ACRWC: -----African Charter on the Rights and Welfare of the Child
ACHPR: -----African Commission on Human and Peoples' Rights
ECHR: -----European Convention on Human Rights
ECHR: -----European Court of Human Rights
ACHR: -----American Convention on Human Rights
ARRA: -----Administration for Refugee & Returnee Affairs
ICCPR: -----International Convention on Civil and Political Rights
ICESCR: -----International Convention on Economic and Social Cultural Rights
UDHR: -----Universal Declaration of Human Rights
ExCom: -----Executive Committee Conclusion
IDP: -----Internally Displaced Persons
IOM: -----International Organization for Migration
NGO: -----Non-Governmental Organization
CRRF: -----Comprehensive Refugee Response Framework
EU: -----European Union
OAU: -----Organization of African Unity
AU: -----African Unity
UNESCO: -----United Nations Economic Social and Cultural Organization

Abstract

Refugee children are the most vulnerable human creature that deserves special protection. Their vulnerability emanates from different backgrounds. There are various ways of providing safeguards. Among the available protection mechanisms, legal protection is apparent. Ethiopia recently enacted a law governing the overall matters of refugees in general. This research is aimed at evaluating the extent of protection that Ethiopia provides to the refugee children based on Refugee Proclamation No.1110/2019. The methodology used for conducting this thesis is doctrinal as the dissertation mainly depends on legal analysis. Global and regional legal frameworks are also deeply considered along with domestic platforms adhered to the protection of refugees. In doing so, various key refugee children's issues are considered. Therefore, this study finds that the protection allocated for children refugees under this law is not adequate and the law needs an amendment to include every child's issue.

Key terms

Child Protection, Refugee Children Protection Law in Ethiopia, Refugee Children Issues

CHAPTER ONE

GENERAL INTRODUCTION

1.1. Background of the Study

Approximately half of the world's refugees are children; the action of the office of the United Nations High Commissioner for Refugees (hereinafter the 'UNHCR') to protect and care for these children is central to the fulfillment of its mandate.¹ One of UNHCR's primary objectives is ensuring evidence-based programming for the protection of children in refugee settings.² Many refugee children squander their entire childhoods in displacement, uncertain about their future. Children whether refugees, internally displaced, or stateless are at greater risk than adults of violence, abuse, neglect, and exploitation. They may experience and witness disturbing events or separate from their families.³ The greatest threats posed by conflict and its ensuing displacement are faced by those most in need of protection. Refugee children are forced to flee leaving behind their homes, communities, schools, friends, aspirations, sense of security, and often their childhoods. Numerous interactions with refugee children have discovered that every day struggles they face in tiresome to establish a sense of normalcy in their lives despite the physical, psychological, and emotional wounds most have suffered. Their salience and strength are an inspiration to those responding to their needs.⁴ Refugee children require special attention and support as they transit from childhood to adulthood, taking on additional responsibilities and growing towards independence.

¹ UN High Commissioner for Refugees (UNHCR), *UNHCR Policy on Refugee Children*, 6 August 1993, EC/SCP/82, available at: <https://www.refworld.org/docid/3f9e6a534.html>, [accessed on January, 2020].

² UNHCR, *Global Trend, 2011 Report*, available at <https://www.unhcr.org/statistics/country/4fd6f87f9/unhcr-global-trends-2011.html>, [accessed on January, 2020].

³ UN High Commissioner for Refugees (UNHCR), *Protection of Refugee Children in the Middle East and North Africa*, October 2014, p6, available at: <https://www.refworld.org/docid/54589a6a4.html>, [accessed on January, 2020].

⁴Ibid.

The growing space on the global stage afforded to child protection and continued improvements to global learning to shape and guide thinking led to an evolution in the child protection approach. The United Nations International Children's Emergency Fund (hereinafter UNICEF) 2008 child protection strategy is a standard-bearer in shaping this direction. Strengthening of systems has moved the child protection agenda away from ad hoc, project-based responses to a more comprehensive approach focusing on addressing the underlying root causes of violence, exploitation, and abuse; promoting children's well-being and protection; and enhancing the role of the family and community.⁵ Changes to refugee child protection systems take time to develop and require a complex layer of support, not only in technical competency but also in the implementation of structures and systems, a portion of proper budgets, and intensification the capacity of the child protection personnel to provide an assortment of property and services. These actions all need to be supported by an enabling legal and policy environment, embedded in the provisions of the Convention on the Rights of the Child and other international and regional legal instruments and standards.⁶ Child safeguard services now extend by the side of a continuum of maintaining, ranging from the key services that toughen the overall capacity of the community to be bothered for and protect children, to early involvement actions that take the edge off risk factors, to tertiary-level interventions providing support services to a child who has experienced any form of violence, exploitation or abuse.

There are different layers and mechanisms of refugee child protection across the globe. Firstly, the UNHCR acts to protect children by responding to their specific needs and the risks they face across the world. It shields, and campaigns against all forms of bigotry; prevents and responds to abuse, neglect, violence, and exploitation; ensures immediate access to appropriate overhauls, and provides durable solutions in the child's best interest. Situations of forced displacement and emergency have devastating effects on children's lives, and boys and girls are uniquely vulnerable due to their age and social status. The international humanitarian system recognizes

⁵ UNICEF, Child Protection from Violence, Exploitation and Abuse, Thematic Report 2013, p5 available at https://www.unicef.org/publicpartnerships/files/Child_Protection_from_Violence_Exploitation_and_Abuse_2013_Thematic_Report.pdf, [accessed on January, 2020].

⁶ UNICEF, Child Protection from Violence, Exploitation and Abuse, Thematic Report 2013, p5 available at https://www.unicef.org/publicpartnerships/files/Child_Protection_from_Violence_Exploitation_and_Abuse_2013_Thematic_Report.pdf, [accessed on January, 2020].

child protection is a life-saving priority. Child protection responses must be established from the start of an emergency, or children's lives and well-being will be put at risk. The most important outcomes of child protection are to prevent violence and abuse and to give displaced children access to protection services, by establishing or supporting national and community-level child protection systems.⁷ Secondly, there are many examples of regional arrangements concerning children's refugee protection from the past and present. Some of these regional arrangements have attempted to share responsibility for refugees' children by allocating state different roles. Thirdly, the national children's refugee protection is an obvious means of protection guaranteed by sovereign states in accommodating children who crossed their borders. It is not the main task of this academic paper to deal with the universal and regional child refugee problem. But the national one would be the main task to be addressed especially with Ethiopia's protection for the child refugees.

1.2. Statement of the Problem

One of the primary obligations undertaken by the Ethiopian government by ratifying the Convention on the Rights of Child (hereinafter the CRC) and International Refugee Law (hereinafter RC) is to ensure that specific rights enshrined in both human rights instruments are included under the constitution and other specific domestic legislations. Having these particular legislations the FDRE government enacted a new law that specifically deals with issues of refugee protection in any manner. Proclamation No. 1110/2019 is mandated with the handling of refugee protection matters. This law repealed the former refugee Proclamation No. 409/2004 intending to provide better protection for refugees at all. Under the new refugee proclamation, different kinds of refugees are protected including children who are below the age of eighteen. But evaluating the overall protection guaranteed by the new law is not the aim of this research. Therefore, the real problem that the researcher tends to address under this thesis is whether the newly enacted law can adequately address the refugee children's problem. Putting in another way, what is the level of protection guaranteed to the problem of refugee children under Ethiopia's new refugee Law from the international and regional human rights standards in which Ethiopia is State Party. Ethiopia is over flooded by the refugees in general and refugee children

⁷ UNHCR, Global Report 2018, available at <https://www.unhcr.org/50f6cf0b9g/.pdf>, [accessed on January, 2020].

in particular. The country is expected to effectively protect these children since it has signed and ratified different human rights protection standards set by the international community. The main way of protecting these refugee children is by enacting a better law that can protect their rights and thus the assessment revolves around this particular issue.

1.3. Objectives of the Study

The main objective of the study is to assess the extent of the protection that Ethiopia provides to the refugee children under the new refugee Proclamation No. 1110/2019.

The specific objectives of this thesis are to:

- Assess the refugee children governing laws of Ethiopia from the perspective of international law.
- Evaluate this particular law from the African refugee protection mechanism viewpoint.
- Compare this specific law from other national laws including the constitution outlook.
- Examine a means of measures to redress refugee children, victims, for violation of protection.
- Suggest on the way forward for better protection of refugee children.

1.4. Research Questions

In answering issues on the protection that Ethiopia provides to refugee children, the following questions will be answered:

- ❖ What is the notion of refugee protection in general and refugee children protection in particular?
- ❖ What is the extent of protection guaranteed for refugee children in the African context?
- ❖ Examine whether or not all key refugee children's issues are included under the law?
- ❖ Are all refugee children's rights are included or do the law needs an amendment for better protection?
- ❖ What are the possible remedies for refugee children available in case of violation of their rights?

- ❖ What are the possible ways forward for better protection of refugee children in the Ethiopian case?

1.5. Methodology

To attain the objectives and to address the research questions listed above, different methods would be implemented. The approach to be followed in this research is doctrinal; in the sense that the assessment is intended to be made on the legal analysis part of the Ethiopian refugee law. A critical examination of different laws, prior studies, and various articles on the area is one of the methods to be used for conducting the thesis. Furthermore, the researcher intended to include an interview from some of the government offices that are assigned to work on the issues at hand and NGOs which are operational on the refugee affairs to critically analyze the overall refugee protection and the procedural framework in case of violation happens.

1.6. Literature Review

As explained above, UNHCR is mandated with several tasks concerning the protection of refugees in general and refugee children in particular. Children⁸ are the most vulnerable part of human beings particularly in association with the case of an urgent situation. Thus, they are the first to receive protection; According to well-established principles at the international and national levels, children deserve special treatment. The 1951 Convention protects refugees and it defines a refugee as a person who is outside his or her country of nationality or habitual residence; has a well-founded fear of being persecuted because of his or her race, religion, nationality, membership of a particular social group or political opinion; and is unable or unwilling to avail him— or herself of the protection of that country, or to return there, for fear of persecution.⁹ Refugee children are identified as rights-bearers by the United Nations Convention

⁸ UN General Assembly, *Convention on the Rights of the Child*, Article 1, 20 November 1989, United Nations, Treaty Series, vol. 1577, p3, available at: <https://www.refworld.org/docid/3ae6b38f0.html>, [accessed on February, 2020].

⁹ The 1951 Convention Relating to the Status of Refugees and Its 1967 Protocol, the Legal Framework for Protecting Refugee, p3, available at <https://www.unhcr.org/about-us/background/4ec262df9/1951-convention-relating-status-refugees-its-1967-protocol.html>, [accessed on February, 2020].

on the Rights of the Child (CRC), but their rights are not uniformly honored in the policies and practices of contemporary states; how the CRC's safeguards for refugee children's rights are honored depends partly on what it means to be 'a refugee child' and partly on how the claims of refugee children's rights are recognized, respected, and implemented in international and national legal and bureaucratic systems.¹⁰ The 1959 UN Declaration on the Rights of the Child provides in Principle 8 that: "The child shall in all circumstances be among the first to receive protection and relief".¹¹

UNICEF and UNHCR have distinct but complementary roles in supporting states in the fulfillment of their international obligations, vis-à-vis children in general and refugee children more specifically. This entails, inter alia, supporting governments to strengthen their national child protection systems to respond to protection concerns of all children, including refugees.¹² Both of these two UN agencies are mandated for better protection of children, especially at emergencies time. They want to make national protection mechanisms more strong by supporting the host states. Different works of literature are written by these agencies concerning the protection that must be made to the children at any cost; commencing from report writing to publishing of different Policies, Articles, Journals that give due attention to child rights protections. Therefore, materials prepared by this UN agent are the main literature part of this thesis as they are the minimum threshold for any protection guaranteed for refugees for those state parties adopting and ratifying the 1951 Refugee Convention and its additional protocol of 1967.

Ethiopia under the support of UNHCR tried to come up with a better legal mechanism of protecting refugees. The new refugee proclamation aimed at providing asylum and protection to refugees and promoting the search for durable solutions.¹³ Article 22 (1) of the new law provides a bundle of rights for asylum seekers and recognized refugees that are emanated from

¹⁰ The Rights of Refugee Children and the UN Convention on the Rights of the Child, available at <https://www.mdpi.com/2075-471X/8/3/20/htm>, (note 1), [accessed on January, 2020].

¹¹ UNHCR-USA, Note on Refugee Children available at <https://www.unhcr.org/en-us/1951-refugee-convention.html>, [accessed on February, 2020].

¹² UNHCR, *Bridging the Humanitarian-Development Divide for Refugee Children in Eastern Africa and the Great Lakes Region, Mapping existing national child protection practice*, (2018) p.8.

