



***DIREDAWA UNIVERSITY: COLLAGE OF LAW***

***THE GAPS AND PROBLEMS OF ETHIOPIA REFUGEE LAW IN LINE  
WITH INTERNATIONAL REFUGEE LAWS***

***PREPARED BY:***

- 1. FAMI ABAS HASSEN**
- 2. MUSTAFA AME MUMAD**
- 3. SHABAN ABDUSELAM ALI**

**ADVISORY: YITAGESUMENGISTE (LL.B, LLM)**

**SUBMITTED IN PARTIAL FULFILLMENT OF THE REQUIREMENT  
FOR THE BACHELORS OF DEGREE OF LAW (LL.B) AT COLLEGE OF  
LAW, DIRE DAWA UNIVERSITY**

***DECEMBER 2016***

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## DECLARATION

We, Shaban Abdusalam, Fami Abas and Mustafa Ame do here by declare that “the gaps and problems of Ethiopian refugee law in line with international refugee laws” is our original work and all the source that we have used or quoted has been indicated and acknowledged by means of complete references.

Signature: \_\_\_\_\_

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This senior essay research has been submitted for examination with my approval as an advisor:

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This senior essay research has been approved by examiners:

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## **Acknowledgement**

Thanks to ALLAH for bestowing full healthy and love of wisdom on us. We would like to express our deepest gratitude to our Advisor YitagesuMangiste [LLB, LLM] ,for his selfless effort to lead us to the right track to complete this thesis.

Also we would like to thanks our families for theirs restless efforts to achieves our objectives and also those support us materially and morally to accomplish this tasks.

## **Lists of Acronyms/Abbreviations**

Art: Article

AALCC: Asia-African Legal Consultative Committee

CAT: Convention against Torture and Others cruel, Inhuman or Degrading Treatment

CEDAW: Convention of the Elimination of All form of Discrimination against Women

CRC: Convention on the Rights of Child

FDRE: Federal Democratic Republic of Ethiopia

ICCPR: International Convention Covenants on Civil and Political Rights

OAU: African Organization unity

UN: United Nation

UDHR: Universal Declaration of Human Rights

UNHCR: United Nations High Commissioner of Refugees

## **ABSTRACT**

*There are a number of problems of refugee at international level.to solve these problems different international instruments enacted on refugee. Ethiopia ratified these international instruments at different time and it also enacted the proclamation on refugee which is proclamation no. 409/20004 these proclamation gives different protection to refugee however, there is a gap and problems in the proclamation which can be solved by interpretation of international instruments. Still there is a gap which we recommend that the proclamation to be amended.*



# CHAPTER ONE

## 1. INTRODUCTION

### 1.1 Background of the study

Early in the twentieth century the refugee problem became the concern of the international community, which for humanitarian reason began to assume responsibility for protecting and assisting refugee<sup>1</sup>. The pattern of international action on behalf of refugee was established by the League Nations and led to the adoption of a number of international agreements for to benefit refugee which were by and large ad hoc agreements in relation to specific refugee situations. Thus the legal protection of refugee under league of nations remained incomplete and it lead international community to create new world organization to save succeeding generation from the scourge of war as provided under United Nation charter preamble<sup>2</sup> and then determine that a stronger refugee regime was necessary to give effective protection for refugee.

Based on the decision by the UN general Assembly, UNHCR was established and the 1951 Convention Relating to the Status of Refugee was formally adopted and has become the cornerstone instrument of refugee protection. Several states affirmed their commitments to protecting refugee by acceding to the 1951 refugee convention<sup>3</sup>. Then the 1951 refugee relating to the status of refugee become the foundation of international refugee law. In addition to this, other three important refugee instruments were adopted at a regional level to enhance refugee protection. These are the Bangkok principle adopted in 1969 by what was known as Asia-African legal consultative committee [AALCC], the Organization of African Unity Convention Governing the Specific Aspects of Refugee problem in African adopted in 1969<sup>4</sup>, and the 1969 Cartagena Declaration was adopted as

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<sup>1</sup>Gizachew Adams *refugee law* p.3-5

