

A decorative border of colorful fish, primarily striped and spotted patterns, surrounds the text. The fish are arranged in a rectangular frame, with some fish at the corners and along the edges.

ST.MARY'S UNVIESITY COLLEGE
FACULTY OF LAW

LL.B THESIS

THE PROTECTION OF REFUGEES
IN ETHIOPIA THE LEGAL
FRAME WORK

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ADDIS ABABA ETHIOPIA

JULY 2008

THE PROTECTION OF REFUGEES IN ETHIOPIA THE LEGAL FRAME WORK

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**Submitted in partial
Fulfillment of the requirement
For the bachelors degree
Of law (LL.B) at the
Faculty of law,
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ADDIS ABABA

JULY 2008

Table of Content

| Title | Page No |
|--|----------------|
| Acknowledgment ----- | I |
| Introduction ----- | 1 |
| 1. Back ground of refugee ----- | 2 |
| CHATTER ONE DEFINITION OF THE REFUGEE ----- | |
| 1.1 International instruments Definition on refugee ----- | 6 |
| 1.1.1 Statute of UNHCR ----- | 7 |
| 1.1.2 The 1951 convention and the 1967 protocol ----- | 9 |
| 1.1.3 1967 Protocol ----- | 12 |
| 1.1.4 1969 OAU Convention ----- | 12 |
| CHAPTER TWO - REFUGEE PROTECTION ----- | |
| 2.1 Refugee Protection under Regional instruments ----- | 14 |
| 2.2 Refugee Protection under International instruments ----- | 17 |
| 2.3 Specific Rights/ Protection / under international and Regional Instrument ----- | 24 |
| 2.3.1 Non-refoulement ----- | 24 |
| 2.3.2 Exemption from Penalties because of illegal entry or presence----- | 26 |
| 2.3.3 Non- Expulsion ----- | 28 |
| 2.3.4 Issuance of travel documents. ----- | 29 |
| CHAPTER THREE- PROTECTION OF REFUGEE IN ETHIOPIA | |
| 3.1 Refugee protection under Ethiopia legal system----- | 30 |
| 3.1.1 Legal Frame Work ----- | 30 |
| A. Scope and Objective of Proclamation No.409/2004----- | 30 |
| B. Protection of Refugee ----- | 31 |
| I. Non- refoulment ----- | 31 |
| II Non- expulsion----- | 33 |
| III Exemption from penalties----- | 34 |
| IV. Non Discrimination ----- | 35 |
| v. Issuance of travel documents----- | 35 |

| | |
|--|----|
| C. Appeal under Proclamation No.409/2004----- | 36 |
| 3.1.2 Institutional frame work ----- | 37 |
| A. Historical Occurent | 37 |
| B. ARRA | 38 |
| C. Refugee Situation in Ethiopia | 39 |
| 3.2 Practical problems in the implementations of Proclamation No 409/2004 ----- | 41 |
| 3.2.1 Issue of identification----- | 41 |
| 3.2.2 Problem on Procedure of Appeal ----- | 43 |
| Chapter Four | |
| Conclusion and Recommendation ----- | 46 |
| End Notes | |
| Chapter One ----- | 52 |
| Chapter Two----- | 55 |
| Chapter Three ----- | 58 |
| Bibliography----- | 60 |
| Annexes | 64 |
| Annexes One The 1951 convention relating to the status of Refugees | |
| Annexes Two The 1969 OAU Convention | |
| Annexes Three Ethiopian Refugee Proclamation | |

Acknowledgement

I thank the Almighty God for the successful completion of this work. During the process of my research, I was fortunate enough to have kind people by my side. Most of All I would like to express my profound gratitude to my advisor Ato Minilk Alemu.

I owe a special debt to my dear mother Asegedech Balcha, Kelemuwa G/Mariam, my dear wife Tseganesh fantahun and my family for their support and strong Commitment to see my success. My sincere thanks go to Ato Hailelassie G/Mariam of ARRA who provided me with relevant literature and information.

My thanks also extend to all those who have helped me in having this paper printed.

Introduction

Refugees are persons in exile, a person who runs away from home seeking shelter elsewhere. These people leave their homeland and seek asylum to another country not for personal convenience, but out of absolute necessity. The large-scale influxes frequently create problems for states in protecting refugees according to their obligations under the international and national instruments. They may even be forced to undermine the essential principles of international protection due to the number of refugees. On the other hand issue of protection of refuge has of two parts which is the legal and political aspects. But this essay is focused on the legal aspects of Refugee protection. From this point of view the legal aspects of Ethiopian refugee protection will be discussed. When we talk about refugee protection it is a wide and complex concept, but in this paper we see limited and important parts of refugee protection such: as non refoulement, non-expulsion, exemption from penalties, non discrimination and Issuance of Travel documents are discussed.

This essay is categorized in to four chapters. In the first chapter, general background of refugee and definition of refugees under international and regional instrument would be discussed.

Chapter two will focus more on refugee protection under international instrument and specific rights under international and regional instrument would be discussed. Chapter three will be committed to deal with Refugee protection under Ethiopian legal system also the protection of important refugee rights such as non-refoulment, non -Expulsion, Exemption from Penalties, non- discrimination Issuance of travel document, Scope and objective of the proclamation, also practical problem in the implementation of Refugee Proclamation would be

discussed. This thesis's finally, end with for warding conclusions and recommendations.

Background of refugee

Millions of people are today forced to flee their homes as a result of conflict, systematic discrimination, or other forms of persecution.¹ Men women and children, bundled in blankets and carrying what ever possessions they could fit in to bags and have to seek refuge in other countries in search of safety.²

People have fled persecution from the moment in earliest history when they began forming communities a tradition of offering asylum began at almost the same time and when nations began to develop an international conscience in the early 20th century. Efforts to help refugees also went global³.

The concept of sanctuary, in the meaning that a person who fled into a holy place could not be harmed without inviting divine retribution was understood by the ancient Greeks and ancient Egyptians. However, the right to seek asylum in a church or other holy place, was first codified in law by king Ethelbert of Kent in about 600 A.D ⁴.similar laws were implemented throughout Europe in the Middle Ages. The related concept of political exile also has a long history: Ovid who was sent to Tom's and Voltaire was exiled to England. Through the 1648 Peace treaty of Westphalia, nations recognized each other's sovereignty. However, it was not until the advent of romantic nationalism in late eightieth century Europe that nationalism became prevalent enough that the phrase" Country of nationality" became meaningful and people crossing borders were required to provide indentification.⁵

A tradition of offering asylum began at almost the same time; and when nations began to develop an international conscience in the early 20th century, efforts to help refugees also went global and refugee laws began to take root. The 1933 League of Nations' Convention relating to the International Status of Refugees that had introduced the notion that signatory states were obligated not to expel authorized refugees from their territories and to avoid "non admittance of refugees at the frontier"; and the 1938 Convention concerning the status of Refugees coming from Germany provided limited protection for uprooted peoples. But none of these early refugee organizations were totally successful as of league of Nations.⁶

Legal protection in international law remained rudimentary and leading members of the newly created United Nations formed to 'save succeeding generations from the scourge of war'⁷, determined that a stronger refugee regime was necessary. UNHCR was born in 1950 and on the following year, the Refugee Convention was adopted. Based on the decision by the General Assembly of the United Nations to complete the drafting of, and to sign, a convention relating to the status of Refugees and a protocol relating to the Status of Stateless persons, the Conference was held at the office of the United Nations in Geneva from 2 to 25 July 1951, three days later the resultant, groundbreaking, 1951 convention relating to the status of Refugees was formally adopted and has become the corner stone instrument of refugee protection. Over the years, States have affirmed their commitment to protecting refugees by acceding to the 1951 Convention⁸.