¹³ Refugee Proclamation No. 1110/2019, (note 1), Preamble.

different international, regional, and other relevant applicable laws. Children are not exceptional to these entitlements since they are part of these categories according to Article 38 of the same law. Analyzing the deep content of this particular law will be the main task of the writer.

A prominent book that specifically deals with issues about refugees, in general, is named as a guide to international refugee protection and building a state asylum system made by UNHCR Inter-parliamentary Union in 2017. The book sets out the international legal framework on which refugee protection built, and it draws continually. It explains the values for states of acceding to international treaties concerned with refugee protection, in particular the 1951 Convention relating to the status of refugees and its 1967 protocol.¹⁴

The other relevant literature for this particular thesis is the Executive Committee Conclusion made by the UNHCR as three prominent conclusions were made; Conclusions Nos. 47 (XXXVIII), 59 (XL), and 84 (XLVIII) will be deeply considered.

1.7. Significance of the Study

This thesis is one of the original works in the Ethiopian context about refugee children protection which is emanated from the new refugee Proclamation No.1110/2019. Consequently, it has its significance in that it would help researchers and academicians to conduct further studies on this particular problem. Besides, the research would also give recommendations for the legislative and policymakers to deeply consider the decisive rights of child refugee protection in Ethiopia.

1.8. Organization of the Study

The thesis contains a total of five chapters. The first chapter deals with an introductory part including a statement of the problem, the methodology of the research, research objectives, research questions, and the like. Chapter two deals with the issues of the protection of refugee children under international human rights instruments. The international framework mechanisms especially in strengthen national protection and regional protection mechanism will be

¹⁴ UNHCR, Inter-Parliamentary Union, *a Guide to International Refugee Protection and Building State Asylum System*, November (2017), p2.

highlighted. Under this chapter, other substantial issues will be addressed as well. Then the third chapter can deal with them the protection of refugee children under Ethiopian laws. Under this chapter, the governing refugee law will be analyzed along with other subordinate legislations. The fourth chapter is about the key refugee children's issues that are recognized under the new refugee law of Ethiopia. The chapter further goes to cover the possible legal remedies available for the victims of a violation of rights guaranteed by the national laws and other international and regional human rights in which Ethiopia is a State Party. Chapter five is devoted to the recommendation and conclusion of the thesis.

CHAPTER TWO

PROTECTION OF REFUGEE CHILDREN UNDER INTERNATIONAL LAW

2.1. Introduction

It is the responsibility of states to protect their citizens.¹⁵ When governments are unwilling or unable to protect their citizens, individuals may suffer such serious violations of their rights and consequently, they are forced to leave their homes, and often even their families, to seek safety in another country.¹⁶ Since, by definition, the governments of their home countries no longer protect the basic rights of refugees, the international community then steps in to ensure that those basic rights are respected.¹⁷ A prominent article summarized the international legal norms that are applicable as follows:-

“At the universal level, the 1951 Refugee Convention and its 1967 Protocol apply, particularly to refugees. Besides, the principles and rules concerning the basic human rights of the individual benefit refugees and returnees, as well as displaced persons since these apply to all individuals on the territory of a State. Thus it is important in the refugee protection field to highlight the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social, and Cultural Rights. Similarly, international humanitarian law relating to armed conflicts provides important guidance for the protection of refugees, returnees, and displaced persons when these are located in areas of international

¹⁵ K. Jastram and M. Achiron, *Refugee Protection: A Guide to International Refugee Law*, (2003), p8.

¹⁶ Ibid.

¹⁷ Ibid.

or non-international armed conflicts. The relevant instruments include the four Geneva Conventions of 1949 and the two Additional Protocols of 1977.”¹⁸

In the aftermath of World War II, the United Nations General Assembly created the Office of UNHCR. UNHCR is mandated to protect and find durable solutions for refugees; its activities are based on a framework of international law and standards that includes the 1948 Universal Declaration of Human Rights and the four Geneva Conventions (1949) on international humanitarian law, as well as an array of international and regional treaties and declarations, both binding and nonbinding, that specifically address the needs of refugees.¹⁹ UNHCR delivers protection to children of its concern by responding to their specific needs and the risks they face which includes protecting and advocating against all forms of discrimination: preventing and responding to all abuse, neglect, violence, and exploitation: ensuring immediate access to appropriate services: and ensuring durable solutions in the child’s best interests.²⁰ The Framework for the Protection of Children marks an evolution in UNHCR’s policy and practice, recognizing both the centrality of children’s protection to UNHCR’s work and the growing body of practice and expertise in the child protection sector globally.²¹ The Framework broadens UNHCR’s understanding of and engagement in the protection of children. It articulates six goals that encapsulate UNHCR’s commitment to protect and realize the rights of children of concern to the office and offers practical guidance on how to achieve them.²² According to the framework, the followings are the major goal of the framework intends to address:-

- Girls and boys are safe where they live, learn, and play.
- Children’s participation and capacity are integral to their protection.
- Girls and boys have access to child-friendly procedures.

¹⁸ H.G. Espiell, S. Picado and L.V. Lanza, Principles and Criteria for the Protection of and Assistance to Central American Refugees, Returnees and Displaced Persons in Latin America, 1990, p5, available at <https://www.refworld.org/pdfid/4370ca8b4.pdf>, [accessed on February, 2020].

¹⁹ Ibid.

²⁰ UNHCR, Refugee Children: Guidelines on Protection and Care, 1993, available at <https://www.unhcr.org/3b84c6c67.pdf>, [accessed on February, 2020].

²¹ Ibid.

²² Ibid.

- Girls and boys obtain legal documentation.
- Girls and boys with specific needs receive targeted support.
- Girls and boys achieve durable solutions in their best interests.

The framework applies a child protection systems approach that includes actions for duty bearers at all levels – family, community, national, and international – to mitigate and respond to the protection risks children are facing.²³ This recognizes that all actors contribute to the comprehensive protection of children.²⁴ The Framework was developed by UNHCR, in consultation with States, partners, communities and children themselves.²⁵

Child migration is a significant contemporary phenomenon and it is likely to increase in both scale and salience as the mobility of young people grows, a result of more affordable travel, climate change, growing technology-mediated connectivity, increasing global inequality in the distribution of opportunity, security and access to employment, and the diffusion of a global cultural commons.²⁶ In terms of the figure for migration of children in the year 2020 is raised to 37.9 million which amounts to 14 percent of the total number of migration.²⁷

UNHCR is committed to increasing national child protection systems and services and advocating for access to refugee, displaced, and stateless children to them. Only in contexts where the State is unable to fulfill its responsibilities toward children would UNHCR, together with partners, establish a parallel and temporary mechanism for protecting children of its concern.²⁸ The systems approach acknowledges and strengthens existing capacity within State child protection systems and community-based child protection mechanisms.²⁹ “It provides a basis for collaboration with State actors, UNICEF and other partners, and a framework for holistic programming.” A sound child protection system is framed within a rights-based

²³ Ibid.

²⁴ Id.

²⁵ Id.

²⁶ IOM, World Migration Report 2020, available at https://publications.iom.int/system/files/pdf/wmr_2020.pdf, p231,[accessed on February, 2020].

²⁷ Ibid.

²⁸ Id, p14.

²⁹ Ibid.

approach and ensures non-discriminatory access to support for all children.³⁰ Thus, any protection guaranteed for a child of a national state applies to the refugee children too. UNHCR works in corporation with governments, civil society, UN and other actors to advocate for resources and policy and legal alteration needed to better protect refugee children at the national level.

Children are affected by migration in at least three ways: they move with their family; they migrate alone, without their parents or legal guardians; or they are left behind by migrant parents who have no other option than going abroad to secure the means of subsistence for their family; in all these cases, children face specific challenges to the rights to special protection and care.³¹ Thus there are many reasons behind the migration of children from one place to another which contributed to the significant increment of children migrant numbers.

Children are exceedingly resilient and find ways to cope and move advance in the visage of destitution and anguish. They draw strength from their families and find joy in friendships. We need to work with children and empower them to advocate for their rights and their protection.³²

The world has changed radically since the establishment of UNHCR and the coming into force of the Refugee Convention some fifty years ago. Within this structure, the RC and its 1967 Protocol are widely acknowledged as enduring instruments with a ‘central place in the international refugee protection regime’, as States Parties to the RC and/or Protocol declared in December 2001.³³ The 1989 CRC and its Optional Protocols, in conjunction with the 1951 RC Relating to the Status of Refugees and its 1967 Protocol, as well as other relevant international and regional instruments, constitute the normative framework on which UNHCR and other

³⁰ Ibid.

³¹ SOS Children’s Village International, Position Paper on Migration and Refugee Children, 2016, p1, available <https://www.sos-childrensvillages.org/getmedia/73abf1b5-05ca-4f1a-89bf-841350b7a8ae/SOS-CVI-Position-Migrant-Refugee-Children-A4.pdf>, [accessed on February, 2020].

³² Id. p 9.

³³ E. Feller, V. Turk and F. Nicholson, *Refugee Protection in International Law-UNHCR’s Global Consultations on International Protection*, (2nd ed.), (2003) v.2, p17.

organizations base their international protection and assistance activities for refugee children and other children of concern to UNHCR.³⁴

The role of child rights in the protection of refugee children is inherent to the UNHCR office's protection work. The commissioner officer explicitly recognizes the 1989 CRC as providing the normative framework for its work with refugee children. International protection is recognized as actions to defend and promote the rights of persons outside their country who can no longer benefit from the protection of their government. Thus, child protection within the mandate of UNHCR is defending and promoting the rights of refugee children.³⁵

Another protection mechanism endowed for refugee children protection is reflected under the General Comment of Executive Committee (hereinafter the Excom). Excom has to date adopted three conclusions specifically devoted to the protection of refugee children.³⁶ Even if Excom Conclusions are not lawfully compulsory, they add up to broad terms of consensus regarding the principles of intercontinental protection. Hence, they can be of assistance to take in hand protection gaps, provide outfitted guidance, and set principles of behavior for states, UNHCR, and NGOs, while serving as lobbying and support instruments. In this way, the adoption of an ExCom Conclusion on protracted refugee situations could be a valuable tool in promoting international engagement in an issue of global importance.³⁷ In the three conclusions specifically devoted to the protection of refugee children, the Excom has, among other things, recognized:-

- the violations of children's' human rights in different areas of the world and their specific needs and vulnerability within the broader refugee population;³⁸,
- that child must be among the first to receive protection and assistance;³⁹,

³⁴UN-GA, A/58/299 Fifty-eighth session Item 114 of the provisional agenda* Report of the United Nations High Commissioner for Refugees, questions relating to refugees, returnees and displaced persons and humanitarian questions, Assistance to unaccompanied refugee minors report of the Secretary-General**, 20 August 2003, p 3.

³⁵ UNHCR, evaluation and policy assessment unit, an independent evaluation of the impact of UNHCR's activities, May 2002.

³⁶ ExCom Conclusions No. 47 (XXXVIII – 1987), No. 59 (XL – 1989) and No. 84 (XLVIII – 1997).

³⁷ J. Milner and G. Loescher, *Forced Migration Policy Briefing, Responding to Protracted Refugee Situation, Lessons from a decade of discussion*, Refugee Studies Centre, Oxford Department of International Development University of Oxford, (2011), p1.

³⁸ ExCom Conclusions No. 47 (a) and ExCom Conclusion No. 84 (PP2).

- the need for States and relevant parties to respect and observe rights and principles that are per international human rights and humanitarian law and that are of particular relevance to international refugee protection, especially to safeguarding child and adolescent refugees;⁴⁰,
- the fundamental importance of the Convention on the Rights of the Child and that all actions on behalf of refugee children must be guided by the principle of the best interest of the child as well as by the principle of family unity;⁴¹,
- the exposure of refugee children to physical violence, family separation and other violations of their human rights and the right to protection from all forms of exploitation;⁴²,
- the right of children affected by armed conflict to special protection and treatment, and the need to take steps to preserve the civilian and humanitarian nature of refugee camps and settlements;⁴³,
- the need to prevent separation of children and adolescent refugees from their families and to promote care, protection, tracing and family reunification for unaccompanied minors;⁴⁴,
- the specific needs of and protection risks faced by unaccompanied and separated children and the need to carry out individual assessments with them;⁴⁵,
- the need to ensure that refugee children are given particular attention through regularly assessing resources and requirements;⁴⁶,
- the right of children and adolescents to adequate food and the highest attainable standard of health; as well as the need to develop and/or support programs and strategies for alleviating the nutritional problems and health risks faced by refugee children;⁴⁷,

³⁹ ExCom Conclusions No. 47 (c) and ExCom Conclusion No. 84 (PP2).

⁴⁰ ExCom Conclusion No. 84 (a).

⁴¹ ExCom Conclusions No. 47 (d) and ExCom Conclusion No. 84 (PP4 and a(i)).