<sup>2</sup> *Ibid*

<sup>3</sup> *Guidelines for refugee protection of UNHCR volume two*.page.22-24

<sup>4</sup> *Hand book of UNHCR international instrument defining the term refuge*. page 10-14

refugee instruments. When we come back to Ethiopia profile of refugee hosting, it is known for long history of hosting refugee and still providing asylum to refugee and asylum seekers<sup>5</sup>.The number of refugee in Ethiopia has shown increase rather than decrease over the past years<sup>6</sup>.The instability of Somalia from the east and the dispute in border areas, especially those contiguous to Sudan blue Nile and south kordoffa states have resulted in a large number of refugees entering western Ethiopia<sup>7</sup>. Moreover, the arrival figures for refugees from Eritrea have also remained high in 2012<sup>8</sup>.The country has ratified several international and regional refugee instruments. Ethiopia has also created a legal mechanism to ensure the domestic implementation of its international obligation it undertaken with respect to refugee. Therefore the main aim of the research is to evaluate the protection given to refugee under Ethiopia refugee law.

## **1.2 Statement of problem**

Ethiopia is a party to the Convention Relating to Status of Refugees done at Geneva on 28, July 1951, the Protocol Relating to the Status of Refugee on 31, January 1967 and OAU Convention Governing the Specific Aspects of Refugee Problem in Africa and a number of international and regional human rights instruments. In order to meet its international commitments under these instruments, Ethiopia has enacted national refugee legislation known as the refugee proclamation no.409/2004, which is intended to ensure the effective domestic implementation of the afore mentioned international legal instruments. This national legislation establish a legislative and management framework for the reception of refugee, ensure their protection and promote their durable solution whenever refugee entering into the country. As provided under its preamble, this refugee proclamation specifically deals with issues of asylum seeker and refugee. Ethiopia provides asylum and protection to refugee and promoting their voluntary repatriation in safety and dignity whenever condition permit and

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<sup>5</sup> *ibid*

<sup>6</sup> *Haile sellasie G/mariam, the Ethiopian asylum policy review, AAU student law review volume 1 no.2 (dec.2011) page 86-110*

<sup>7</sup> *Ibid*

<sup>8</sup> *Ibid*

to ensure their protection and promote durable solution whenever condition permit. Under this proclamation wide definition of refugee is adopted, by extending protection to a large number of people of refugee and asylums .Even though Ethiopia take this legislative measure in order to fulfill her international obligation, still there are some problems and gaps in Ethiopia refugee law that may affect the effective protection of the right of refugee recognized under international refugee instruments. one of the problems with the proclamation is that of the clause under Art.4(3) of proclamation that give priority for the African refugee which is a clear contradiction with the proclamation itself and the mandatory principle of non-discrimination under the international law and refugee convention. How this apparent contradiction should be resolved and handled is one of the issues that need to be dealt with by this research. The other problem or gap that exists in the proclamation is with regard to protection to be given for people who do not fulfill the criteria lay down under the refugee convention ,but who also cannot be returned to their home countries because there is real risk that they would suffer a certain types of harm. Under international instruments, there is a commitment that would engage a state non-refoulment (this means not return to home country) obligation that may be called complementary or subsidiary protection .Hence the proclamation is silent with respect to the protection to be given for group of peoples that don't fulfill the strict definition and condition of the refugee instrument. Since it doesn't include the issues of subsidiary or complementary protection ,the question of how it will be governed is one of the gaps under refugee proclamation that need to be addressed .Reservation with some provision of the refugee instrument is other problem under the proclamation ,specifically article 8,9 and 17(2) of international refugee instruments which deal with the obligation of the state to respect or exempt refugees from measure which may be taken against person, property and obligation to allows elementary public education for refugee is other problems under proclamation .The problem that need to be investigated here is that how Ethiopia give effective protection for rights of refugee in the absence the above provision under refugee

proclamation .Another problem is Ethiopia law and policies do not allow the integration of refugee with local people .In addition the proclamation lacks provision as far as the procedural rights of refugee are concerned ,that mean it does not provide a rights to legal aid ,fair hearing and judicial review by ordinary court of the decision given by refugee council .

So the main aim of the research is to analyze the problems and gaps existed in the refugee proclamation and the possible effects of these uncertainties on the implementation of the rights of refugee and to forward ways to tackle the problem.