The 1951 Convention relating to the Status of Refugees is the foundation of international refugee law. It defines the term "refugee" and sets minimum standards for the treatment of persons who are found to qualify for refugee status. Because the Refugee Convention was drafted in the wake of World War II, its definition covers only those persons who have become refugees as a result of events occurring before January 1, 1951. As new refugee concerns emerged that don't fall within the scope of convention during the late 1950s and early 1960s, it became necessary to widen and remove both the temporal and geographical deadlines.⁹

Countries have responsibility to protect their citizens. When the governments of home countries are not able or willing to protect the basic rights of people living in the State and these people are forced to cross an international border to escape persecution, generalized violence, conflict, or serious human rights violations, then the international community has the responsibility to step in to ensure that these people receive effective protection and that their basic rights are respected.¹⁰

Much has changed over the past 5 decades. The world is more complex than it was in 1951; ideas of civilization creates new world, people are more mobile; shades of gray elude categorization where once black-and-white fitted neatly into hard won definitions. But one thing has not changed: people still flee persecution, war and human rights violations and have to seek refuge in other countries. For refugees, now as half a century ago, the 1951 Convention with 1967 protocol is the one truly serve the refugee that offers some guarantee their rights as human beings will be safeguarded.¹¹

Also three other important instruments have regional application. These are the Bangkok Principles, adopted in 1966 by what was then known as the Asian-African Legal Consultative Committee (AALCC), the Organization of African Unity (OAU) Convention Governing the Specific Aspects of Refugee problems in Africa, adopted in 1969, and the 1984 Cartagena Declaration.¹²

In 1984, a colloquium of Latin American government representatives and distinguished jurists adopted the Cartagena Declaration. The Declaration recommended that the definition of a refugee used throughout the Latin American region should include the 1951 Refugee Convention definition and also persons who have fled their country "because their lives, safety or freedom have been threatened by generalized violence, foreign aggression, internal conflicts, massive violation of human rights or other circumstances which have seriously disturbed public order". Although the Declaration is not legally binding on States, most Latin American States apply the definition as a matter of practice and some have incorporated it into their national legislation.¹³

The only agreed to, but non-binding, Statement of refugee protection principles with regional applicability for many countries in Asia is the Bangkok principles, as adopted in 2001 by the Asian-African Legal Consultative Organization. These principles are the result of more than six years of negotiations.¹⁴

CHAPTER ONE

1. DEFINITION OF THE REFUGEE

International Instruments Definition on Refugee

Early in the twentieth century, the Refugee problem became the concern of the international community, which for humanitarian reasons began to assume responsibility for protecting and assisting refugees. These laws are categorized as early instruments, 1921-1946. The pattern of international action on behalf of refugees was established by the League of Nations and led to the adoption of the number of international agreements for their benefit.

These instruments are referred to in Article 1A (I) of the 1951 convention relating to the status of refugees.¹⁵

Although few persons covered by the terms of the early instruments are likely to request a formal determination of refugee status at the present time. Persons who meet the definitions of international instruments prior to the 1951 convention are usually referred to as "statutory refugees"¹⁶

The UN General Assembly adopted the protocol relating to the status of Refugees. When these instruments, which is the 1951 convention and 1967 protocol relating to the status of refugee, are combined, a refugee is defined as some one who:-

- ❖ Has a well founded fear of persecution because of his or her race, religion, nationality, membership in a particular social group, or political opinion.
- ❖ Is outside his or her country of nationality.
- ❖ Is unable to avail himself or herself of the protection of his or her country of nationality or habitual residence, or to return there, for fear of persecution.

1.1.1 Statute of UNHCR

The office of the United Nations high commissioner for Refugees (UNHCR) was established on December 14, 1950 by the United Nations General Assembly.¹⁷ The office has head quartered in Geneva, Switzerland, in more than 110 countries. The agency is mandated to lead and co-ordinate international action to protect refugees and resolve problems world wide. Its primary purpose is to safeguard the rights and well - being of refugees. It strives to ensure that every one can exercise the right to seek asylum and find safe refuge in another state, with the option to return home voluntarily integrate locally or to resettle in a third country.¹⁸

The statute first brings within UNHCR'S Competence refugees covered by various earlier treaties and arrangements. It next defines refugee as.

"Any person who . . . owing to well founded fear of being persecuted for reasons of race, religion, nationality or political opinion, is outside the country of his nationality and is unable or, owing to such fear or for reasons other than personal convenience, 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, is unable or, owing to such fear or for reasons other than personal convenience, is unwilling to return to it"¹⁹

The definition is important to determine who is entitled to the benefits provided for in the statute. The persons included in this definition are called by the name "Mandate Refugees. This term is used for persons considered by UNHCR to be refugees. This determination is not dependent up on the state of asylum being party to the 1951 convention or 1967 protocol.²⁰ Mandate refugees can benefit from the High commissioner's action. They do not, however, benefit from the rights accorded by the 1951 convention to refugees, unless also recognized by a state party to the convention/ protocol as refugees. This term (Mandate refuges) is also used for refugees under the broader competencies as later conferred on the High Commissioner by the general assembly.

The notion of persons of concern to the High commissioner has evolved beyond the definition contained in the statute, moving with the tide of events in various parts of the global. The world to day is very different from the world when UNHCR's statute was drafted. This has necessitated a degree of flexibility in order to respond to new needs which have implied a breading of certain concepts. At the end of the 1950's the High commissioner was authorized to use his " good offices" for the transmission of contribution to refugees who did not come under the competence of the untied Natins.²¹ Various UN General Assembly resolutions adopted as from 1975 authorized the high commissioner to assist and protect persons displace outside their country of origin who might not strictly fulfill

the refugee definition, but who find themselves in a "a refugee like situation" due to events (sometimes referred to as " man made disasters") arising in their country of origin.

1.1.2 The 1951 convention and the 1967 Protocol

The 1951 convention relating to the status of refugee came in to force in 1954 and today almost every definition of a refugee reflects is any person who:

"Owing to well founded fear of being persecuted for reasons of race, religion nationality, Member ship of a particular Social group or political opinion, is out side the country of his nationality or is unable or- - - un willing to return to it"²²

The convention definition applied to person who becomes refugees before 1 January 1951, in other words who were refugees because of World War II and events after that. On the other hand the convention definition is followed by two limitations. These limitations in relation to time ("events occurring before Jan 1951")²³ and the geographical limitation (events occurring before Jan 1951)²³ and the geographical limitation (events occurring in Europe")²⁴ this to limitations excluded a wide range of persons from the scope of the convention hampered its universal applicability. How ever the state parties to the convention developed the habit of applying it beyond its vision²⁵, i.e. on displaced persons who were out side Europe and to those displaced due to events occurring after 1 Jan, 1951. Such extended use of the convention as a matter of habit continued until the coming in to force of the protocol relating to the status of the refugees of

1967, which expressly recognized this practice of removing the temporal and Eurocentric characteristics of the 1951 convention definition. Since 1967, for the purpose of determination of status, these two instruments are seldom invoked separately.

The phrase "well-founded fear of being persecuted" is the key element issue of the definition. It contains a subjective and an objective element.

Fear is, by definition, a state of mind and hence a subjective condition. The applicant's state of mind must be supported by an objective situation. His fear is well founded if there is reason to believe that his or her continued stay in the country of origin has become intolerable for the reasons stated in the definition, or would be intolerable if the applicant returned. In other words, the applicant's statements must be assessed in the context of the background situation. This shows the objective element.

The well-founded fear must relate to persecution. Persecution is not defined in the 1951 convention or in any other international instrument.