⁴² ExCom Conclusions No. 47 (e) and ExCom Conclusion No. 84 (PP3 and a(v)).

⁴³ ExCom Conclusion No. 84 (a(iv) and b(ii)).

⁴⁴ ExCom Conclusion No. 84 (b(i)).

⁴⁵ ExCom Conclusions No. 47 (j) and Exom Conclusions No. 59 (g and h).

⁴⁶ ExCom Conclusions No. 59 (d).

⁴⁷ ExCom Conclusions No. 47 (q), Exom Conclusions No. 59 (e) and ExCom Conclusion No. 84 (a(iii)).

- the fundamental right of refugee children to education and the right of all refugee children benefit from primary education of a satisfactory quality; the need for refugee children to pursue further levels of education; as well as the link between education and durable solutions;⁴⁸,
- the need to promote continuing and expanded cooperation between UNHCR and other concerned agencies and bodies;⁴⁹,
- the development and dissemination of the UNHCR 1997 Guidelines on the Protection of Refugee Children;⁵⁰ and
- UNHCR's strategy for the follow-up to the United Nations Study on the Impact of Armed Conflict on Children.⁵¹

2.1. The Concept of Child and Refugee Child

The concepts of 'child' and 'refugee' are not consistently defined across disciplines, although both concepts are critical structural markers for positioning this doubly vulnerable group as children distinct from adults and refugees distinct from citizens. According to the CRC, a child means every human being below the age of eighteen years unless, under the law applicable to the child, a majority is attained earlier.⁵² In another way, a refugee child has not received different definition and their issues are governed by international treaties since the latter are important to refugee children because they set standards. When a state ratifies a treaty, the government of the state promises to the international community that it will conduct itself according to the standards in the treaty. The 1951 RC and the 1967 protocol set standards that apply to children in the same way as to adults:

(1) a child who has a "well-founded fear of being persecuted" for one of the stated reasons is a "refugee",

⁴⁸ ExCom Conclusions No. 47 (o and p), Exom Conclusions No. 59 (f).

⁴⁹ ExCom Conclusions No. 47 (s).

⁵⁰ ExCom Conclusions No. 59 (c).

⁵¹ ExCom Conclusions No. 84 (PP7 and d).

⁵² Art.1, CRC.

(2) a child who holds refugee status cannot be forced to return to the country of origin (the principle of non-refoulment), and
*(3) no distinction is made between children and adults in social welfare and legal rights.*⁵³

One article in the CRC sets standards that are of special importance to children: refugees must receive the "same treatment" as nationals in primary education, and treatment at least as favorable as that given to non-refugee aliens in secondary education.⁵⁴ How refugee children's rights are recognized and enacted in legal and immigration systems is largely dependent on how refugee children are defined as being children and refugees.⁵⁵ The 'child' and 'refugee' labels together identify a minority category: 'refugee child' with a special basis for protection. Although the 1951 Convention does not explicitly mention children, the CRC Preamble identifies being a child as warranting special 'safeguards', 'care', and 'legal protection'. Article 22 makes further stipulations related to refugee children, who are to be treated similarly to any other citizen child.⁵⁶ Therefore in terms of protection, there is no disparity between these two discourses.

2.1.1. The Convention on the Rights of Child (CRC)

The CRC is the most comprehensive compilation of existing international legal standards for the protection of the human rights of children.⁵⁷ It was adopted in 1989, was the first international treaty to state the full range of civil, political, economic, social, and cultural rights belonging to children. The realities confronting children can be assessed against the commitments to which it holds States parties.⁵⁸ It deepens the protective impact of human rights for children through an

⁵³UNHCR, Refugee Children Guideline on Protection and Care, (1994) p.4.

⁵⁴Ibid.

⁵⁵J.A.Lawrence, A.E.Dodds, I.Kaplan and M.M.Tucci, The Rights of Refugee Children and the UN Convention on the Rights of the Child, 2019, vol.1 p.2.

⁵⁶Id, p.4.

⁵⁷ Ibid.

⁵⁸ SOWC-The Convention on the rights of the child, available at <https://www.unicef.org/sowc2012/pdfs/SOWC-2012-The-Convention-on-the-Rights-of-the-Child.pdf>, (2012) p1,[accessed on February,2020].

implementation structure that includes reporting obligations to and scrutiny by its overseeing treaty body, the Committee on the Rights of the Child.⁵⁹ Lawfully compulsory on States Parties, the Convention details across the world recognized norms and values concerning the fortification and endorsement of the rights of children ubiquitously and at all times. The Convention emphasizes the complementarities and interdependence of children’s human rights. Across its 54 articles and 2 Optional Protocols, it establishes a new vision of the child – one that combines a right to protection through the State, parents and relevant institutions with the recognition that the child is a holder of participatory rights and freedoms.⁶⁰ The prevalent ratification of the CRC is important for other reasons as well. When a State is a party to the CRC but not to any refugee treaty, then the CRC may be used as the most crucial foundation for protecting refugee children. Even when a State has not ratified the CRC, UNHCR still advocates its observance because its standards are universal.⁶¹

The CRC impose a specific obligation upon States Parties to take appropriate measures to ensure that children are protected from all forms of discrimination or punishment based on the “status, activities, expressed opinions, or beliefs of the child’s parents, legal guardians, or family members”.⁶² This is the implication derived from the principle of non-discrimination. Another provision of the CRC is the protection that requires States Parties to “respect the right of the child to preserve his or her identity”.⁶³

In addition to the CRC protection mechanism of protection guaranteed to refugee children the human right committee of CRC in 2005 make a general comment regarding the handling of refugee children protection by drawing attention to the particularly vulnerable situation of unaccompanied and separated children; to outline the multifaceted challenges faced by states and other actors in ensuring that such children can access and enjoy their rights; and, to provide

⁵⁹ Ibid.

⁶⁰ Ibid.

⁶¹ Bhabha and Jacqueline, (note 2), Id. p5.

⁶² UN Commission on Human Rights, *Convention on the Rights of the Child.*, 7 March 1990, E/CN.4/RES/1990/74, art 2.

⁶³ UN Commission on Human Rights, *Convention on the Rights of the Child.*, 7 March 1990, E/CN.4/RES/1990/74, art 3.

guidance on the protection, care and proper treatment of unaccompanied and separated children based on the entire legal framework provided by the CRC.⁶⁴ The Committee issued General Comment no. 6, which specifically and holistically addressed states' obligations towards unaccompanied and separated children outside their country of origin.⁶⁵

The Convention's four core principles – non-discrimination; the best interests of the child; the right to life, survival, and development; and respect for the views of the child – apply to all actions concerning children. Every decision affecting children in the urban sphere should take into account the obligation to promote the harmonious development of every child.⁶⁶

2.1.1.1. The Principle of Non Discrimination

Refugee and migrant children risk discrimination in all aspects of their lives, both because they are children and because of their status as migrants, refugees or asylum seekers, or members of particular religious, ethnic, racial or nationality groups. They are frequent targets of xenophobic crime, including both physical attacks and hate speech. They are frequently criminalized because of irregular entry or stay. They are regularly denied access to health, education, housing, and other services, or to work simply because of their status. Migration status intersects with gender and disability-linked vulnerabilities to compound the risk of discrimination-related exploitation or violence, including in situations of sexual exploitation or trafficking. Age may also exacerbate discrimination. Some States operate a double standard concerning child protection, refusing refugee and migrant children aged 15 to 17 access to protective care when they face abuse or exploitation, thus increasing their risk of re-victimization.⁶⁷

⁶⁴ UN Committee on the Rights of the Child (CRC), *General comment No. 6 (2005): Treatment of Unaccompanied and Separated Children Outside their Country of Origin*, 1 September 2005, CRC/GC/2005/6, available at: <https://www.refworld.org/docid/42dd174b4.html>, [accessed on February, 2020].

⁶⁵ Ibid.

⁶⁶ Id. p 2.

⁶⁷ J. Bhabha and M. Dottridge, *Child Rights in the Global Compact: Recommendation for Protecting, Promoting and Implementing the Human Rights of Children on the Move in the Proposed Global Compacts*, (2017), (note 1), p7.

In addition to these acts of direct discrimination, refugee and migrant children also routinely experience indirect discrimination. The failure to implement robust social inclusion measures that stimulate integration between host and refugee or migrant communities as soon as possible from the time of reception, enabling both to optimistically become accustomed to change, can have continuing detrimental effects on societies. Factors affecting all children, such as the lack of access to information or justice, disproportionately affect these children because States fail to address their particular needs, including for mentorship or interpreting services. The relative's condition of refugee and migrant children may also affect their spotlight to oblique prejudice. Because accompanied children have not generally been considered at risk of protection failures, they are routinely excluded from participation in proceedings that have a direct impact on their future.⁶⁸

The principle of non-discrimination is a fundamental norm of international law, enshrined in the Universal Declaration of Human Rights, and codified in many binding international treaties including the International Covenant on Civil and Political Rights and the CRC.⁶⁹

2.1.1.2. The Principle of Best Interest of Child

This pillar principle of CRC is enshrined under Art.3 of the Convention.⁷⁰ Throughout the migration cycle, all refugee and migrant children are routinely affected by policies and practices that do not take their best interests into account as a primary consideration. This failure has severe and enduring consequences for the children and for States' ability to respect, protect, and fulfill the human rights they owe to these children. Consideration of the best interests of the child includes a substantive right – namely, the right of the child to have his or her best interests assessed and taken into account as a primary consideration; a legal principle – namely, that if a legal provision is open to more than one interpretation, the interpretation that most effectively serves the child's best interests should be chosen; and a rule of the procedure – namely, that whenever a decision is made that will affect a specific child, group of children or children in

⁶⁸ Ibid.

⁶⁹ Ibid.

⁷⁰ UN Commission on Human Rights, *Convention on the Rights of the Child.*, 7 March 1990, E/CN.4/RES/1990/74, art 3.

general, the decision-making process must include an evaluation of the possible impact (positive or negative) of the decision on the child concerned.⁷¹ All refugee and migrant children are entitled to a best interest's assessment (BIA) of their individual needs, which incorporates into the actions taken by state authorities an ongoing procedure for balancing and weighing the different elements of their circumstances, with particular emphasis on health, education and social protection needs. The process needs to be initiated as soon as the refugee or migrant child is identified to ensure that the child's best interests are a primary consideration throughout the migration cycle and that they inform the whole process of reaching a sustainable solution for that child.⁷²

From an international law perspective:

“States are required as a matter of binding international law to treat the best interests of a child as a primary consideration in all actions concerning them. This principle asserts that in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration”. Several soft law commitments also assert the primacy of the best interest's principle for particular categories of children, including stateless children, unaccompanied and separated children, and refugee and asylum-seeking children.”⁷³

2.1.1.3. The Principle of the Right to Life, Survival, and Development

This principle is among the other cardinal principle enshrined under the CRC for the sake of providing better protection for children at all scenarios.⁷⁴ The principle implies that protection

⁷¹ J. Bhabha and M. Dottridge, (note 2), p10.

⁷² Ibid.

⁷³ Ibid.

⁷⁴ UN Commission on Human Rights, *Convention on the Rights of the Child.*, 7 March 1990, E/CN.4/RES/1990/74, art 12.

from violence, neglect, and abuse is crucial for the maximum survival and development of the child. The basic concept under this principle is that children have the right to life. The implementation of this principle requires States Parties to the Convention to take measures to ensure the optimal development of the child.⁷⁵

Article 6 is closely intertwined with Article 24 of the Convention. Article 24 deals with the rights of children to health and health services. Article 24 also requires States Parties to take measures to reduce infant and child mortality. Other implications of Article 6 also include measures to improve prenatal health for mothers and children and create conditions that promote the well-being of children.⁷⁶ Therefore, this particular provision has a nexus with international law as it imposes a clear obligation upon state parties concerning protection for children's rights.

2.1.1.4. The Principle of Child Participation and Views to be Heard

The other core principle in association with child rights protection is the principle of child participation in the affairs that affect them.⁷⁷ Article 12(1) of the CRC stipulates that any child capable of forming a view has the right to express views freely in all matters affecting him or her. States parties are called upon to promote children to form a free view and to create the conditions conducive for children to exercise their right to be heard. The provision implies an obligation on States Parties to make a presumption that a child is capable of forming his or her own autonomous opinion. On the contrary, States Parties are not in a position to make the presumption that a child is incapable of forming views and opinions. Consequently, the child is not required to prove that he or she is capable of forming opinions.⁷⁸

Article 12(2) entitles children to give their views in any judicial and administrative proceedings affecting him or her. This implies that the child can participate in a variety of settings court

⁷⁵ G. Alemu and Y. Birmeta, *Handbook on the Rights of the Child in Ethiopia*, Center for Human Rights, Addis Ababa University, (2012), Vol.1 (note1), p48.