### **1.3. Research Question**

- 1 .What is the current status of refugee crisis in the world in general and in Ethiopia in particular?
2. What are the legal mechanisms put in place to govern the issues of refugee both under international and Ethiopia level?
3. What are the rights of refugee recognized and protected by international and national instruments?
4. What are the limitations of Ethiopia refugee proclamation vis-a- vise international refugee laws and its negative effects on the rights of refugee?
5. What possible ways are available to fill the gaps that exist under Ethiopian refugee law?

### **1.4. Objective of the study**

#### **1.4.1. General objective**

The major objective the research is to critically analyze the uncertainty in Ethiopian refugee law with regard to ensuring adequate protection of the right of refugee

### **1.4.2 Specific objectives the study**

- To describe the current refugee problem in the world in general and in Ethiopia in particular
- To state the legal mechanism created internationally and nationally to address the problem of refugee.
- To discuss the various rights of refugee protected and recognized by various refugee legal framework.
- To analyze the limitation or gaps in Ethiopia refugee proclamation in relation to protection of the rights of refugee recognized under international instruments.
- To suggest the possible means that may be employed to alleviate the problems at hand.

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

To achieve the purpose and objective of this research the researcher has limited the scope of research only to the gaps and the problems of Ethiopia refugee law without extending to any other issues. Hence the issue of the practical implementation of the proclamation is out of the scope of the research.

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

The significance of this research will be:

- Serve other researcher as a reference or input on the same issues
- Law student and academician as a source for their academics purpose
- To policy maker as a guideline by showing the gaps in the law
- To NGO and international organization examine the protection given by Ethiopia law to refugee and its standard in line with international refugee instruments.

### **1.7. Limitations of the study**

The researcher will face the following problem while conducting the research

1. *Time* –since by very the research tasks require or consume much time, it consume our which we used to prepare for national exit exam.
2. *Financial problem* is another problem which the researcher will face while conducting the research.
3. Poor internet connection
4. Lack of organized and appropriate hard copy reference materials in the library

### **1.8. RESEARCH METHOD ANDMETHODOLOGY**

#### **1.8.1 Research design**

This research is specifically design based on document analyze or doctrinal forms of research to achieve its desire goal.

#### **1.8. 2. Source of data**

In conducting the study the researcher will use both primary and secondary data as source

##### **1.8.2.1. Primary source of data**

The researcher will conduct the study mainly focusing on documents analyze and relevant law including The 1951 refugee convention ,1967 protocol relating to the status of refugee, the Cartagena declaration of 1984 at international level and OAU refugee convention at regional level and other relevant regional and national refugee laws

### **1.8.2.2 Secondary source of data**

The researcher will use all relevant literature as secondary of data which may be included journal ,Web Pages ,books ,research paper and other relevant materials both published and unpublished .

### **1.8.3. Method of data analyze**

After collecting all necessary data the researcher will critically analyze both primary and secondary data and finally the study will be concluded and recommended.

## **1.9. Organization of the study**

To achieve its objectives the research is divided into five chapters The first will contain proposal of the research which includes the background of the study, statements of problem, research question, objectives the study, research methodology, significance of study and limitation of the study.

The second chapter will discuss the international legal frameworks of refugee .Under this chapter the definition of refugee, asylum ,refugee crisis in the world, refugee crisis in Ethiopia, international refugee instruments ,regional refugee instruments and other international human rights which give refugee protection will be discussed.

The third chapter will be discuss the rights of refugee granted by international refugee convention which includes, the rights to non-refoulements ,exemption from penalties ,freedom of movements and other rights granted by refugee convention and other international human instruments .

The fourth chapter will deal with the gaps and problems in the Ethiopia refugee law, basically it focuses on refugee proclamation in line with international refugee instruments.

The last chapter will have conclusion and recommendation based on the discussion made in other chapters.

## **CHAPTER TWO**

### **International Legal Framework on Refugee**

#### **2.1 Introduction**

Since refugee problems became a concern of the international community, it has been working hard to establish the legal and institutional framework at international level to protect the right of refugees. Due to this, various international and regional refugee instruments and other human right instrument, either under the guidance of UN or the other regional organization became vital in protection of asylum seeker and refugees. The purpose of this chapter is, therefore, to examine the international refugee regime in detail and also highlight on human rights law that may assist to provide protection of refugee.