Therefore, we have to refer to literatures to understand what constitute persecution. There are two schools of thought.

The first one, which is liberal, holds the opinion that all measures in violation of human rights embodies in the 1948 universal Declaration of Human rights constitute persecution in the proper sense.²⁶

The proponents of the second school of thought on the other hand argue that the concept of persecution should always be construed

to mean deprivation of life or of physical freedom only.²⁷ in my opinion; persecution should not be limited to deprivation of life and physical freedom only. This does not go with the spirit of the 1951 convention. From the wordings of article 33, it can infer that a threat to life or physical freedom because of race, religion, nationality, political opinion or membership of a particular social group constitutes persecution. The convention does not seem to confine the definition of the term to actual deprivation of life or physical freedom. It also acknowledges a threat to be part of the definition for persecution.

Persecution is normally associated with action by the authorities of a country. There are situations, however, where the government of a country of origin cannot be immediately implicated. For example: Refugees have fled mob violence or the activities of so-called death squads. Government may be unable to suppress such activities, they may be unwilling or reluctant to do so, or they may even be colluding with those responsible.

In which case, there is an absence of protection, which may lead to persecution. The concept is therefore not limited to the action of governments or their agents. Race, religion, nationality, membership of a particular social group or political opinion are the five grounds for persecution specified in the convention.

The other important point that I would like to discuss is that: the definition of the convention was drawn up to deal with individual asylum-seekers.²⁸ That means determination of status is carried out on a case-by-case basis. The claim of every individual is considered in light of the elements in this definition. If refugee

entering Ethiopia from neighbor countries are in mass influxes, the method of determining the status of refugees on individual basis is practically impossible. In other words, the fact that some refugees move in large numbers may be enough to render the definition of the convention inapplicable to their case even though such refugees may meet the requirements in the definition. For example, the Kurds in Iraq flee for fear of persecution due to their membership in an ethnic group. That makes them refugees as in the 1951 convention but because of their large numbers individual screening on the basis of the definition of the convention cannot be done. It is not feasible to extend the use of the definition to areas of mass influx.

For these reasons, the convention relating to the status of refugees of 1951 and its protocol of 1967 do not recognize the mass influx as refugees.

1.1.3 The 1967 Protocol

The 1951 convention was contractually limited to pre 1951 events in Europe but the 1967 protocol eliminated this limitation prospectively, nonetheless it did not review the substantive content of the definition it was just a formal internalization of the convention definition of refugee status.²⁹

1.1.4 1969 OAU Convention

The 1951 refugee convention together with 1967 protocol is the vital instrument defining the status of refugees. The definition in these instruments has been adopted by the OAU convention of refugees. But the OAU convention expanded the definition to

include any person who is compelled to leave his or her country- - owing to external aggression, occupation foreign domination or events seriously disturbing public order in either part or the whole of his country of origins or nationality. ³⁰

This expanded definition of the OAU which is meant to meet the situations of African Nations. ³¹ would help to accommodate situations of mass- influx, however it is not yet accepted by the U.N though, and proposals were made to this effect.

The OAU refugee definition has two parts:-

- ❖ The first repeats the definitions of the 1951 convention.
- ❖ The second goes further. It covers any persons compelled to leave his or her country" 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".

This phrase is an important addition It meant that persons fleeing civil disturbances, violence and war are entitled to claim the status of refugee in states that are parties to this convention.

Chapter Two

Refugee Protection

2.1 Refugee protection under Regional Instrument

A number of instruments relating to refugee protection have been adopted in the world on universal and regional bases, the major ones being the 1951 convention relating to the status of refugees and its protocol of 1967. There is also the OAU convention of 1967 which is especially concerned with refugee problems in Africa and which has considerably widened the definition in the 1951 convention and its 1967 protocol.

It is the responsibility of states to protect the human rights and security of their citizens. Most people can look to their own governments and state institutions to protect their rights and physical security. Refugees cannot. In many cases they are fleeing in terror from abuses perpetrated by the state. In other instances they are escaping from oppression. This is due to either that the state is powerless to prevent because it has lost control of territory or otherwise ceased to function in an effective way. Such lack or denial of protection is the principal feature of refugeehood, and this is when alternative protection needs to step in.

The protection that is extended to refugees recognizes the specific needs of people who have good reason to fear that their own governments will not or cannot provide safeguards against abuse.³² It provides a temporary substitute for the normal safeguards until the refugee can again benefit from national protection

either by returning voluntarily to his or her original country of nationality, or by assuming a new nationality.

The core of Regional and international protection is the principle that people should not be forced to return against their will to a country in which their lives or freedom would be endangered because of race, religion, nationality, membership of a particular social group or political opinion.

The organization of African unity decided that a regional refugee treaty was needed, in order to take account of special characteristics of the situation in Africa. The resulting the 1969 OAU Convention Governing the specific Aspects of Refugee Problems in Africa expanded the definition of a refugee to people who were compelled to leave their country not only as a result of persecution but also "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."³³ In 1984 Latin American jurists adopted a declaration, adding to it the additional criterion of "Massive violation of human rights"³⁴. Also the Cartagena Declaration on Refugees has become the basis of refugee policy in the region, and has been incorporated into the national legislation of a number of states. The extended refugee definition of the OAU Convention and the Cartagena Declaration have brought international protection to large number of people who have not been covered by the 1951 convention but who are forced to leave their country for a complex range of reasons including persecution wide spread human rights abuses, armed conflict and generalized violence. The extended definitions have been of particular importance in situations of massive influx where

it is generally impractical to examine individual claims for refugee status.

Refugee protection under the OAU Convention of 1969 is also the part international laws that are relevant in the determination of status and the protection of the right of the refugee in Ethiopia.

The Most recent extension of the refugee protection of regional instrument is the Cartagena Declaration of the Latin American states in 1984. The representatives of these ten Latin American states agreed to a definition of refugee which is more or less similar to that of that of the OAU Convention.³⁵

Recognizing convention refugees as it is protection as refugee was extended to persons who have fled their country because their lives, safety or freedom have been threatened by the generalized violence foreign aggression internal conflicts, massive violation of human rights or the Circumstances which have seriously disturbed public order.³⁶

The innovative characteristic of the OAU definition is shared by the OAS, though not completely. It expands the persecution standard of the refugee convention of 1951 to take consideration of abuse as a result of socio- political unrest in developing countries yet, Constrains the protection.

Obligation to cases where it is possible to show that there is some real risk of harm to persons in similar situation to the refugee claimant.

The other regional recommendation that describe about refugee protection is Council of Europe. The Council of Europe introduced more modest changes than those of the OAU and the OAS.

In Parliamentary Assembly's recommendation 773 in 1976 the council of Europe expressed its concern to persons who either have not been formerly recognized as convention refugees or who are unable or unwilling for other valid reasons to return to their countries of origin³⁸. This Parliamentary Assembly also invited member states to apply liberally the convention refugee definition and not to expel those who were not accepted unless they will be admitted by another willing state where they do not risk persecution.³⁹ But yet no text was get been adopted to this effect.⁴⁰ Over all it might be said that the European council has acknowledged the importance of incorporating an expanded class of persons as refugees with out however moving to formalize their status or rights.

2.2 Refugee protection under international Instruments

Most countries have signed a variety of multilateral treaties, there by agreeing to abide by various human rights standards. Even though not all countries have signed, and there have also been numerous violations, many analysts argue that such traits take on the characteristic of international law once they have been signed by the preponderance of the world's states. As such the standards set in these treaties may be used in a number of ways, including through international courts and tribunals, to judge cases of states and individuals.⁴¹

But, the laws, agreements and institutions which have been established to provide and regulate the refugee protection are often referred to as the "international refugee regime" or "international refugee protection system"⁴².