⁷⁶ Ibid.

⁷⁷ UN Commission on Human Rights, *Convention on the Rights of the Child.*, 7 March 1990, E/CN.4/RES/1990/74, art 12.

⁷⁸ Id, p 53.

hearings as well as formal decision making concerning the child as in the case of education, health, planning, the environment, etc. This principle implies that the child is not merely a passive object of charity, but an active participant in the promotion, protection, and monitoring of his or her rights. The principle implies that the views of children should be considered in decision making, policymaking, preparation of laws, and other matters.⁷⁹

2.1.2. The 1951 Refugee Convention (RC) and the 1967 Protocol

The 1951 Convention relating to the Status of Refugees and its 1967 Protocol are the foundation of the global protection arrangements, complemented by regional treaties and declarations that also deal with the rights of refugees. But the worldwide refugee ruling does not function in isolation. It is best understood in conjunction with international human rights law, starting with the 1948 Universal Declaration of Human Rights, and with international humanitarian law.⁸⁰

According to the 1951 Convention Relating to the Status of Refugees under Article 1(2), a refugee is defined as any person who:

“.....owing to a well-founded fear of persecution 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. In the case of a person who has more than one nationality, the term 'the country of his nationality' shall mean each of the countries of which he is a national, and a person shall not be deemed to be lacking the protection of the country of his nationality if, without any valid reason based on well-founded fear, he has not availed himself of the protection of one of the countries of which he is a national.”

⁷⁹ Ibid.

⁸⁰ Frances Nicholson and Judith Kumin, *A Guide to International Refugee Protection and Building State Asylum Systems, Handbook for Parliamentarians N° 27*, (UNHCR and Inter-Parliamentary Union), (2017),p15.

From this definition, we can understand that refugee children will fall under this definition once they fulfill every element of the provision since they are not exceptional. The RC of 1951 has been the principal governing legal standards under which the legal status, rights, and obligation of refugees including children's' have been defined and enforced.⁸¹ The convention guarantees to those who fall within the refugee definition a broad range of civil and political as well as economic, social and cultural rights, thus in principle creating in those refugees lawfully in the country of asylum a privileged class of non-nationals which could be extended to include the protection for refugee children as well.⁸² Therefore this particular human rights instrument is much useful for the protection of refugee children as well.

2.1.3. Universal Declaration of Human Rights (UDHR)

The UDHR is of enormous importance in the protection matters of refugee children. The declaration was adopted by the UN General Assembly in December 1948. It emphasizes, among other things, the inherent value of human dignity and the universal nature of human rights including the rights of refugees.⁸³ They are not the safeguard of any particular person, people, organization, or nation. They apply to all humans equally without any segregation. Human rights and human dignity are treated as indivisible and they are necessary parts of the human circumstance. The point sought to be made is that though a person may seek refuge in another country, they are not to be treated as less human or that they are inferior to the nationals of the states where they seek refuge. Children refugees, thus, have the inviolable human rights and human dignity which must at all times be preserved for a mere reason for human beings. The UDHR underlines the fact that every person has the right to life, liberty, and security of person. The provisions do not admit of any exemption.⁸⁴ Everyone must be understood to include children, prisoners, aged, refugees, migrants, to mention a few, are all entitled to live, enjoy freedoms granted them, and be protected and respected as well.

⁸¹ L.Gilbert, *Rights, Refugee Women and Reproductive Health*, the American University Law Review (1995), p1218.

⁸² *Id.*, p1220.

⁸³ UN General Assembly, *Vienna Declaration and Programme of Action*, 12 July 1993, A/CONF.157/23.

⁸⁴ UN General Assembly, *Universal Declaration of Human Rights*, 10 December 1948, 217 A (III), art 13.

2.1.4. International Covenant on Civil and Political Rights (ICCPR)

In their country of refuge, refugees face manifold problems when trying to adapt to their new environment. Unfortunately, many host communities do not sufficiently acknowledge the plight of refugees and fail to provide a stable and safe environment, which in turn puts the refugees at risk of human rights abuses. The standards laid down in the human rights treaties oblige states to promote human rights and therefore to protect refugees. Primary concerns of refugees, for which the ICCPR provides important rights, are physical security about forced removal (non-refoulement), family unity, and non-discrimination and minority rights.⁸⁵ Thus, ICCPR is another international human rights standard that protects children of a refugee. The Covenant states that:

“Every child shall have, without any discrimination as to race, color, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State.”⁸⁶

ICCPR stipulates that the right of every child, without any inequity, to obtain from his family, the general public, and the State the protection mandatory by his/her status as a minor. Consequently, the implementation of this provision entails the adoption of special measures to protect children, in addition to the measures that States are required to take under article 2 to ensure that everyone enjoys the rights provided for in the Covenant.⁸⁷ The Human Rights Committee reaffirmed that the enjoyment of rights recognized in this Covenant is not limited to citizens of States Parties but must be available to all individuals regardless of nationality or

⁸⁵ Santhosh Persaud, *New Issues in Refugee Research*; Research Paper No. 132 Protecting refugees and asylum seekers under the International Covenant on Civil and Political Rights, 2006, available at <https://www.unhcr.org/4552f0d82.pdf>, p22, [accessed on March, 2020].

⁸⁶ International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) (ICCPR), art.24(1).

⁸⁷ UN Human Rights Committee (HRC), *CCPR General Comment No. 17: Article 24 (Rights of the Child)*, 7 April 1989, available at <https://www.equalrightstrust.org/ertdocumentbank/general%20comment%2017.pdf>, [accessed on March, 2020].

statelessness; thereby including asylum-seekers and refugees.⁸⁸ Therefore, the protection is extended to include for the refugee children as well.

2.2. Regional Standards for Protection of Refugee Children

In addition to the international apparatus of refugee children protection mechanisms, regional ways of protection are being implemented transversely in different regional setups. Across the globe, the well known regional human rights standards include the European Refugee Protection, the Inter American Refugee Protection, and the African Refugee Protection Mechanism. Let see the highlights of these legal instruments concerning refugee children's protection.

2.2.1. The European Refugee Children Protection Mechanism

The European Convention on Human Rights (ECHR) has always operated successfully as a regional mechanism of human rights protection.⁸⁹ But to a greater level, the European Commission of Human Rights and the European Court of Human Rights have made a considerable contribution to European law and practice in the areas of private and public family law, the protection of children from abuse and neglect and, most recently, juvenile justice and detention.⁹⁰ They have done this; it is submitted, through a variety of inventive methods of interpretation, including the practice of drawing on the provisions of the CRC. While it is not apparent that the Court (or the Commission, up to its abolition in 1998) has followed a consistent strategy to refer to the CRC in all children's cases, it has been making such references with increasing frequency and with significant effect.⁹¹

⁸⁸ The Human Rights Committee General Comment No. 15: The position of aliens under the Covenant: 11/04/86. U.N. Doc. HRI/GEN/1/Rev.1 (1994). See paragraph 1 in particular, which states: "In general, the rights set forth in the Covenant apply to everyone, irrespective of reciprocity, and irrespective of his or her nationality or statelessness." available at <https://www.refworld.org/pdfid/45139acfc.pdf>, [accessed on March, 2020].

⁸⁹ Ursula Kilkelly, *the Best of Both Worlds for Children's Rights? Interpreting the European Convention on Human Rights in the Light of the UN Convention on the Rights of the Child*, Human Rights Quarterly, Vol 23, (2001), p308.

⁹⁰ Ibid.

⁹¹ Ibid.

One of the CRC's outstanding features is the comprehensive nature of its provisions and it is arguably by putting these to effective and imaginative use that the Convention can play an influential and dynamic role in the protection of the rights of children and young people.⁹² The Convention breaks fresh ground by providing for child-specific versions of existing rights, like the freedom of expression and the right to a fair trial. It also establishes new standards by codifying for the first time the right of the child to be heard, both in general and, more specifically, in all proceedings that affect the child. This right to participate, together with the principles of non-discrimination in Article 2 and provision for the child's best interests in Article 3, form the guiding principles of the Convention, which reflect the vision of respect and autonomy in which the drafters wished to create for all children.⁹³

The current European refugee policy protects unaccompanied children/minors from being transferred back to Turkey (Council of the European Union 2017:7).⁹⁴ It is supported by the Dublin Regulation for the protection of refugee children that come to Europe from different parts of the world; the EU law of concern is the *Dublin Regulation No 604/2013* (EU 2013), which regulates which EU country that is responsible for processing an individual's asylum claim.⁹⁵

2.2.2. The African Refugee Children Protection Mechanism

In Africa, two streams of legal regimes govern refugee matters. One can be described as a generalized instrument and the other as particular. However, the two sets of instruments co-exist and both apply to Africa at the same time. One set is the 1951 Geneva Convention Relating to the Status of Refugees (GCR) and the 1967 Protocol to the 1951 Convention. The other instrument, on the other hand, is more particular and restricted to Africa. It is the 1969 OAU

⁹² Id,p310.

⁹³ Id, p311.

⁹⁴ V. Roman, *Unaccompanied Refugee Children in Greece and Their right to Family Reunification with family members in other EU countries: An explorative and explanatory study of the implementation of Dublin Regulation in Greek national legislation.*, Thesis submitted to the school of Global Studies, University of Gothenburg (2017), p2.

⁹⁵ Id, p4.

Convention Governing the Specific Aspects of Refugee Law in Africa. Under this instrument, an extended definition of a refugee is provided as follows:⁹⁶

*The term "refugee" shall mean every person who, owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable 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.*⁹⁷

Another definition provided in the 1969 OAU Convention is that:

*The term "refugee" shall also apply to every person who, 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, is compelled to leave his place of habitual residence to seek refuge in another place outside his country of origin or nationality.*⁹⁸

The convention recognizes the refugee definition of the 1951 RC but prolonged it to include people who are obliged to go away their motherland for survival not only as a result of harassment but also due to external aggression, occupation or foreign supremacy and thus the convention is more appropriate to the reality of the developing world particularly to Africa. Children are the most vulnerable people in the refugee crisis in Africa. Their health, nutrition, education, and personal development are all affected. It is therefore very important to help in the best possible way to ensure that their future is protected. It is also imperative to protect them

⁹⁶ Stella Akpene Gaba, *Child Refugee Issues in Africa: An Examination of the Effects of Refugee Crisis on African Children, specifically children from South Sudan and Cote D'ivore*, Thesis submitted to the school of law, University of Ghana, (2019) p 11 available at University of Ghana <http://ugspace.ug.edu.gh>.

⁹⁷ Ibid.

⁹⁸ Ibid.

from falling prey to crime and other social vices due to lack of opportunities and due to frustration.⁹⁹

2.2.2.1. African Charter on the Rights and Welfare of the Child (ACRWC)

The African Charter on the Rights and Welfare of the Child is another prominent regional child rights protection mechanism situated in the continent of Africa. It is the principal norm-setting instrument for child rights and welfare in Africa guarantees the core principles and rights in addition to others.¹⁰⁰ The normative framework established by the ACRWC is also complemented by the ACHPR, the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (PRWA), the OAU Convention Governing the Specific Aspects of the Refugee Problems in Africa and the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (the Kampala Convention).¹⁰¹ Child protection encompasses the full spectrum of standards and structures that protect children from violence, exploitation, and abuse.¹⁰² Even though the ACRWC shares a lot in common with the CRC, the theme of the Charter reflects the state of affairs of African children, filling in some gaps in the CRC, such as the protection of internally displaced children, protection of the rights of children living under apartheid and protection from harmful social and cultural practices.¹⁰³ The ACRWC also provides for the four foundational principles of child rights mentioned above as well as a comprehensive list of rights, spanning all three conventional generations of rights.¹⁰⁴ Likewise, the ACRWC, though it does not specifically mention children on the move as a broad category, it has provisions, under article 23, which directly address the situation of some

⁹⁹ Id, p12.

¹⁰⁰ African Committee of Experts on the Rights and Welfare of the Child, *Mapping Children on the Move Within Africa*, (2018), p5.

¹⁰¹ Id, p10.

¹⁰² Ibid, p10.

¹⁰³ Id, p15.