In short an attempt will be made to sketch out the outline of the protections given to refugee by establishing the nexus of refugee law and relevant international human right instrument and providing a basic road map on the protection to be given to refugee is the concern of this chapter.

## **2.2 Definitions of refugee and asylum**

### **2.2.1 Refugee**

Black law dictionary 8<sup>th</sup> edition defined refugee as “an individual who has been forced to flee his or her home due to war, fear of persecution or natural disaster or a refugee is a displaced person who has been forced to cross national boundaries and who, cannot return home safely ”<sup>9</sup>. What is more when the international community strive to establish a legal framework at the international level that deal with refugee problem, an attempt was also made to provide a definition for the term refugee.

The first international co-ordination of refugee affairs came with the creation by the League of Nations in 1921 of the High Commission for Refugee under the League of Nation, there is no general or universal definition of refugee which applied to all refugees instead there were criteria set down by League of Nation to determine refugee that prevail at this time.

The definition of refugee during the league of nation all person in a group for which the league had approved a mandate as opposed to a person to whom a general definition of refugee applied at time was an individual with either the person high commissioner of League of approved<sup>10</sup> or a certificate of identity issued by the International Refugee Organization (IRO).

The most important agreement in relation to refugee established at the international level is that of The 1951 Convention Relating to the Status of Refugee that define refugee as any person who, owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion or outside the country of his nationality or unable or unwilling to return to it<sup>11</sup>.

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<sup>9</sup>Black law dictionary 8<sup>th</sup> edition Bryan A. Garner editor in chief

<sup>10</sup>Fried of, the 1<sup>st</sup> High Commissioner for Refugee of League of Nation

<sup>11</sup> Hand book at UNHCR, international instruments defining the term” refugee pp 22

Similarly the United Nation High Commissioner for Refugee (UNHCR) define refugee as any person who ...owing to well-founded fear of being persecuted for reason of race, religion, nationality or political opinion outside the country of this nationality and unable or owing to such fear for reasons other than personal covalence or 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, or unable or owing to such fear or for reason, other than personal convenience or unwilling to return to it <sup>12</sup>.

The 1967 protocol eliminated the limitation of the 1951 convention and UNHCR refugee definition which limit the refugee definition by time and geographic limit found in the convention.

The protocol defined the term refugee by making cross- reference to the definition of refugee under convention (art.1) by modifying the convention and omitting some word, the convention and intended the definition equal to all people fulfilled the criteria in under convention.<sup>13</sup>

The UN General Assembly adopted the Protocol Relating to the Status of Refugees. When this instrument and the 1951 Refugee Convention are combined, a refugee can be defined as someone who:-

- Has a wall founded fear of persecution because of his or her race, religion, nationality, member ship in a particular social group or political opinion or
- Is outside his/her country of nationality or
- Is unable to avail him or her of the protection of his or country of nationality or habitual residence or to return there for fear of persecution.

The 1969 OAU Convention adopted the definition of refugee under 1951 Convention together with 1967 protocol, but the OAU convention expanded the definition to include any person who is compelled to leave his/her

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<sup>12</sup> Statute of UNHCR, Art 6(A) (II)

<sup>13</sup> Refugee Convention of 1951, Art. 1 and protocol (art.1)

country owing to external aggression, occupation, foreign domination or event seriously disturbing public order, in either part or the whole of his country of origin or nationality.<sup>14</sup>

### **2.2.2 Asylum**

The literal meaning of the term asylum is the protection granted by nation to someone who has fled his/her homeland for political reasons.

Even though the practice of asylum is well known, there is no definition expression of asylum in any international treaty of universal scope and there is no international agreed definition of asylum. However, the term asylum may protection granted by a nation to someone who has fled his or her homeland for political reasons.<sup>15</sup>

Asylum is different from refugee as the former constitutes the institution for protection while the latter refers to one of the categories of individual, among other, who benefit from such protection.