The statute of UNHCR; the 1951 convention Relating to the status of Refugees and the 1967 protocol Relating to the status of Refugees have universal application.

The 1951 Convention Relating to the status of refugees and the 1967 protocol to the convention are the modern legal embodiment of the ancient and universal tradition of providing sanctuary to those at risk and in danger. Both instruments reflect a fundamental human value on which global consensus exists and are the first and only instruments at the global level which specifically regulate the treatment of those who are compelled to leave their homes because of a rupture with their country of origin. For half a century, they have clearly demonstrated their adaptability to changing factual circumstances. Beginning with the European refugees from the Second World War, the convention has successfully afforded the frame work for the protection of refugees from persecution whether by repressive regimes, the upheaval caused by wars of independence or the many ethnic conflicts of the post - cold war era.⁴³

International refugee protection is as necessary today as it was when the 1951 convention was adopted over fifty years ago. Since the end of the cold war, simmering tensions of an inter-ethnic nature - often exploited by populist politicians have erupted in to conflict and strife. Communities which lived together for

generations have been separated and millions of people displaced whether in the former Yugoslavia, the great lakes, the Caucasus, or Afghanistan. The deliberate targeting of civilians and their enforced flight has not only represented methods of warfare but has become the very objectives of the conflict. Clearly, this forced displacement is for reasons which fall squarely within the scope of the convention refugee definition. Yet states in some regions have often been reluctant to acknowledge this at the outset of the crisis and have developed ad hoc, discretionary responses instead.

There are also many longstanding refugee situations resulting from conflicts which have not been resolved with the ending of the cold war and have taken on a life of their own, often fuelled by the plunder of valuable natural resources and/ or illicit trade in small arms. Endemic instability and insecurity often accompany displacement within and from failed states or states where central government only controls part of the territory-hardly offering conditions for safe return.

The displacement resulting from such situations can pose particular problems to host states, especially if they provide asylum to large refugee communities some times for decades. There is thus a real challenge as to how best to share responsibilities so as to ease the burden on any one state unable to shoulder it entirely. There is also a need to put in place burden sharing- not burden shifting mechanisms which can trigger timely responsibility sharing in any given situation.

Xenophobia and intolerance towards foreigners and in particular towards refugee and asylum seekers have also increased in recent

years and present a major problem. Certain media and politicians appear increasingly ready to exploit the situation for their own ends.

In addition, security concerns since the attacks in the United States on 11 September 2001 dominate the debate, and have at times overshadowed the legitimate protection interests of individuals. A number of countries have, for instance, revisited their asylum systems from a security angle and have in the process tightened procedures and introduced substantial modifications, for example, by broadening grounds for detention or reviewing claims for the Purpose of detecting potential security risks. In some situations, it has been noticeable that the post- September 11 context has been used to broaden the scope of provisions of the 1951 convention allowing refugees to be excluded from refugee status and/or to be expelled. The degree of collaboration between immigration and asylum authorities and the intelligence and criminal law enforcement branches has also been stepped up.⁴⁴

It would be naive to argue that the world has even begun to come close to resolving its numerous individual and group human rights issues, it would be equally wrong to deny that a start has been made. The way to evaluate the worth of the efforts that we are about to discuss is to judge their goals and to see them as the beginnings of a process that only a few decades ago did not exist at all what ever country you live in, the protection of human rights has evolved over an extended period and it still far from complete. The global community has now embarked on an effort. It will however, take time and will be subject to much controversy.⁴⁵

The growth of irregular migration, including the smuggling and trafficking of people, presents a further challenge. These developments are in part consequence of globalization, which have facilitated and strengthened transport and communication networks and raised expectations. In part, the increase in irregular migration can also be viewed as a result of restrictive immigration policies in many industrialized states, which oblige economic migrants and refugees alike to use irregular channels, whether they are in search of a better life or, more fundamentally, freedom from persecution. Visa requirements, carrier sanctions, readmission agreements, the posting of immigration officers abroad and other similar measures are all migration control tools which require proper protection safeguards and procedures if refugees are to be able to reach safely.

More specifically, in terms of the interpretation of the 1951 convention it self, some states use various complementary forms of protection, which have had the effect; in some instances of diverting convention refugees to lesser forms of protection when the protection afforded by international human rights instruments is also taken in to account, the result is that many states now have several different procedures for determining international protection needs. This in turn raises questions concerning the inter- relationship between international refugee law on the one hand and international humanitarian and human rights law on the other.

With-in the asylum procedure, systems in many states face significant challenges in ensuring a proper balance between the need for fairness and for efficiency. Dilemmas abound. How can

notions such as safe third countries, and safe countries of origin or indeed accelerated procedures for manifestly unfounded cases, which have been introduced in many jurisdictions, be implemented both efficiently and in a protection -sensitive manner?

Are the victims of violence and persecution by non- state actors- such as militias, paramilitary groups, Separatist rebels, bandits, Mafia, violent husbands-entitled to protection as refugees in another state? To what extent can the notion of " persecution" and the " particular social group" ground in the 1951 convention refugee definition reasonably be extended to protect women from gender - related - violence, not least rape in the context of conflict but also, perhaps, harmful traditional practices, trafficking or domestic violence? If only part of the state of origin is affected by conflict, to what extent are individuals able to relocate to other areas inside that state and how does this affect their claim for refugee protection? What bearing do other conventions such as the 1989 convention on the Rights of the child have on asylum procedures and the treatment of refugee children?

Differing approaches with in regions have also led states to develop regionally specific legal frameworks for handling refugee claims. Such endeavors can strengthen refugee protection but need at the same time to ensure consistency with the 1951 convention regime and there by promote its "full and inclusive application".⁴⁶ concepts, such as the safe country of origins or safe third country notions, developed in some regions are some times also " exported" to other parts of the world, which may receive far fewer claims or have less well developed protection capacities.

Ultimately, the full realization of the international protection regime with the 1951 convention at its heart hinges on the ability of the international community to find durable solutions to forced displacement situations, whether those be voluntary repatriation, resettlement in a third country, local integration, or combination thereof. The challenge is how to realize solutions for individuals, as well as for refugee groups which are both casting and protection based.

In short, the 1951 convention and 1967 protocol are the global instruments setting out the core principles on which the international protection of refugees is built. They have a legal, political, and ethical significance that goes well beyond their specific terms. Reinforcing the convention as the foundation of the refugee protection regime is a common concern. The office of the United Nations High Commissioner for Refugees (UNHCR), as the guardian of the convention, has particular role to play, but this is a task which requires the commitment of all actors concerned.⁴⁷

Generally speaking Refugee enjoy first and for most the protection to them by refugee law and the mandate of the office of the United Nations High Commissioner for Refugees (UNHCR). If they are in a state involved in an armed conflict, refugees are also protected by international humanitarian law. Apart from the general protection afforded by IHL to Civilians, refugee also receives special protection under the Fourth Geneva Convention and Additional protocol 1. This additional protocol recognizes the vulnerability of refugees as aliens in the hands of a party to the conflict and the absence of protection by their state of nationality.⁴⁸

2.3 Specific Rights /Protection/ under international and Regional Instrument

2.3.1 Non - refoulement

Non refoulement is a prohibition from returning a refugee or asylum seeker to territories where there is a risk that his or her life or freedom would be threatened on account of race, religion, nationality, membership of a particular social group, or political opinion.⁴⁹

According to article 33(1) of the 1951 convention non-refoulement is clearly stated. It is stated that no contracting state shall expel or return (refouler) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion. This is one of the provisions to which no contracting state can make reservation at the time of signing, ratifying or acceding to the convention.