¹⁰⁴ Id, p16.

categories of children, such as refugee children, which also apply, mutatis mutandis to internally displaced children.¹⁰⁵

2.2.3. The Inter American Refugee Children Protection Mechanism

Another regional refugee children protection mechanism that is currently implemented is the Inter American refugee children mechanism. This legal instrument is specifically intended to govern the human rights situation of refugee and migrant families and unaccompanied children in the United States of America.¹⁰⁶ States have the right to establish immigration policies, laws, and practices, which may include provisions for the control of their borders; the requirements for entering and remaining in their territory; and the right to expel or deport foreign nationals.¹⁰⁷ The Inter-American Commission on Human Rights shares the considerations established by the Inter-American Court in its most recent Advisory Opinion on the Rights and guarantees of children in the context of migration and/or in need of international protection:

“Given the special condition of the vulnerability of child migrants in an irregular situation, States are obliged, under Articles 19 of the American Convention and VII of the Declaration, to choose measures that promote the care and wellbeing of the child to ensure its comprehensive protection, rather than the deprivation of her or his liberty. The Court considers that the parameter for the State’s actions should, therefore, aim at ensuring, insofar as possible, the prevalence of the *best interest of the child migrant* and the guiding principle of respect for the child’s right to life, survival, and development by measures adapted to the child’s needs.¹⁰⁸ The Commission considers many aspects of the overall legal framework in place for unaccompanied children to be consistent with international standards.”¹⁰⁹

¹⁰⁵ Ibid, p16.

¹⁰⁶ IACHR, Refugees and Migrants in the United States; Families and Unaccompanied Children, 2015, p15 available at www.iachr.org, [accessed on March, 2020].

¹⁰⁷ Id, p31.

¹⁰⁸ Id, p33.

¹⁰⁹ Id, p91.

Another prominent legal mechanism that is applicable in this particular region is the Cartagena Declaration on Refugees of 1984, which contains a set of principles and criteria for the protection of and assistance to refugees.¹¹⁰ Although not a legally binding instrument for States, it is nevertheless of fundamental importance as it reflects consensus on particular principles and criteria and has guided States in their treatment of refugees.¹¹¹

2.3. Durable Solutions for Refugee Children

Internationally, CRC's focus on durable solutions makes it the standard for the protection of refugee children amongst a fragmented patchwork of legal instruments and policy frameworks that constitutes the international protection for the protection of refugees.¹¹² In a nutshell, the CRC is a very comprehensive treaty that makes provision for almost every aspect of a child's life; it may rightly be described as forming the core of the international law on the rights of the child.¹¹³ The direction to take all appropriate measures requires state parties to deploy all their resources including social, economic, political, legal, and diplomatic resources in ensuring that refugee children are allowed to enjoy the rights enshrined in the CRC and to alleviate the difficult situation in which such children find themselves.¹¹⁴

Many factors contribute to the decision on where and when a child will find a permanent solution. As per Article 3 of the CRC, the best interest of the child should guide all actions concerning children, particularly decisions on solutions.¹¹⁵ Durable solutions are those which positively contribute to the refugee child's survival, protection and development and encompass

¹¹⁰ H.G. Espiell, S. Picado and L.V. Lanza, (note 2) on *Regional Refugee Instruments & Related, Cartagena Declaration on Refugees, Colloquium on the International Protection of Refugees in Central America, Mexico and Panama*, 22 November 1984,p3.

¹¹¹ H.G. Espiell, S. Picado and L.V. Lanza, (note 3), p4.

¹¹² R. Islam and J. H. Bhuiyan, *An Introduction to International Refugee Law*, Martins Nijhoff Publisher, (2013), p402.

¹¹³ R. Islam and J. H. Bhuiyan, (note 2) Id, p 403.

¹¹⁴ Ibid.

¹¹⁵ Johannessen and Rikke, *Durable Solution for Children Toolkit*, Save the Children International, (2019), (note 1), p16.

considerations such as the child's need for bodily and mental health, normal intellectual development, adequate material security, stable and non-superficial interpersonal relationships and a fair degree of liberty.¹¹⁶

A durable solution is one where a displaced person permanently gains or regains, status, and rights to live freely as a citizen, through local integration, resettlement, or return to home.¹¹⁷ Each solution must be carried out based on the consent of the concerned child. Let see each solution in detail.

2.3.1. Voluntary Repatriation

Voluntary repatriation, where and when feasible, is one of the three durable solutions for refugees and it generally requires appropriate measures to ensure that any choice regarding return made by refugees is voluntary, free from coercion, and based on objective information.¹¹⁸ Support for the return of refugees to conditions of physical, legal, and material safety, with full restoration of national protection as the ultimate end, ensures that return takes place in safety and with dignity and that it is sustainable.¹¹⁹

Ethiopian refugee proclamation has enshrined the very conceptual thoughtful of voluntary repatriation under it. The proclamation says that every recognized refugee has the right to a free and informed choice to seek to repatriate in safety and with dignity, to his country of nationality or former habitual residence.¹²⁰ Therefore, refugee children have the right to choose to repatriate either to hi/her country of origin or habitually residing place or to remain here.

¹¹⁶ R. Islam and J. H. Bhuiyan, (note 3) Id, p 411-412.

¹¹⁷ Johannessen and Rikke, (note 2), Id, p14.

¹¹⁸ UNHCR, Solutions for Refugees, available at [https://webcache.googleusercontent.com/search?q=cache:sIb98NpOy-sJ:https://www.unhcr.org/50a4c17f9.pdf,\[accessed on March, 2020\].](https://webcache.googleusercontent.com/search?q=cache:sIb98NpOy-sJ:https://www.unhcr.org/50a4c17f9.pdf,[accessed on March, 2020].)

¹¹⁹ UNHCR, Solutions for Refugees, available at [https://webcache.googleusercontent.com/search?q=cache:sIb98NpOy-sJ:https://www.unhcr.org/50a4c17f9.pdf,\[accessed on March, 2020\].](https://webcache.googleusercontent.com/search?q=cache:sIb98NpOy-sJ:https://www.unhcr.org/50a4c17f9.pdf,[accessed on March, 2020].)

¹²⁰ Refugee Proclamation No.1119/2019, Art. 40, Pro. No.38, Fed. Neg. Gas, Year 25 (note 1).

2.3.2. Local Integration

The issues of integration to the host state or resettlement to a third state are among the mechanisms implemented to overcome refugee problems across the globe. The 1951 RC under Article 34 stipulates that:

*The Contracting States shall as far as possible facilitate the assimilation and naturalization of refugees. They shall, in particular, make every effort to expedite naturalization proceedings and to reduce as far as possible the charges and costs of such proceedings.*¹²¹

This particular provision puts an obligation upon State Parties to the Convention to assimilate and naturalization of refugees at any cost. The term “assimilation” is to be understood in the sense of integration into the economic, social, and cultural life of the country and not as denoting any notion of forced assimilation or coercion.¹²² This solution occurs when a child is granted residence and legal right to stay in the host country.¹²³ Beyond being afforded the right to stay, the child is offered the opportunity to integrate within the local population.¹²⁴ Often, this is an incremental process, ideally leading to permanent new citizenship.¹²⁵ Ethiopia became a State Party to UNRC and the 1967 Optional protocol on November 10, 1969.¹²⁶

Another international human rights instrument that deals with the integration issue are the ICCPR, endorsing the right of every child to acquire a nationality.¹²⁷ While this particular

¹²¹ Convention Relating to the Status of Refugees (adopted 28 July 1951, entered into force 22 April 1954) 189 UNTS 137 (Refugee Convention), art 34.

¹²² Rosa da Costa, *Legal and Protection Policy Research Series, Rights of Refugees in the Context of Integration: Legal Standards and Recommendations Division of International Protection Service POLAS/2006/02 June 2006*, (note 1), p24.

¹²³ Johannessen and Rikke, (note 3), Id, p14.

¹²⁴ Ibid.

¹²⁵ Ibid.

¹²⁶ UNHCR, States Parties to the 1951 Convention relating to the Status of Refugees and the 1967 Protocol, available at <https://www.unhcr.org/protect/protection/3b73b0d63.pdf>, [accessed on March, 2020].

¹²⁷ International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976), (ICCPR), art.24(3).

provision intends to thwart a child from being afforded fewer protections by the public and the State because he is stateless, it does not necessarily make it an obligation for States to give their nationality to every child born in their territory. However, States are required to adopt every appropriate measure, both internally and in cooperation with other States, to ensure that every child has a nationality when he is born.¹²⁸ CRC also provided the following under its provision:

*“States Parties shall take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee per applicable international or domestic law and procedures shall, whether unaccompanied or accompanied by his or her parents or by any other person, receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights outlined in the present Convention and in other international human rights or humanitarian instruments to which they said States are Parties.”*¹²⁹

This solution is essential for children who will not be able to return to their place of origin – often unaccompanied minors or the most vulnerable. In the case of refugees and asylum-seekers, hosting states often prefer to offer a certain set of rights instead of full local integration. This is particularly the case concerning large-scale movements.¹³⁰ There are also cases where migrant children cannot be returned to their country of origin, due to the situation of the country, or the individual circumstances of the child, and therefore local integration is the most suitable option following the best interest’s determination procedure.¹³¹

¹²⁸ General Comment No. 17: Rights of the child (Art. 24):07/04/89. CCPR General Comment No. 17. (General Comments) available at <https://www.equalrightstrust.org/ertdocumentbank/general%20comment%2017.pdf,p3>, [accessed on March, 2020]

¹²⁹ UN Commission on Human Rights, *Convention on the Rights of the Child.*, 7 March 1990, E/CN.4/RES/1990/74, art 22(1).

¹³⁰ Ibid.

¹³¹ Ibid.

2.3.3. Resettlement

Resettlement is the transfer of refugees from an asylum country to another state that has agreed to admit them and ultimately grant them permanent settlement.¹³² UNHCR is mandated by states to facilitate resettlement.¹³³ On an annual basis, states decide on the quota of refugees they are willing to accept, and often will also determine the specific refugee population they will resettle.¹³⁴ Resettlement States provide the refugee with legal and physical protection, including access to civil, political, economic, social, and cultural rights similar to those enjoyed by nationals.¹³⁵ As a core element of global responsibility sharing, resettlement aims to support hosting countries by providing solutions to the most vulnerable refugees, whose needs may be particularly difficult to meet in frontline states and has both tangible humanitarian value as well as a symbolic political value.¹³⁶ While resettlement must continue to be available first and foremost to the most vulnerable, refugees who may not be prioritized for resettlement should benefit from complimentary admissions schemes as long as these pathways guarantee minimum protection safeguards (e.g. guarantee *non-refoulement*, ensure access to appropriate identity and travel documents, and preserve family unity).¹³⁷

2.3.4. Complementary Pathways

When durable solutions are not achievable for all members of a refugee population, complementary pathways of admission can help refugees access protection and long term solutions.¹³⁸ The core assertion of this principle is it enhances cooperation with national, regional, and international agencies engaged in labor issues, including employer and professional

¹³² Id, p17.

¹³³ Ibid.

¹³⁴ Ibid.

¹³⁵ UNHCR, Resettlement available at <https://www.unhcr.org/resettlement.html>, [accessed on March, 2020].

¹³⁶ Joint NGO, *Recommendation Durable Solutions for the Global Compact on Refugees' Programme of Action*, (2017), p8.

¹³⁷ Ibid.

¹³⁸ UNHCR, Complimentary Pathways for Admission to Third Countries, available at <https://www.unhcr.org/complimentary-pathways.html>, [accessed on March 2020].

groups, to explore labor migration options for refugees and to increase their access to safety measures.¹³⁹ Complementary pathways afford refugees a wider range of mechanisms for how they may achieve protection and solutions and it help refugees gain access to safe, regulated means of protection and to solutions through work, study, and family reunion opportunities.¹⁴⁰

¹³⁹UNHCR, Complementary Pathways for Admission to Third Countries, available at <https://www.unhcr.org/complementary-pathways.html>, [accessed on March 2020].

¹⁴⁰UNHCR, The 10 Points Plan Action, 7 Solutions for Refugees, (2016),p178, <https://www.refworld.org/10pointplaninaction2016update.html>.

CHAPTER THREE

REFUGEE CHILDREN PROTECTION UNDER ETHIOPIAN LEGAL SYSTEM

3.1. Introduction

Ethiopia has a long tradition of receiving and hosting refugees mainly originating from neighboring countries. Owing to its open-door policy, the country has always been generous in granting a haven to people coming in need of refuge and protection irrespective of their nationality, religion, or race. Refugee protection and the right to asylum are not a tradition new to Ethiopia rather it is a genuine and deeply rooted culture. Ethiopia, hence, sets global standards for its generosity and its humanity with regards to hosting so many refugees.¹⁴¹ Through a less-stringent refugee strategy than neighboring states, and its peace and stability, Ethiopia hosts refugees from different nationalities. At the start of 2019, the nation hosted 905,831 thousand refugees who were forced to flee their homes as a result of insecurity, political instability, military conscription, conflict, famine, and other problems in their countries of origin. Ethiopia is one of the chief refugee asylum countries all-inclusive, and the second-largest in Africa, shimmering the ongoing fragility and conflict in the region. The country protects refugees from some 26 countries. Among the principal factors leading to this situation are predominantly the conflict in South Sudan, the prevailing political environment in Eritrea, together with conflict and drought in Somalia.¹⁴²

Ethiopia has hosted refugees from neighboring countries for decades, and the government of Ethiopia has long taken a leading role in managing refugee response. The country is a signatory to the 1951 Refugee Convention and the 1967 Protocol, as well as the International Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of Discrimination

¹⁴¹ARRA: Administration for Refugee & Returnee Affairs of Ethiopia available at <https://arra.et/about-us/>, [accessed on March, 2020].