### **2.2.3 Cessation of refugee status**

The protection or the status of refugee is not necessarily intended to be permanent. There are certain circumstances when a person once recognized as a refugee can no longer be continued to avail himself to the protection of his country.<sup>16</sup> However, such cessation shall not apply to a refugee falling under section 1(A) of the 1951 refugee convention, who is able to invoke compelling reason arising out of the previous persecution for refusing to avail himself of the protection of the country of his nationality or his/her formal habitual residence.<sup>17</sup>

The cessation clause under art 1(c) of the 1951 convention covers two categories. The first category of situations from (Art.1-4) where international protection come to an end, which means that he/she no longer requires international protection as refugees.<sup>18</sup>

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<sup>14</sup> OAU/AU convention on refugee problem in Africa, 1969 art 1(2)

<sup>15</sup> Institute of international law (5<sup>th</sup> communication), asylum in public international law

<sup>16</sup> See art 1c of the 1951 refugee convention Cumulative with Art. 1(4) of the OAU.

<sup>17</sup> Art 1C(6) of the 1951 refugee convention

<sup>18</sup> Art.5-6 of 1951 refugee convention

The second category of situation is (art 5-6) has no connection with the act of refugees. It is applicable if the objective circumstance on the country of origin have undergone a fundamental, stable and durable which gave rise to recognition of refugee status.<sup>19</sup>

Cessation is different from cancellation from refugee status. Cancellation is a decision to invalidate a refugee status recognition which should not have been issued in the first place. It is appropriate if it has been established that the individual concerned did not meet the inclusion criteria.

## **2.3 Refugee crisis**

### **2.3.1 Refugee crises in the world**

Millions of peoples are today forced to flee their homes as result of conflict, systematic discrimination, or other forms of persecution.<sup>20</sup> Men, women and children bundled in blanket, and carry whatever possession they could first in to bags and have to seek refuge in other countries in search of safety.<sup>21</sup>

The recent global refugee statistics report<sup>22</sup> reveal that the total number of people forcibly displaced worldwide has reached 42.2 million people, the highest level in almost 20 years. The report shows that as of the end of 2012 more than 45.2 million people were forcibly displaced compared with 42.5 million at end of 2011.<sup>23</sup>

This include 15.4 million were in after refugee, 973,000 asylum seekers and 28.8m internally displaced person (IDP) those forced to find refugee within the borders of their own countries <sup>24</sup> around 35.8m people where persons of concern.<sup>25</sup> To the UNCHR (United Nation Commission of Human

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<sup>19</sup>Ibid

<sup>20</sup>Erika Fakir Volker turn and France Michael

<sup>21</sup> Marilyn Acheron- timeline treaty under attack UNHCR available at UNHCR website <http://www.unhcr.org/treat>

<sup>22</sup> The UNHCR 2012, refugee statistics report

<sup>23</sup> Ibid

<sup>24</sup> Ibid

<sup>25</sup> Person of concern are those whom UNHCR has been helping and caring of them these persons are refugees and others who haven't got the status of refugee like internally displaced person available at above website.

right) by the end of 2012, the second highest number on record, according to their latest report.

Our world is in the painful trouble of most serious refugee crises for almost 20 years as conflict in Syria, Congo, Mali and Sudan have forced 10,000 of people to flee their homes, as UN refugee agency has said. The report added that, majority of the refugee population in 2012 was female and children below 18 years, constituting 48% and 46% respectively.

### **2.3.2 Refugee crisis in Ethiopia**

As for the refugee crisis in Ethiopia is concerned, the past two years have seen the refugee population in Ethiopia nearly double.<sup>26</sup> This due to the influx of more than 100,000 Somalis in the Dollo Ado region, and a stream of Sudanese entering the country in the Assosa.<sup>27</sup> A steady, but significant number of Eritreans have also entered into Ethiopia in Afar and Tigray regions. Ethiopia is now the host to some 370,000 refugees the largest group is Somalis (56%) Sudanese and South Sudanese (23%) and Eritreans (17%).<sup>28</sup>

In addition, there are numbers of refugees. As well as urban refugees from Congo, Djibouti, Rwanda, Uganda and Yemen to Ethiopia.<sup>29</sup> The number of refugees in Ethiopia has shown increase rather than decreasing over the past years.<sup>30</sup> The stability of Somalia from the east and the dispute in the border areas especially those contiguous to Sudan, Blue Nile and South Kordofan state, have resulted in a large number of refugees entering western Ethiopia.<sup>31</sup>