There is a difference of opinion as to whether non-refoulement includes non rejection at the frontier. Many authorities of refugee law argue that its application is limited to those that have already set foot in the territory of the concerned state.⁵⁰

Others point to the fact that while the 1951 convention did not encompass non-rejection at the frontier? Over the last 30 years, the broader interpretation of non refoulement has established itself⁵¹

The concept of non-refoulement is relevant in a number of contexts principally, but not exclusively, of a treaty nature. Its best known expression for present purposes is in Article 33 of the 1951 convention relating to the status of Refugees.

1. No contracting state shall expel or return (refouler) a refugee in any manner what so ever to the frontiers of territories where his life or freedom would be threatened on account of his race religion nationality member ship of particular social group or political opinion .
2. The benefit of the present provision may not, however, be claimed by a refugee whom there are reasonable grounds for regarding as a danger to the security of the country in which he is, who , having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of that country⁵².

The exceptions to non- refoulment are to be determined by the judgment of the state authorities. A problem arises because the terms "national security and public order, are not defined in the convention.

The 1969 OAU convention governing the specific aspects of refugee problems in Africa is worthy of consideration in the issue of non- refoulment. Article 2(3) of the convention reads as " No person shall be subjected by a member state to measures such as rejection at the frontier, return or expulsion, which would compel him to return to or remain in a territory where his life, physical integrity or liberty would be threatened - - - "⁵³

Here we can see or differentiate the OAU convention from the 1951 convention unlike the 1951 convention, it explicitly prohibits rejection of asylum seekers at the frontier, thus

making any debate as to whether the principle of non-refoulement applies only to refugees who have already set foot in the territory of the receiving state.

2.3.2 Exemption from penalties because of illegal entry or presence.

The second protection available to refugees is exemption from penalties because of their illegal entry or presence. The manner in which refugees enter the territory of another state may vary considerably. In certain situations their initial entry may be legal but they may over-stay and seek asylum because of fear of persecution resulting from events taking place in their country of nationality or habitual residence either before or after entry. In the majority of cases, however, a refugee crosses the frontier to escape his pursuers or the compelling situations, and he rarely has the time or the desire to observe immigration formalities.

Article 31 of the 1951 convention relating to the status of Refugees provides: -

The contracting states shall not impose penalties on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened in the sense of Article 1, enter or are present in their territory with out authorization, provided they present themselves with out delay to the authority's and show good cause for their illegal entry or presence.⁵⁴

The practice among receiving countries is to set up special detention or holding centers, for example, in Austria, Belgium, Denmark, France, Germany, Greece, the Netherlands Spain,

Sweden, the United Kingdom, and the United States; such facilities may be open, semi-open, or closed. Many states also employ regular prisons for the purposes of immigration related detention. In such cases, asylum seekers are generally subject to the same regime as other prisoners and are not segregated from criminals or others offenders.

The 1951 Convention establishes a regime of rights and responsibilities for refugees. In most cases, only if individuals claim for refugee status is examined before he or she is affected by an exercise of state jurisdiction (for example, in regard to penalization for " illegal entry), can the state be sure that its international obligations are met? Just as a decision on the merits of a claim to refugee status is generally the only way to ensure that the obligation of non- refoulement is observed, so also is take a decision essential to ensure that penalties are not imposed on refugees, contrary to Article 31 of the 1951 convention. ⁵⁵

The term "Penalties" appears to comprehend prosecution, fine and imprisonment, but not administrative detention.⁵⁶ Article 31(2) makes it clear that states may impose "Necessary" restrictions on freedom of movement, which would include those prompted by security consideration or special circumstances like a large influx. Such measures also come with in article 9, and are an exception to the freedom of movement called for by article 26. Article 31(2) "never the less" calls for restrictions to be applied only until status in the country of refuge is regularized , or admission obtained in to another country; Moreover contracting states are obliged to allow refugees a reasonable period and all necessary facilities to obtain such admission.

2.3.2 Non - Expulsion

As stated under Article 32 of the 1951 convention states parties have undertaken not to expel a refugee lawfully in their territory save on grounds of national security or public order.⁵⁶

Decisions to expel are further required to be in accordance with due process of law and except where compelling reasons of national security otherwise require the refugees shall be allowed to submit evidence to clear himself and to appeal to and be represented for the purpose before competent authority or a person or persons specially designated by the Competent authority.⁵⁷

Moreover, the contracting states shall allow such a refugee a reasonable period within which to seek legal admission in to another country. The contracting states reserve the right to apply during that period such internal measures as they may deem necessary.⁵⁸

This provision benefit the refugee when he has to fulfill the requirement that he is in the grounds of "lawfully in their territory" on the other hand such person has to be admitted in to the territory in accordance with the applicable law.

2.3.3 Issuance of travel documents

The contracting states shall issue to refugees lawfully staying in their territory travel documents for the purpose of travel out side their territory, unless compelling reasons of national security or public order or otherwise require,⁵⁹ Hence, article 28 obliges

contracting states to issue travel documents to refugees in their territory in accordance with the provisions of the schedule. Travel documents thus issued are known as convention travel documents, and have received wide acceptance even by states that are not parties to the conventions. The provision also empowers states in their discretion to issue travel documents to refugees not linked to them by the nexus of lawful stay.

CAPTER THREE

PROTECTION OF REFUGEE IN ETHIOPIA

3.1 Refugee protection under Ethiopian Legal System.

3.1.1 Legal Frame work

A. Scope and objectives of proclamation No.409/2004

There is comprehensive municipal legislation that deals with refugee in Ethiopia witch is known as Ethiopian Refuge Proclamation No409/2004. This Proclamation on its preamble envisage that the purpose of enacting this proclamation is for the

effective implementation of the obligations springing from the international legal instruments which Ethiopia is a party to and establish a legislative and management frame work for the reception of refugees and ensure their protection, and promote durable solutions wherever condition permit¹. All most majority of the provisions in the Proclamation are largely dominated by the provisions of 1951 Refugee convention, the 1967 protocol and the 1969 OAU Refugee convention. The proclamation has five parts and twenty seven articles. In its part one summarizes the definition of the terms; part two refers to the General principles, part three application for the recognition of Refugee status Determination (RSD) procedures, part four rights and obligations of an asylum seekers and Refugee, on its part Five Miscellaneous provisions are stated.

B. Protection of Refugee

I Non refolement

The most important legal protection provider by the Law refugee in Ethiopia is protection against being forcibly returned to a country, where they may be subjected to persecutions for race, religion, nationality, membership of a particular social group or political opinion or where his life, physical integrity or liberty would be threatened on account of external aggression, occupation, foreign domination or events seriously disturbing public order in part or whole of the country.¹² The idea of this provision shows that the protection system that indicate non refolement.

Though these provisions do not directly refer to the country of origin, it must be understood that, as far as the majority of refugees in Ethiopia are concerned, it indicates Eritrea, Sudan, and

Somalia where their life physical integrity or liberty would be threatened.

There are two exceptional circumstances where a refugee could not avail him self the protection afforded to him under these provisions. The first is where a refugee who found himself in Ethiopia is regarded as a danger to the security of the country.³

In absence of clear definition, this phrase has to be construed narrowly and restrictively and that the return of a refugee is only resorted to, if no other solution can be found, and if such Measures are fully justified in order to protect the legitimate interest of Ethiopia. In other words, there should be reasonable grounds for regarding as dangerous a given refugee to the national security of the country.