¹⁴² Ethiopian Country Refugee Response Plan: The integrated response plan for refugees from Eritrea, Sudan, South Sudan and Somalia January 2019 — December 2020 available at <https://data2.unhcr.org/en/documents/download/67744>, [accessed on March, 2020].

against Women, the Convention on the Rights of the Child, and the International Convention on Torture, Inhuman and Degrading Treatment.¹⁴³ At the regional level, it has ratified the African Charter on Human and Peoples' Rights and the 1969 OAU Convention.¹⁴⁴ At the domestic level, the country made a substantial improvement for the protection refugees that come to its territorial jurisdiction. The protection mechanism is included from its constitutional setup up to enacting different domestic legislations. More recently Ethiopia enacted a new law that specifically governs refugees matter under Proclamation No. 1110/2019. This law repealed a previous law that was in work since 2004. This particular law comes up with different improvements such as it introduces new provisions that will facilitate refugees' enjoyment of rights afforded to other foreign nationals residing in the country. A move away from a traditional camp-based approach to assistance not only seeks to further the dignity of care to those in need but will ensure investment in essential services that benefit both refugees and Ethiopian nationals.¹⁴⁵ Having said this, I have to return to the main issue intended to be addressed under this chapter.

3.2. Pertinent Laws and Policies on the Protection of Refugee Children in Ethiopia

3.2.1. The FDRE Constitution

The current Ethiopian constitution, which is the supreme law of the land, has recognized the human rights of children under chapter three which deals with fundamental freedom and rights. The Constitution under article 36 recognized the protection for children and it provides that:¹⁴⁶

¹⁴³ International Rescue Committee: New Responses to the Refugee Crisis: Promises and Challenges in Ethiopia A case study of World Bank financing for refugee-hosting nations, available at <https://reliefweb.int/sites/reliefweb.int/files/resources/ethiopiacasestudy.pdf>, 2016, p8, [accessed on March 2020].

¹⁴⁴ Ibid.

¹⁴⁵ UNHCR, Additional provisions within the revised national refugee law in Ethiopia, available at https://www.ethioembassy.org.uk/wp-content/uploads/2019/02/RefugeeLaw_AdditionalProvisions.pdf, p1, [accessed on March, 2020].

¹⁴⁶ Constitution of the Federal Democratic Republic of Ethiopia, Proclamation No.1/1995, Art.36, Fed. Neg.Gaz, No.1, Year 1.

1. *Every child has the right:*
 - (a) *To life;*
 - (b) *To a name and nationality;*
 - (c) *To know and be cared for by his or her parents or legal guardians;*
 - (d) *Not to be subject to exploitative practices, neither to be required nor permitted to perform work which may be hazardous or harmful to his or her education, health or well-being;*
 - (e) *To be free of corporal punishment or cruel and inhumane treatment in schools and other institutions responsible for the care of children.*
2. *In all actions concerning children undertaken by public and private welfare institutions, courts of law, administrative authorities or legislative bodies, the primary consideration shall be the best interests of the child.*
3. *Juvenile offenders admitted to corrective or rehabilitative institutions, and juveniles who become wards of the State or who are placed in public or private orphanages shall be kept separately from adults.*
4. *Children born out of wedlock shall have the same rights as children born of wedlock.*
5. *The state shall accord special protection to orphans and shall encourage the establishment of institutions that ensure and promote their adoption and advance their welfare and education.*

According to these particular provisions children, whether nationals of Ethiopia or refugees are entitled to Human Rights simply because they are human beings. All categorical rights of children are included in this article. Article 36(2) specifically deals with one of the basic principles of child rights.....*the consideration of the principle of the best interest of a child.* Accordingly, any matter relevant to children's issues whether it is public-based or private oriented must be made in light of the desire and will of the child in question. The inclusion of this article is similar to Art.3 of the CRC. The implementations of Constitutional rights and duties applicable are to the State of Ethiopia. Therefore, the protections guaranteed by the Constitution are not limited to Ethiopian national children only; thus it extends to refugee children who came to Ethiopian soil and get recognition pertinent to Proclamation No.1110/2019 and they have the same rights as that of Ethiopian children for the sake of protection. This is the

basic Constitutional safeguard for refugee children as well. Having a Constitutional safeguard other relevant laws provides protection and hence they are discussed hereafter.

3.2.2. Refugee Proclamation No.1110/2019

Ethiopia made remarkable progress in enacting a new law that specifically deals with the problem of refugees. Proclamation No. 1110/2019 comes to effect having different aims to address.¹⁴⁷ According to the Proclamation, the law applies to any person who is a refugee apply for recognition or is a recognized refugee in Ethiopia.¹⁴⁸ Under this scope of application of the law, refugee children are included once they are a recognized refugee or have applied for refugee status. Article 4 of the same law substantiates the protection of refugees must not be made upon discrimination based.¹⁴⁹ The phrase '*other similar grounds*' must be interpreted to include age as well since the grounds are illustrative. According to article 1 of CRC, children are natural persons who are below the age of eighteen, saving the exception from the African Charter of Humans and Peoples Rights as the latter doesn't talk about the minimum age of the child. Therefore, the applicability of the proclamation goes to include refugee children as the law makes a clear reference to other relevant laws.

Article 22 of the proclamation entitles for those recognized refugees and asylum-seekers to be treated according to the safeguards of RC, OAU Refugee Convention, and other applicable international laws including the CRC and they are subjected to obligations that emanate from these human rights instruments too.¹⁵⁰

The issues of refugee children are specifically addressed by article 38(2) of the same proclamation. Accordingly, children are among those vulnerable groups that demand special protection.¹⁵¹ The special protection must be based on the cardinal principles of CRC. Thus the law provides for the enjoyment of rights and protections enshrined under this and other relevant

¹⁴⁷ Proclamation No.1110/2019, cited above at note 2, Preamble.

¹⁴⁸ Proclamation No.1110/2019, cited above note 3, Article 3(1).

¹⁴⁹ Proclamation No.1110/2019, cited above note 4, Article 4.

¹⁵⁰ Proclamation No.1110/2019, cited above note 4, Article 22 (1).

¹⁵¹ Proclamation No.1110/2019, cited above note 5, Article 38 (2).

human rights laws that are intrinsically attached to refugee children's affairs. Major issues about refugee children in Ethiopia according to the new refugee law will be dealt with in chapter four.

3.2.3. Immigration Proclamation No 354/2002

Ethiopian Immigration Law was enacted to govern to foreigners that came to Ethiopia through legitimate ways for different purposes.¹⁵² This law is different from the refugee Proclamation No. 1110/2019 in that it intended to address those people who want to enter into Ethiopia by possessing a valid document as opposed to refugees.¹⁵³ But once they came to Ethiopia fulfilling all the valid requirements according to this specific law they may want to live here persistently. The grounds in which these foreigners are going to be deported are according to Art.5 and Art.8 of the law. According to this law, refugees are not expected to register once they become either a recognized refugee or a registered asylum seeker thus¹⁵⁴ their matters are governed by the new refugee law. Minor children shall be recorded in the residence permits of their parents in case of issuance of residence permit.¹⁵⁵

3.2.4. National Intelligence and Security Service Reestablishment Proclamation No.804/2013

Another ex legal instrument that directly or indirectly deals with the Ethiopian refugee's matter was associated with Security, Immigration, and Refugee Affairs Authority Establishment Proclamation No. 6/1995. But the latest law, Proclamation No.804/2013, National Intelligence, and Security Service Reestablishment, replaced Proclamation No 6/1995. According to Proclamation No. 804/2013, the National Intelligence and Security Service (NISS) provides the necessary service for refugees based on the new Ethiopian refugee law with other appropriate

¹⁵² Immigration Proclamation of Ethiopia, Proclamation No. 354/2003, Preamble, Fed. Neg. Gaz., No. 75, Year 9.

¹⁵³ Proclamation. No.354/2002, cited above note 1, Article 3.

¹⁵⁴ Proclamation. No.354/2002, cited above note 2, Article 14 (2).

¹⁵⁵ Proclamation. No.354/2002, cited above note 3, Article 15 (2).

organs.¹⁵⁶ Accordingly, NISS will work with the Agency for Refugees and Returnees Affairs (ARRA) and other appropriate organs either governmental or nongovernmental for refugees matter based on Refugee Proclamation.

3.2.5. The Ethiopian Nationality Proclamation No. 378/2003

The Nationality law of Ethiopia addresses how Ethiopian nationality is going to be acquired and lost as well as rights of nationality. The law requires at least a nexus that pave the way for foreigners to be an Ethiopian citizen.¹⁵⁷ Refugee children may be adopted by Ethiopian nationals upon fulfilling certain requirements according to article 7(1) of the proclamation. By way of interpretation, we can protect refugee children by giving them an Ethiopian nationality which is almost similar to the principle of local integration since the law is inclusive. Consequently, the law allows that a recognized refugee child can apply for nationalization based on Ethiopian Nationality Law.¹⁵⁸

3.3. Ethiopian Policy Document Relevant to Refugee Children Protection

The Ethiopian government has adopted several major policies that aim at ensuring that children are given opportunities, services, and facilities to develop in a healthy manner pointing out the measures and strategies for the realization of the rights of children.¹⁵⁹ UNHCR has stressed those including refugee children in national legal/policy frameworks and services; child protection and social welfare services in refugee contexts should ideally be provided through public authorities. This also contributes to increased integration between services provided to refugees and host-communities and prevents the creation of parallel systems. This is more sustainable and enhances governments' lead over child protection. Where national child protection services are

¹⁵⁶ National Intelligence and Security Service Reestablishment Proclamation of Ethiopia, Proclamation No. 804/2013, Art. 9(2), Fed. Neg. Gaz., No.55, Year 19.

¹⁵⁷ Ethiopian Nationality Proclamation, Proclamation No. 378/2003, Art.3 and Art.5, Proc. No.13, Fed. Neg. Gaz., Year 10.

¹⁵⁸ Proclamation No.1110/2019, cited above note 6, Article 42.

¹⁵⁹ G. Alemu and Y. Birmeta, (note 2), p29.

underdeveloped or limited, international organizations and financial institutions should work to strengthen, expand, and capacitate national child protection and social welfare systems.¹⁶⁰

The National Children’s Policy and the National Social Protection Policy are expected to clearly define the responsibilities of all service providers for promoting the well-being and protection of vulnerable children and their families.¹⁶¹ Ethiopia adopted a National Child Refugee Protection Strategy in 2017.¹⁶² The Government of Ethiopia announced its intention to expand its support for refugees after taking part in the World Leader Summit on Refugees in New York back in September 2016.¹⁶³ Concretely, the nine pledges made by the Government of Ethiopia put forward to enlarge the out of camp policy and to an endowment of refugees to access the formal labor market for them to become more autonomous. For refugee children of particular significance/direction impact are the pledges made in connection to access to civil documentation (birth certificates issued by the civil registration authority), the increased enrolment of students at all levels of education, local integration of 13,000 refugees who have been in Ethiopia for over 20 years and the overall enhancement of basic and essential social services for refugees? These commitments made by the Government of Ethiopia constitute great opportunities to increase refugee children’s protection, wellbeing, and development in this country of asylum.¹⁶⁴ These key refugee children's issues will be addressed in chapter four.

Following the adoption of the New York Declaration on Refugees and Migrants, Ethiopia is selected as one of the few pilot countries to test the Comprehensive Refugee Response Framework the practical application of which will inform the preparation of a Global Compact

¹⁶⁰ UNHCR and UNICEF: Inclusion of Refugee Children in National Child Protection System; Guidance for Practitioners in East Africa, available at <https://www.refworld.org/docid/5b0ea9de4.html> 2017, p9, [accessed on April, 2020]

¹⁶¹UNICEF, Ethiopia Annual Report (2017) p.45, available https://www.unicef.org/about/annualreport/files/Ethiopia_2017_COAR.pdf, [accessed on April, 2020].

¹⁶²Ethiopia National Refugee Child Protection Strategy 2017-2019, available at <https://data2.unhcr.org/en/documents/download/62618>, [accessed on April 2020].

¹⁶³ Leaders Summit on Refugees in New York in September 20, 2016.