The second instance where it is possible to return a refugee to his country of origin without breaching the obligation under the Proclamation is where having been convicted by a final judgment of particularly serious crime, constitute a danger to the community.⁴

In this regard the refugee Proclamation No. 409/2004 of Ethiopia in its Article 9(2) does not provide definition for the term "serious crime". However, the court which determines the return of the refugee in question, may if it thinks or interpret the term as an a crime that carries a death penalty or rigorous imprisonment for fifteen years or more or where there is possibility of the person in respect of whom the crime is committed dying as stated under criminal procedure code of Ethiopia.⁵ This shows the interpretation

tendered whenever an Ethiopian court defines the term "serious crime".

During my research time, and also when I was discussed with Ato Haileselassie G/Mariam (the head of the Legal and Protection Department in ARRA), have not come across any case involving non-refoulment. But there is a possibility that the refugees might be returned to the territory they came from when the member of the defense force catches them. However, due to the lack of knowledge about refugee issues or the appropriate body for the protection of refugee, which in effect is refoulment. This is very likely to happen because of the absence of receiving the application at the frontier except that of the Eritrean refugee but the other does not have offices or responsible body for receiving the application. There fore, it is crucial that the bodies receiving application are clearly identified and the persons responsible for receiving the application have some know ledge abut refugee law.

II. Non- Expulsion

The second protection of refugees, who are lawfully in the territory of Ethiopia enjoyed, is protection against expulsion. This is provided under article.¹⁰ of the Refugee proclamation 409/2004 of Ethiopia. But in this case there isalso exceptions. "National security" and "public order" justify expulsion. Though there is no definition provided for the terms "national security" or "public order ". This means the term of public order or "national security" have to be construed narrowly and restrictively and that the expulsion of a refugee is only to be resorted to, if no other solution can be found.

And if such measures is fully justified in order to protect the legitimate interest of the state.

When we see article 150 of the criminal code of the Federal Democratic Republic of Ethiopia, reads (1) if the convicted person is and alien and proves to be undesirable or dangerous the court may order expulsion from the territory of the state either temporarily or permanently.

This measure may always be ordered in respect to a convicted person who has been sentenced to a term of simple imprisonment of three years or more, or to an irresponsible or partially responsible criminal recognized by expert opinion as a danger to public order (2) the court shall, prior to its decision, Consult the competent public authority.

Nothing in this Article shall affect the provisions of international conventions. According to the Refugee proclamation 409/2004 the term "public order" or "national security" requires strict and narrow interpretation. In other words, a refugee can be declared as a danger to national security or public order and expelled if no other solution could be found, and if such measure is fully justified in order to protect the legitimate interest of the Ethiopia. In other words, not every crime committed by a refugee in Ethiopia, which in fact justifies the expulsion of an ordinary alien, would similarly justify the expulsion a refugee.

When the meanings of these terms in the proclamation require strict interpretation, it is possible to conclude that article 150 of the new penal code of Ethiopia does not apply to refugees.

III Exemption from Penalties Because of illegal entry or Presence

The third protection available to refugees is exemption from penalties, because of their illegal entry or presence. The manner in which refugees enter the territory of another state may vary considerably. In certain situations their initial entry may be legal but they may over - stay and seek asylum because of fear of persecution resulting from events taking place in their country of nationality or habitual residence either before or after entry. In the majority of cases, however, a refugee crosses the frontier to escape his pursuers or the compelling situations, and he rarely has the time or the desire to observe immigration formalities.

According to the 1951 convention and Ethiopian Refugee proclamation state shall not impose penalties on account of the refugees illegal entry or presence, which came directly from a territory where their life and freedom was threatened.⁶

Thus, the Ethiopian government is under international and national obligation not imposing penalties on refugees because of their illegal entry or presence.

Iv. Non discrimination

The ultimate human right that has been incorporated in countless international instruments is the principle of non-discrimination. This human right has been specifically provided in international refugee instruments and the national law of Ethiopia. The state has the duty not to discriminate on the grounds of race, religion,

nationality, Membership of a particular social group or political opinion when it applies provisions of the international refugee instruments and the proclamation more or less similar terms.⁷

v. Issuance of Travel document

The main purpose of travel documents is to facilitate the refugees' freedom of movement guaranteed by the international refugee law, in general to equip the refugees with documents so that they could travel for purpose of study, training, or resettlement to other countries.

According to Article 28 of the 1951 convention it obliges the contracting states to issue travel documents for refugees lawfully staying in their territory for the purpose of travel out side their territory unless compelling reasons of national security or public order other wise require. Sub article one of the same article permits exceptions to the obligation to issue for reasons of national security or public order.

The Federal Democratic Republic of Ethiopia has issued - Regulation for Issuance of Travel Documents No. 114/2004, which lays down the rules for issuing travel document on its part two and also refuge Proclamation NO 409/2004 Article 21(1)(c) reads as:

Every recognized refugee shall:-

Be issue with a travel document for the purpose of traveling out side Ethiopia in accordance with international agreement. There for Ethiopian is bound to accord issuance of travel document to refugees lawfully staying in its territory.

C Appeal under Proclamation No. 409/2004

When an asylum seeker interred in the territory of Ethiopia it is mandatory to submit their Application with in fifteen days to the nearest office of Authority or police station for the question of earning Refugee status.

According to Article 6(1) of Proclamation No.6/1995 "Authority" means the security Immigration and Refugee Affairs Authority. (SIRA). But now change its name as National Intelligence and Security service (NISS). This body and the police station in the boarder receive application. When they are dissatisfied with the decision of the eligibility committee there is possibility to appeal against that decision. This right of appeal is proclaimed under article 14(3) of the Ethiopian Refugee Proclamation which state that:-

"Any asylum-seeker, who is aggrieved by the decision of the Authority, May with in thirty days of being notified of such a decision, appeal in writing to the Appeal Hearing Council established under Article is of this proclamation."

The refused Appeal should heard by the Appeal Hearing Council as stated under Art. 16 of the Proclamation which are composed of chairman from the Authority (ARRA), One member from ministry of foreign Affairs, one member from ministry of Justice and also two representatives of the Federal Affairs. The UNHCR Shall be invited to Participate as an observer. Secretary shall be appointed by the Authority. During my research time, this Appeal Hearing council was established and also begins its work, and almost 13 negative decisions of the Eligibility committee have been seen by the council.

3.1.2 Institutional Frame work

A. Historical occurrence

There is also a body concerned with the over all administration of refugee affairs on behalf of the FDRE government. This body is known as Administration for Refugee and Returnee affairs (ARRA). But this body is not formally established by law as an independent authority or administrative agency, derives its authority and legal standing from the Security, Immigration and Refugee Authority (SIRA) established by the Proclamation No 6/1995 (at present its name is changed in to National Intelligence and security service (NISS). This body here in after we call it NISS has the following objectives:-

- Executing polices, strategies and laws on state and public security immigration, nationality and refugees.⁸
- Take responsibility for matters relating to refugees in cooperation with organs and international organization.⁹

The NISS was also mandated to perform a lot of tasks which necessitated the creation of several sub organs having their own particular functions. One of such sub organs is Administration for Refugee and Returnee Affairs (ARRA) we can there fore, assert that ARRA has a legal backing, which is obtained from the proclamation No.6/1995.