¹⁶⁴Ethiopia National Refugee Child Protection Strategy 2017-2019, available at <https://data2.unhcr.org/en/documents/download/62618>, [accessed on April 2020].

on Refugees.¹⁶⁵ The new paradigm shift in refugee protection in Ethiopia deviates from the traditional “care and maintenance” approach to a more comprehensive and solutions-oriented approach aiming at fostering the self-reliance of refugees thereby easing the burden on the country by according them a wider range of rights and opportunities.¹⁶⁶

The nine pledges are policy undertakings by the Government of Ethiopia that endeavor at humanizing the lives of refugees hosted in Ethiopia; the pledges could be thematically grouped into six categories as; out of camp pledges, education pledges, work and livelihood pledges, documentation pledges, social and basic services pledges, and local integration pledges. The implementation of the pledges is meant to be progressively realized without entailing additional obligations to Ethiopia under international law.¹⁶⁷ The followings are the pledges undertaken by the Ethiopian government in improving the lives of refugees come to Ethiopia to get better protection:

Pledge 1: Expanding the Out-of Camp-Policy: to expand the Out-of-Camp Policy scheme to all refugees, which was originally reserved to Eritrean refugees, following the policy and laws of Ethiopia. The pledge intends to benefit 10% of the total refugee population in Ethiopia. If resource allows, the number of beneficiaries is intended to grow progressively.¹⁶⁸

Pledge 2: Access to Employment: to provide work permits to refugees and those with permanent residence ID within the bounds of domestic laws, within the bounds of domestic laws, and without prejudice to Ethiopia’s reservation to the 1951 Refugee Convention.¹⁶⁹

¹⁶⁵ Yonas Birmeta (ed), Refugee Protection in Ethiopia; International Law Series Addis Ababa University, Vol.1, 2017, p 149.

¹⁶⁶ Ibid.

¹⁶⁷ Id, p 157.

¹⁶⁸ Id, p 165.

¹⁶⁹ Id, p 165.

Pledge 3: Work Permits for Refugee Graduates: to provide work permits to refugee graduates in the areas permitted for foreign workers by giving priority to qualified refugees.¹⁷⁰

Pledge 4: Education: to provide primary, secondary and tertiary education to all qualified refugees without discrimination and within available resources. Ethiopia also pledges to increase enrollment of pre-school children from 44% to 60%; primary school-age children from 54% to 75%; secondary school-age children from 9% to 25%; and higher education from 1,600 to 2,500.¹⁷¹

Pledge 5: Self-reliance, Land Access: to avail 10,000 hectares of irrigable land to allow refugees and local communities to engage in crop production by facilitating irrigation schemes subject to availability of external financial assistance. This pledge intends to benefit 20,000 households or 100,000 individuals.¹⁷²

Pledge 6: Local Integration: to allow for local integration of protracted refugees who have stayed 20 years or more in Ethiopia as a refugee. The pledge intends to benefit at least 13,000 refugees identified by the Administration for Refugees and Returnees Affairs (ARRA).¹⁷³

Pledge 7: Job Creation: to promote the development of the infrastructure for industrialization to generate job opportunities both for nationals and refugees. Ethiopia is working with partners on the possibility of building industrial parks that could employ 100,000 host communities and refugees.¹⁷⁴

Pledge 8: Basic and Social Services: to strengthen, expand and enhance basic and essential social services such as health, immunization, reproductive health, HIV, and other medical services provided for refugees within the bounds of national law.¹⁷⁵

¹⁷⁰ Id, p 165.

¹⁷¹ Id, p 165.

¹⁷² Id, p 165.

¹⁷³ Id, p 165.

¹⁷⁴ Id, p 165.

¹⁷⁵ Id, p 165.

Pledge 9: Other Benefits: to provide facilities for refugees to open bank accounts, obtain driving licenses, and other benefits to which any foreigner with a legal permanent residence permit is entitled to. Ethiopia also pledges to issue birth certificates to refugee children born in Ethiopia.¹⁷⁶

The CRRF can be regarded as a vehicle to accompany the implementation of Ethiopia's nine pledges. The government has progressively more sought a supplementary sustainable response that goes beyond the care and maintenance of refugees to promote their self-reliance. This approach combines wider support to host communities, fostering peaceful coexistence, and greater inclusion of refugees in national development plans.¹⁷⁷ A set of new and innovative approaches is required to increase the quality of protection and expand protection solutions for refugees in the country. This will be done through a four-pronged approach: (1) implementing the pledges; (2) strengthening legal and policy components; (3) supporting host populations (4) strengthening coordination mechanisms.¹⁷⁸

The Government further issued its National Comprehensive Refugee Response Strategy (NCRRS) for consultation in May 2018. The Strategy includes the Government's vision to see all refugees and hosting communities becoming socio-economically active and self-reliant by 2027 and commits to changing the primary assistance model from refugee camps towards development-oriented settlements over 10 years.¹⁷⁹

¹⁷⁶ Id, p 165.

¹⁷⁷ UNHCR, CRRF Ethiopia, Briefing Note, August 2018, available at <https://data2.unhcr.org/en/documents/download/65916>, [accessed on April, 2020].

¹⁷⁸ UNHCR, CRRF Ethiopia, Briefing Note, August 2018, available at <https://data2.unhcr.org/en/documents/download/65916>, [accessed on April, 2020].

¹⁷⁹ UNHCR, CRRF Ethiopia, Briefing Note, August 2018, available at <https://data2.unhcr.org/en/documents/download/65916>, [accessed on April, 2020].

CHAPTER FOUR

KEY REFUGEE CHILDREN ISSUES IN ETHIOPIA ACCORDING TO REFUGEE PROCLAMATION NO. 1110/2019

4.1. Introduction

The responsibility of the High Commissioner for refugee children has been endorsed by the General Assembly on several occasions. In Resolution 35/135 of 11 December 1980, the Assembly:

“Requests all States to co-operate with the United Nations High Commissioner for Refugees to assure full protection of the well-being of women and children in particular, per their fundamental rights under international law and national legislation.”¹⁸⁰

In legal terms, every refugee under the age of 18 is a refugee child, ‘unless, under the law applicable to the child, a majority is attained earlier.’ Concerning refugee children, UNHCR has identified five main global priority issues:¹⁸¹

- Separation from families and caregivers
- Sexual exploitation, abuse, and violence
- Military recruitment
- Education
- Specific concerns of adolescents. In certain regions, there may be additional issues of importance that require special attention, such as birth registration, detention of children,

¹⁸⁰UNHCR, Note on Refugee Children EC/SCP/46, July 1987 available at <https://www.unhcr.org/excom/scip/3ae68ccc18/note-refugee-children.html>, [accessed on April, 2020].

¹⁸¹ Summary Note, UNHCR’s Strategy and Activities concerning Refugee Children, Geneva 2005, p2, available at <https://www.unhcr.org/3bb3107ba.pdf>, [accessed on April, 2020].

trafficking, or child labor. These and other key refugee children issues are the main content of chapter four and it will be evaluated and analyzed from the Ethiopian refugee law perspective.

As discussed above, recently the Ethiopian government enacted a new law governing matters of refugees at all under proclamation number 1110/2019 having the following as its main objectives:-

- ✓ To have a comprehensive legal framework, per international standards, that contains rights and entitlements embodied in regional instruments as well so that better protection on refugees and promises sustainable solutions,
- ✓ Ethiopia had a refugee law number 409/2004 but this law was not able to properly address the current refugee crisis and does not reflect the current overall development and progress made in refugee protection.

Having the above points as its objectives the refugee proclamation included the following key children issues to be considered.

4.2. Key Refugee Children Issues Addressed under the 2019 Refugee Proclamation

4.2.1 The Right to Integration Assistance

Ethiopia being a State Party to major human rights instruments is expected to effectively protect the rights of refugee children. Ethiopian refugee law has included the concept of local integration for certain refugees. Those refugees who live in Ethiopia for extended years are allowed to integrate themselves to the Ethiopian society.¹⁸² The law under Art.41 provides the principle of local integration for those refugees who stayed in the country for a prolonged period. But the phrase ‘protracted period’ is not well defined. It needs a clear interpretation to effectively

¹⁸² Refugee Proclamation No.1110/2019, cited above note 7, Article 41.

implement this provision to refugees in Ethiopia particularly for those who qualified either as recognized refugees or an asylum seeker. The discourse of local integration with refugee children needs to incorporate three major aspects. They are the legal aspect, where refugee children attain a wider variety of rights in Ethiopia. The other aspect is associated with the economic course of action of establishing sustainability and values of living as good as the Ethiopian community. The final aspect is refugee children's right to uphold and exercise their social life, culture, and values without fear in Ethiopia. The Refugee Law of Ethiopia though included wider rights for refugees in general but for children it is not adequate. Once they are locally integrated they will no longer be considered as refugees.

4.2.2. The Right to Work

The Ethiopian refugee proclamation has recognized the rights of refugees with the right to work. According to the proclamation, refugees are granted several rights like the right to engage in wage-earning employment, the right to engage individually or in the group, in agriculture, industry, small and micro-enterprise, handicrafts and commerce in the same circumstances as the most favorable treatment accorded to foreign national.¹⁸³ The only exception to the right to work of recognized refugees and asylum seekers in Ethiopia is the prohibition to get employed in the National Defense, Security, Foreign Affairs, and other similar political establishments.¹⁸⁴ Analogically, refugee children are permitted to undertake any work that is allowed by the proclamation as far as they are either recognized, refugee, or asylum seekers.

The issue of child labor could be addressed in various ways in the international mechanisms of protection. These mechanisms are addressed through an integrated approach including advocating for legal and policy framework on child labor, engaging with communities, advocating safe and appropriate educational opportunities, providing specialized child protection interventions, and promoting child-sensitive livelihood programs.¹⁸⁵ Proclamation No. 1110/2019 stipulated the issue of child labor in a general manner under Art. 38(2). The

¹⁸³ Proclamation No.1110/2019 cited above note 8, Article 26(1) and 26 (2).

¹⁸⁴ Proclamation No.1110/2019, cited above note 9, Article 26 (10).

¹⁸⁵ Child Labor in the Syrian refugee situation available at <https://data2.unhcr.org/en/documents/download/66236>, [accessed on April, 2020].

phrase...specific measures are taken to protect them from abuse, neglect, exploitation, and trafficking, which is meant to provide a safeguard for child labor matter.

This right to work of refugee children is supported by different international human rights instruments of protection in which Ethiopia is a State Party as discussed under chapter two. These instruments are the UNRC, UDHR, the CRC, and the ICESCR. Thus, the UDHR, as well as the International Covenant on Economic, Social, and Cultural Rights (ICESCR) also includes the right of everyone, without distinction, to work (i.e. the opportunity to gain a living) and to free choice of employment.¹⁸⁶ This right is more confined by a non-discrimination provision in these instruments, which encompasses, amongst other grounds, race, national or social origin, birth, or another status.¹⁸⁷

4.2.3. The Right to Education

Recent legal and policy developments are growing the rights of refugees in Ethiopia, including options for integration and other durable solutions, initiated through the Comprehensive Refugee Response Framework, under which Ethiopia is a pilot country.¹⁸⁸ This includes progress against ambitious goals to increase enrolment of refugee students at all levels of education and a commitment to the Djibouti Declaration, which focuses on States' efforts to mainstream refugees into their national education systems.¹⁸⁹ Access to quality education is a central part of the country's efforts to improve the plight of refugees in general and refugee children in particular. It is also a shared responsibility, requiring the involvement and expertise of a multitude of actors including the Ministry of Education, and humanitarian and development partners.¹⁹⁰ Ethiopian refugee law recognized the right to education for refugees. The law acknowledged this particular

¹⁸⁶ Rosa da Costa, (note 5), Id, p51.

¹⁸⁷UN General Assembly, *International Covenant on Economic, Social and Cultural Rights*, 16 December 1966, United Nations, Treaty Series, vol. 993, art 2 (2) and UN General Assembly, *Universal Declaration of Human Rights*, 10 December 1948, 217 A (III), art 2.

¹⁸⁸ S.Lashford and S.Malik, *Education for Resilience; Exploring the experience of refugee's students in three communities in Ethiopia*, June 2019, p1.

¹⁸⁹ Ibid.

¹⁹⁰ IIEP and UNESCO Ethiopia, planning education building the future, June 19 2018, available at <http://www.iiep.unesco.org/en/ethiopia-education-knows-no-boundaries-4525>, [accessed on April, 2020].

right for every recognized refugees and asylum seekers. Refugee children are not exceptional to these entitlements especially for the accessibility of pre-primary and primary education.¹⁹¹ The same law extends the right to education to higher education, technical and vocation education and training, and adult and non-formal education within available resources and subject to the education policy of the country.¹⁹² Under CRRF pledge four, Ethiopia has undertaken to provide primary, secondary and tertiary education to all qualified refugees without discrimination and within available resources.