B. Administration of Refugee and Returnee Affairs (ARRA)

ARRA has an overall responsibility on matters relating to refugees and returnees. It has the primary responsibility of implementing of

international protection and assistance. ARRA is the main body for determination of eligibility for refugee status; issuance of travel documents and identification card for refugees; managing refugee camps and settlements and provision of health, education and other assistance programs like scholarship for refugees.¹⁰

ARRA has also main partner that is known as UNHCR. The UNHCR assists ARRA in Managing refugee camps and settlements with its full budget. While ARRA takes the prime responsibility in registering and distributing food packages and delivering transporting allowances to repatriating refugees, UNHCR Coordinates all related filed activities on the ground.¹¹

The country of asylum seekers to which the refugee flee is the main responsibility for protecting and assisting refugees. But UNHCR also has an important role in promoting and monitoring state adherence to the convention and enabling them to offer adequate protection to the refugees on their territories. UNHCR maintains a "watching brief", intervening if necessary to insure that bona fide refugees are granted asylum and are not forcibly returned to countries where their lives may be in danger. The agency seeks ways to help refugees restart their lives, either through local integration, voluntary return to their home land or, if that is not possible, through resettlement in third countries. UNHCR also participate in refugee determination process as an observer.¹²

C. Refugee situation in Ethiopia

The recent history of refugees in Ethiopia is a result of the unrest in southern Sudan, Somalia and Eritrea. Currently Ethiopia is hosting 83,451 refugee registered and assisted in the camp, 26,000

Asylum seekers, and the other 100,000 unregistered and self-assisted Somalia refugees are in Ethiopia. There are also small numbers of refugees from 16 different countries. Among this the Eritrean Refugee live in 4 camps in Northern Ethiopia with a total number of 25,606, the somalian Refugee live in 3 camps in Eastern Ethiopia with a total number of 27,422, the Sudanese Refugee live in 2 camps in western Ethiopia with a total number of 26,303, the Kenyan Refugee live in 2 camps in Oromiya Region with a total number of 2845 Refugees.

Having considered the treatment of the refugee in Ethiopia there are two categories. The first is those who forced to flee to Ethiopia in large influxes predominantly from Eritrea, Somalia and Sudan. Secondly those seeking asylum individually from different countries and live in Addis Ababa and other towns of the countries. The Refugees that are forced to flee in large numbers are staying in the refugee camps and settlements. Refugee camps are established along the boarders with the respective countries of the refugees. In practice Refugee from Eritrea, Somalia and Sudan are protected and assisted in the refugee camps and they are not allowed to live in Addis Ababa as urban refugee except for exceptional cases like medical or personal safety of the refugees ¹³.The Refugees under the category of urban refugees are from different countries of origin are individual asylum seekers who were granted asylum because they fulfill the individual status determination criteria¹⁴.

Based on the nature of Refugees in Ethiopian the protection measures taken by ARRA are treated in the same way, due to the huge number of these refugees, the arrangement for their protection is different. There is also another difference, which

related to their freedom of movement. According to the interview with Ato WUJIRA, the movement of refugees is restricted to the camp only. They can only leave the camp with the permission of ARRA¹⁵. Other countries also impose these kinds of restriction on refugees living in camps.

3.2 Practical problems in the implementations of Refugee Proclamation NO.409/2004

3.2.1 Issue of identification

Today, in every definition of a refugee, there is the requirement that the person be outside the country of his nationality or habitual residence before he can become a refugee.¹⁶ The international refugee instruments ratified by Ethiopia the 1951 Convention, its protocol of 1967, the 1969 OAU Convention and Refugee Proclamation No 409/2004 of Ethiopia all incorporate this requirement in their definitions. So an asylum- seeker in Ethiopia first of all needs to be from out side Ethiopia that means he needs to be of a different nationality than Ethiopia and should have been resigning habitually out side Ethiopia. It is in this regard that the issue of identification of non-Ethiopians and non- residents becomes important. The Issue of Identification is clearly stipulated in Article 27 of the 1951 convention and also in the Ethiopian Refugee proclamation. Accordingly Article 21(1) (b) of Ethiopian Refugee proclamation provides:

Every recognized refugee shall be issued with identify card attesting to his refugee status;

But in the case of the refugees in Ethiopia issue of identification is not a simple matter. With relatively few exceptions, Eritrea refugees in Ethiopia settle in the northern part where their similar language is found.

The boarder between Ethiopia and Eritrea, Ethiopian & Somalia, Ethiopia nod Sudan are like most other border in Africa was artificially imposed each other, and as a result the Tgrians from northern Ethiopia (which is called region 1) and those crossing the border from Eritrea share the same culture, language, religion and have the same physical appearance, but they live on opposite sides of the border and are therefore of different nationalities and when settlers from different sides of the border, are mixed it is not easy to identify who is from where.

Sometimes it is practically impossible to identify an Eritrean from Tgrians the Sudanese from Berta of Benishangul (which is Region 6) and also Somalis in Ethiopia from among Ethiopian nationals residing in Eastern Ethiopia.¹⁷ This problem implies that without identification of the refugee, there is no means of ensuring that the refugee will benefit from the protection directed to him as distinct from nationals, in other words, there is no means of stopping Ethiopian nationals from benefiting from protection programmers which are meant to benefit refugees exclusively.

To conclude this idea in practice we see that the horn of Africa is a continent with continual refugee problems. It can be expected that refugees will continue to flow in to Ethiopia crossing the border in large numbers and being mixed up with Ethiopian nationals who are in many ways identical to them.

There for the problem of identification will continue to make its presence felt. And the FDRE government taking this in to consideration should come up with the meaning of Article 1(b) of Refugee Proclamation No 409/2004 and Article 27 of 1951 UN Convention to avoid limited pass permit on the limited area of the country.

3.2.2 Problem on procedure of Appeal

In most state standards of due process of appeal or review mechanism is recognized. Because, this mechanisms ensure the fair functioning of asylum procedures. Ethiopia also recognizes this procedure and also guaranteed the right of appeal on refugee proclamation No 409/2004 article 14(3) which deals that:

" - - - - - Any asylum - seeker who is aggrieved by the decision of the Authority, may with in thirty days of being notified of such a decision , appeal in writing to the Appeal Hearing council established under Article 15 of this proclamation"

Appeals rejected by first heaving committee or rejected by the Authority are to be heard by the Appeal Hearing council which is composed of:

- ❖ The representative of the Authority - - - - Chairman
- ❖ The representative of the ministry of foreign Affairs - - - member
- ❖ The representative of the ministry of justice - - - - member

- ❖ Two representatives of the Federal Affairs - - - -"members
- ❖ UNHCR participate as an observer
- ❖ The Authority shall appoint a secretary for the council.¹⁸

This Appeal Hearing council was established by the proclamation and also begins its work. When it starts its work almost 13 negative decisions of the Eligibility committee has been seen by the Appeal Hearing council. Among these negative decision of the Eligibility committee the council decides on eleven cases the other two cases are still on process of decision. From the above eleven cases the council give positive decision on one case and give the refugee status and reject the previous decision given by the Eligibility committee. Two cases were still not get decision and almost on the process. But the rest ten cases are not accepted by the council. The Appeal Hearing council give the same decision in aver of the Eligibility committee and prohibit the right to earn refugee status.¹⁹

The question raised here is what is the right of those persons hare in after? Can they go to ordinary court and continue their litigation? Is the decision of the Appeal Hearing council final? Thence forth to answer this question it is impossible to say some thing about it because the right of appeal guaranteed in article 14(3) of refugee proclamation of Ethiopia is not clearly stated that what comes after the decision given by Appeal Hearing council.

In international law, there is no duty up on the state to grant asylum. The decision is left to the state to accord or reject asylum to the persecuted. The law also doesn't specify the method or procedures that the state has to follow in granting asylum. It is my

opinion that the Ethiopian Government come up with a binding instrument which addresses the issue of Appeal Procedure after the decision of the Appeal Hearing council what remedy does the asylum seeker to follow and resolve such problem. The clarity and predictability of this issue is very essential to wind up the appeal hearing procedure.

Chapter Four

Conclusion and Recommendations

Ethiopia is internationally one of those countries which are parties to take both the 1951 refugee convention and the 1967 protocol. Ethiopia at the time of acceding to the 1951 UN convention made reservation on the provisions of the convention: Article 8,9,17 (2) and 22(1).

The 1951 refugee convention is the fundamental instrument of refugee law; it has clear shortcomings to deal with emerging refugee problems especially in African refugees.

The problems of African refugees are commonly the results of external aggression, civil war or events generally disturbing public order. The mass influxes are special characteristics of African refugee problems. The 1951 convention can not address the problems of African refugees. It designed to deal with the refugee situation in Europe.

The 1969 OAU convention governing the specific Aspects of Refugee problems in Africa was adopted to address the peculiar nature of African refugee problems. It is designed to deal with the special nature of African refugee problem and a wider definition of the term "refugee". The role of Ethiopian Government was very interesting to give greater emphasis on the 1969 OAU convention when protecting refugees. The international instruments to which Ethiopia is a party on it the 1951 UN convention, the 1967 protocol and the regional instrument that is the 1969 OAU Convention and also recently the FDRE Government Proclaimed comprehensive instruments of Refugee proclamation No409/2004 which have legal basis for protection of refugees in Ethiopia. The majority of the provisions in the proclamation are largely dominated by the provisions of the 1951 refugee convention, the 1967

protocol and the 1969 OAU refugee convention. Based on this fact the Ethiopian government categorized refugees in to two:-

The first category is those forced to flee to Ethiopia in large influxes, predominantly from Eritrea, Sudan and Somalia. The second category is individual asylum seekers from different countries. Those refugees stated under the first category are staying in refugee camps along the borders with their respective countries. The second category of refugees are staying in Addis Ababa, Those Somalian's living in Addis Ababa is not categorized in both category because they are not given refugee status under the proclamation No 409/2004 Article 13(1) the bodies that receive application for refugee status are clearly stated. That is office of the Authority or police station. "Authority" means the security, Immigration and Refugee Affairs Authority established by proclamation No. 6/1995 Article 6(1). This term is defined under Article 2 of proclamation No. 409/2004. But now this name is changed in to national. Intelligence and security service. (NISS). This body and the police station in the boarder receive application some times there are instances when the members of the defense force catch the refugees and may send them back to their countries which is discussed in chapter three of this paper.

The National Intelligence and security service (NISS) is a responsible body according to the proclamation but delegating one of its branch offices that is Administration for Refugee and returnee Affair main department (ARRA) There fore ARRA has the responsibility of protecting refugee in Ethiopia.

As I discussed with Ato Haileelliasie G/Mariam Head of the legal protection department in ARRA and mentioned under chapter three of this paper AARA has an over all responsibility on matters relating to refugee and returnees. It has the primary responsibility

of implementing of international protection and assistance. ARRA is the main body for determination of eligibility for refugee status, issuance of Travel documents and identification card for refugees, managing refugee camps and settlements and provision of health, education and other assistance programs like scholar ship for refugees. Also ARRA work with the especial co-operation with UNHCR.

Based on this procedure the refugee proclamation of Ethiopia lay down rights of the refugee obliging the state itself to respect and apply the law. This law (proclamation) insure the protection of refugee from being forcibly returned to a country where they are persecuted. But there is instances that show refoulment when the member of the defiance forces catch the refugee. This is the problem that implies there is no any skilled and legally assigned bodies that receiving application for refugee status.

The other right that refugee enjoys in international and national instrument is none expulsion. Refugee proclamations of Ethiopia are also protected from expulsion which is clearly stated under Article 10 of this proclamation. Here there are exceptions on both cases of: non- refoulement and non-expulsion when the refugee or asylum seekers are the treat of "national security" and " Public order".

Refugee proclamation of Ethiopia can not impose penalties on refugees because of their illegal entry or presence where they directly came from a territory where their life or freedom is threatened. Thus any person who is at the frontier or any other entry point or with in Ethiopia, whether he has entered the country lawfully or other wise, and who wish to remain within the country

as a refugee he is expected to submit his application with in fifteen days apply to the nearest office of the Authority or police station. But in this case the problem is that no mechanism to identify that the asylum seeker whether he arrived in territory of Ethiopia more than fifteen days or it supposed to a month or beyond that.

The refugee proclamation No 409/2004 and regulation on Immigration No 114/2004 put the FDRE government under obligation to issue travel documents to refugees lawfully in Ethiopia, unless obligatory reasons of national security or public order require other wise. This term is not strictly defined.

The other right the refugee should granted under the 1951 convention and also in principle stated under the Ethiopian refugee proclamation is issued with identify card attesting to his refugee status. The problem of identification is discussed on subtitle of practical problem of refugee proclamation No 409 /2004, practically refugee in Ethiopia allow to handle limited pass permit from ARRA but there is no uniform and standard ID cards, that shows there is a gap between the proclamation and practical implementation, as the proclamation and the 1951 convention permit the case, refugee in Ethiopia should enjoy the right given by the international and national instrument.

Finally there is a problem for the proper implementation of the refugee proclamation No.409/2004. But there is a need to be issued a regulation by council of ministers according to article 26 of the Ethiopian Refugee Proclamation. There fore issue of regulation is very important for the effective implementation of the over all provisions of the Ethiopian Refugee proclamation.

On the other hand my final conclusion is that Ethiopian refugee proclamation is not define the right of movable and immovable property. Practically Majority of the refugee is exercising their talent for the purpose of income generation some of them have small restaurants, shops, Generators, others are Tailors in the camps and earned some income.

There is those who have cattle, poultry and traditional and Modern beehives is many in number, but when they go back out of Ethiopia what is the remedy behind the property right of the refugee, this problem is seen practically the refugee sold their property and change it the Ethiopia birr in to a dollar or their country currency by using black market this is likely to happen there for the government should fill this gap and the refugee property right should addressed in legal term is mandatory.

Recommendation

1. The importance of OAU convention is to add and Expand the definition in to - - - - any persons compelled to leave his country" owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part of the whole of his country of origin or nationality from this point of view still Africa is a continent with intensity of refugee problems . Thus it can be expected that refugees will continue to flow in the Ethiopia crossing the border and being mixed up with Ethiopian nationals who are in different angles identical to them. As I discussed in part three of this paper the problem of identification will continue. There fore ARRA and The UNHCR if necessary the national Intelligence and security service (NISS) behalf of the Ethiopian government taking this in to consideration should come up with a mechanism to avoid this problem.

2. As stated under Article 26 of Proclamation no.409/2004, if the regulation is going to be enacted for the effective implementation of the proclamation it should include the following:
 - I. to minimize the problem of refolement that is very likely to happen because of the absence of receiving the application at the frontier except that of the Eritrean refugee it is very important to have the boarder immigration offices and branch offices of ARRA to receive application.
 - II. A provision that clearly defines property right. The right of Refugee on movable and immovable property is silent on the proclamation there for the FDRE government should address this issue in the regulation.
 - III. The other problem that should need due attention and that may be enacted under the expecting regulation is the right of appeal procedure after the final decision of the Appeal Hearing council. There is practical problem in the Refugee proclamation of Ethiopia it is silent after the final decision of the council As I mentioned under the practical problem of the proclamation there is tangible instance regarding the asylum seeker those who is not granted refugee status by the council, still they are under assistance in the territory of Ethiopia there fore the regulation should strictly define the rights of those asylum seeker decision of the council. I recommended that court should see appeals, because courts should have full powers to decide on appeal.

End Notes

Chapter One

1. Erika Feller Volker Turk and Frances Nicholson Refugee Protection in International Law.
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ANNEXES

Declaration

I here by declare that this paper is my original work and I take full responsibility for any failure to observe the conventional rules of citation.

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Signature -----