4.2.4. The Right to Access to Health Service

Having under consideration the severity of the sufferings of the refugees, the 1951 RC under Article 23 stipulated that the Contracting States shall accord to refugees lawfully staying in their territory the same treatment for public relief and assistance as is accorded to their nationals.¹⁹³ The Ethiopian refugee law also recognized this cardinal right of refugees; the availability of the right to health services for every recognized refugee and asylum seeker in Ethiopia.¹⁹⁴ The provision has stated in general terms and it does not specifically stipulate what amounts to the inclusion of health service.

4.2.5. The Right to Birth Registration

UNHCR, the UN Refugee Agency, welcomes the launch of civil registration for refugees in Ethiopia. Starting today, all refugees in the country will be able to register their vital life events, including birth, death, marriage, and divorce, directly with national authorities.¹⁹⁵ This is a remarkable, foremost and a ground-breaking development for refugee protection in Ethiopia, not

¹⁹¹ Proclamation No.1110/2019, cited above note 10, Article 24(1).

¹⁹² Proclamation No.1110/2019, cited above note 10, Article 24(2).

¹⁹³ UN General Assembly, *Convention Relating to the Status of Refugees*, 28 July 1951, United Nations, Treaty Series, vol. 189,p37, art. 23.

¹⁹⁴ Refugee Proclamation No.1110/2019, cited above note 9, Article 25.

¹⁹⁵ UNHCR, <https://www.unhcr.org/en-us/news/briefing/2017/10/59f2f4757/historic-first-ethiopia-begins-civil-registration-refugees.html>, [accessed on April, 2020].

previously realized over decades. Then in 2019 Ethiopia enacted a law governing the matters of refugees at all. Ethiopian recently enacted refugee law doesn't specifically define what amounts to birth registration. Birth registration is included under the title of Vital Event Registrations.¹⁹⁶ The concept of Vital Events in Ethiopia is defined under Vital Events Registration and National Identity Card Proclamation No. 760/2009 which states that "vital event" means birth, marriage, divorce or death, and includes adoption, and acknowledgment and judicial declaration of paternity".¹⁹⁷ The Refugee Proclamation of Ethiopia 2019 also included this concept under Art. 36 which states:

"Every refugee or an asylum seeker shall be treated in the same circumstance as nationals concerning the registration and issuance of a certificate of registration of vital events, following applicable laws."

Therefore, birth registration is among the vital events registration categories. Refugee children have the right to get registered by the concerned government bodies once they are acknowledged either as recognized refugees or asylum seekers under our refugee law and other pertinent international as well as regional human rights instruments. Birth registration is an important protection tool – ensuring basic human rights, particularly in situations of displacement and it establishes a child's legal identity and can help prevent statelessness.¹⁹⁸ The only requirement for birth registration is the identification card of the mother and father, name of the child, physical presence of both parents (unless for the justified ground where both can be present).¹⁹⁹

4.2.6. The Right to Family Reunification

Ethiopian refugee law has included the issue of the right to the reunification of refugee children with their parents.²⁰⁰ The guiding principle for effective implementation of the right to family

¹⁹⁶ Refugee Proclamation No.1110/2019, cited above note 10, Article 36.

¹⁹⁷ Registration of Vital Events and National Identity Card Proclamation No.760/2012, Art. 2(1).

¹⁹⁸ UNHCR, <https://www.unhcr.org/en-us/news/briefing/2017/10/59f2f4757/historic-first-ethiopia-begins-civil-registration-refugees.html>, [accessed on April, 2020].

¹⁹⁹ UNICEF Ethiopia, <https://data.unicef.org/crvs/ethiopia/>.

²⁰⁰ Proclamation No.1110/2019, cited above note 11, Article 14.

reunification is the consideration of the principle of the best interest of the child.²⁰¹ The proclamation starts from defining what family member's means.²⁰² According to Art. 2(9(b)) any unmarried children of the recognized refugee or asylum seeker under the age of eighteen years are considered as family members. It directly refers to refugee children and children are entitled to the rights and subject to the duties of refugees and asylum seekers. The law under its scope has managed to include issues on refugee children. Another issue that is relevant to family reunification is associated with the condition and requirements for family confirmation. The requirements are documentary shreds of evidence that can be proof of the family affiliation. But mostly, a refugee child lacks the necessary documentation to prove that. Therefore, the law allows making an affidavit to prove the truth fullness of the application.²⁰³ The application procedure for family reunification is governed according to Article 15 and the following of Refugee Proclamation No. 1110/2019. Regarding the matters of refugee children again the Ethiopian refugee law stresses the best interest of the child should be given primary consideration.²⁰⁴ Those who are not satisfied with the decision of ARRA can submit their appeal to Appeal Hearing Council within sixty days.²⁰⁵ As can be understood from the above explanation the right to the reunification of children with their parents and growing up with them is an essential step for the effective protection of their basic rights. Thus, having the best interest of a child under consideration, refugee children should be allowed to raise with their parents, tutors, or guardians.

4.2.7. Child Labor, Abuse and Torture

The issue of child labor is another crucial challenge for refugee children. They may subject to the worst forms of abuse and exploitation including hazardous works. Exposure of children on the move to child labor is interconnected to broader legal frameworks inside the countries concerning labor matters. Ethiopian refugee law Proclamation No. 1110/2019 also includes the

²⁰¹ Proclamation No.1110/2019, cited above note 12, Article 16(2(e)).

²⁰² Proclamation No.1110/2019, cited above note 13, Article 2 (9).

²⁰³ Proclamation No.1110/2019, cited above note 14, Article 15(6).

²⁰⁴ Proclamation No.1110/2019, cited above note 12, Article 16(2(e)).

²⁰⁵ Proclamation No.1110/2019, cited above note 15, Article 16(4).

issues of abuse, exploitation, and trafficking under Art.38 (2). But the law does not provide the details of these conceptions as it is stipulated in general terms. Each detail of what amounts to abuse; child labor and torture must be clearly stated.

4.3. Legal Remedies for Refugee Children in case of Violation of their Rights

Even though refugee children's rights are recognized under many international and regional human rights standards, it does not mean that all nations would discharge their obligation properly. States may in one way or another violate the rights in which case individuals should have access to various remedies. There is saying that support this standing; *Ubi jus, ibi remedium*: where there is a right, there is a remedy. The right to have to access to either judicial or quasi-judicial remedies is included under various international human rights instruments and mechanisms. Ethiopian Refugee Proclamation also included legal remedies for refugees as well and it will be discussed now.

4.3.1. The Right to Access to Justice

Under the CRC, the child is explicitly recognized as a human rights bearer, a legal subject entitled to all human rights and fundamental freedoms laid down in the CRC and related international human rights instruments and jurisprudence.²⁰⁶ Although the CRC recognizes the procedural rights of the child in addition to substantive rights, it is rather silent on the fundamental right to an effective remedy (art. 8, UDHR, cf. e.g. art. 2(3), ICCPR).²⁰⁷ Access to justice is grounded in the fundamental right to an effective remedy and revolves around the right of children to seek remedies in case of (alleged) rights violations.²⁰⁸ The UN High Commissioner observed that access to justice 'is a fundamental right in itself and an essential prerequisite for the protection and promotion of all other human rights'.²⁰⁹ This suggests that access to justice for

²⁰⁶ Ton Liefwaard, *International Journal of Children's Right, Access to Justice for Children: Towards a Specific Research and Implementation Agenda*, (2019), p196.

²⁰⁷ Ibid.

²⁰⁸ Ibid.

²⁰⁹ Id, (note 3), p198.

children should be understood both as a fundamental right and as a means to safeguard the enjoyment of just and timely remedies concerning the protection of substantive rights of the child.²¹⁰ The same goes for refugee children.

Ethiopian refugee law has included the right to access to justice for refugees in general. But what does the right to access to justice means? “Access to justice” typically refers to the ability of persons to make full use of the existing legal processes designed, formally or informally, to protect their rights per substantive standards of fairness and justice.²¹¹ Ethiopian legal system has recognized the right to access to justice under the FDRE Constitution.²¹² It is the democratic rights of citizens. Having this principle under consideration the Ethiopian Refugee Law under Art.30 (1) enshrined this basic right. It is observed that every recognized refugee and asylum seeker has the right to access to justice for any matter they confronted. They can exercise their right through different assistances.²¹³ Therefore, refugee children are also entitled to have such rights in case their rights are violated.

²¹⁰ Id, (note 4) p198.

²¹¹ IOM, International Migration Law Information Note, June 2019, p2, available at https://www.iom.int/sites/default/files/our_work/ICP/IML/iml-infonote-access-to-justice.pdf, [accessed on April, 2020].

²¹² See FDRE Constitution, Art 37.

²¹³ Refugee Proclamation No.1110/2019, cited above note 12, Article 30 (2).

CHAPTER FIVE

CONCLUSION AND RECOMMENDATIONS

5.1. Conclusion

Refugee children protection is a willful obligation undertaken by most states across the globe. At the international level, UNHCR aims at securing better protection for refugees in general and refugee children in particular by providing different guidelines and protection mechanisms as well as standards since its concerns are the safety and welfare of refugees. The basic international human rights instruments for better protection of the rights of refugee children are the 1951 RC and its 1967 Protocol, the CRC, UDHR, ICCPR, and ICESCR. Under these treaties, it is provided that children's rights, whatever their statuses, are must be respected and protected.

CRC is the first and foremost international treaty to state the full range of civil, political, economic, social, and cultural rights belonging to children and thus all the rights and entitlements of children are included under this particular convention as observed under chapter two. Different factors contribute to the special needs of refugee children: their dependence, their vulnerability, and their developmental needs. Therefore, children deserve to get special protection and care to realize their potential.

Relying only on CRC could not guarantee the needed protection. Thus regional mechanisms are implemented across the different continents of the world. The prominent regional standards are the African, the European, and the Inter American protection mechanisms as discussed under chapter two.

For effective and better protection of refugee children, national mechanisms are much stronger than other mechanisms. Ethiopia who ratified all the global and regional refugee children protection mechanisms has recently enacted compulsory legislation regarding the problem of refugees under proclamation no.1110/2019. As per the proclamation, anyone who is either a recognized refugee or an asylum seeker is entitled to get protections stipulated under this particular law. Refugee children are not exceptional to the beneficiary of this protection. Under

Art.38(2) says that refugee children who are recognized refugee and asylum-seeker shall enjoy the rights and protections enshrined under relevant laws, in particular, specific measures are taken to protect them from abuse, neglect, exploitation, and trafficking.

This paper analyzed the issue of the extent of protection guaranteed for refugee children's in the case of Ethiopian refugee law from international and regional protection perspectives. Children, unlike adults, deserve special protection since they are vulnerable to various problems. They cannot handle any challenge by themselves as they demand protection at any cost. To this end, certain key refugee children's issues are considered. The law fails to properly address this and another subsequent issue as it makes a cross-reference to other laws. Making a cross-reference will pave the way for the violation rights of refugee children.

Lack of a political commitment from government side is a clear indication for un adequate protection for the protection of marginalized people. This fact can be attested by the failure of the Ethiopian government to officially publicize the long time ago adopted major human rights instruments like the CRC and the ACRWC.

5.2. Recommendations:

Ethiopian refugee law comes up with better protection for the ongoing refugee problem across the country and it is appreciated by many international organizations including the UNHCR. The UNHCR took part in the drafting of this particular law. To ensure better protection for refugee children in Ethiopia, to effectively protect their rights and to overcome any human rights violation to them, it will be essential to make some recommendations. Accordingly,

- The issue of the right to integrate locally into the Ethiopian community is very limited to those refugees who have domiciled in Ethiopia for protracted years. The phrase ‘protracted years’ is not well defined. The law must answer for those refugee children who lived in Ethiopia henceforth of their recognition as a recognized refugee or asylum-seeker status. They should be allowed to integrate themselves into the Ethiopian community as soon as they are granted the protection.
- Ethiopian Refugee Proclamation No.1110/2019 to some extent has included certain rights and entitlements of refugee children which is a good part of this law. But the law is not yet supported by regulation and directives for its effective implementation. Regulation must be enacted since they have detailed descriptions of the provisions of the refugee proclamation.
- The Ethiopian refugee law fails to provide an adequate guarantee for the protection of child refugees in respect to their vulnerable nature. The law should be amended to include every refugee child's issues under one topic which must address the key issues of this person of concern since human rights are all about human dignity and worth, and it's the concern of every individual including refugee children.
- The main provision from the Proclamation No. 1110/2019 that deals the matters of refugee children is Art.38 (2), which is stipulated in general terms. Hence it is difficult to effectively protect their rights with this general stipulation and needs a detail of the matters included under this particular provision.
- Ethiopian government must indicate its commitment for the protection of rights of refugees in general and refugee children in particular henceforthly by promulgating the CRC and ACRWC in the federal negarit gazetta.

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Thank You!

Address:-

Name- Naabeek Girma Chemed

Email- naabeek10@gmail.com

teshesnavy@gmail.com

Cellphone - +251913-89-10-41

-+251944-27-78-70