Moreover, the arrival figures in Ethiopia are also apparently increasing in urban areas.<sup>32</sup> As of June, 2012, there were nearly 3,900 registered urban

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<sup>26</sup>Haile Selassie Gebremariam, the Ethiopia refugee policy review AAY vol. 1. No.2

<sup>27</sup> Id

<sup>28</sup> Ibid

<sup>29</sup> Ibid

<sup>30</sup> Ibid

<sup>31</sup> Ibid

<sup>32</sup> Ibid

refugees, of whom more than 2,000 were receiving assistance;<sup>33</sup> the majority of the registered urban refugees are Eritrean, allowed to live in various towns under the government, out of camp of refugees.<sup>34</sup> In general, the number of refugees in Ethiopia is increasing from time to time due to the above-mentioned reason.

## **2.4 International legal Framework on Refugee**

There are various refugee instruments at the international level to protect refugees that include the 1951 Refugee Convention, its 1967 Protocol and other human rights instruments, which either directly or indirectly provide protection to refugees and asylum seekers.

### **2.4.1 The 1951 Refugee Convention**

In the aftermath of World War II the United Nations General Assembly created the office of the United Nations High Commissioner for Refugees (UNHCR). The Statute of UNHCR adopted by the UN General Assembly on December 1950<sup>35</sup> has been given a mandate to provide international protection to refugees and asylum seekers permanent solutions to their problems.

The 1950 Statute of UNHCR and 1951 Refugee Convention were negotiated in the aftermath of World War II, were intended to deal with the European problem of 1.25 million refugees arising out of the victims of post-war chaos. In particular it was directed at the victims of Nazis and other fascist regimes. The refugee statute emerged during the late 1950s mainly concerned to the protection of refugees both temporal and geographical to Europe and limited the application.<sup>36</sup>

The 1951 Convention Relating to the Status of Refugees and the 1967 Protocol to the Convention is the modern legal embodiment of the ancient and universal tradition of providing sanctuary to those at risk and in

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<sup>33</sup> Ibid

<sup>34</sup> Ibid

<sup>35</sup> Volker and Francis refugee protection on international law an overall perspectives

<sup>36</sup> UNHCR Statute United Nations General Assembly Resolution DEC, 1950 text at A/177, 1950

danger. Both instruments reflect a fundamental human value on which global consensus exists and the first and only instrument at the global level which specifically regulate the treatment of those who are compelled to leave their home because of a rupture with their country of origin.<sup>37</sup>

#### **2.4.2 The 1967 protocol**

The 1951 refugee convention was contractually limited to per-1951 event in Europe but the 1967 protocol eliminate 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.<sup>38</sup> For this reason the 1951 convention and the 1967 protocol becomes the foundation for the international refugee law. In conclusion, the 1951 convention and the 1967 protocol cover the following three main subjects.<sup>39</sup>

A) The basic refugee definition along with term of cessation of and inclusion from the refugee status.

B) The legal status of refugee on their country of asylum, their right and obligation including their right to be protected against forcible return or refoulment to a territory where their lives or freedom would be threatened and

C) States obligation including cooperating with UNHCR in the exercise of its function and facilitating its duty of supervising of the application of the convention.

### **2.5 Other international human right instrument protect refugee**

At international level in addition to refugee instrument, other international human right instrument play significant role in grating international protection of refugee.<sup>40</sup> Those human right instrument include International Conventions Civil and Political Right (ICCPR), Universal Declaration on

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<sup>37</sup> Supra note

<sup>38</sup> Statute of UNHCR .Article 6 (A) (II)

<sup>39</sup>Volker tank Franked Rachel:- refugee protection in international law an overall perspective, pp.36

<sup>40</sup>Ibid

Human Right, 1949 Genève Convention, Convention on Elimination of all Forms of Discrimination Against Women (CEDAW, Convention Against Torture (CAT) and International Convention on Economic Social and Cultural Right (ICESCR) are some human right instrument guaranteeing protection for refugee at international level .

Among the above instruments Art.7 of ICCPR has been interpreted to prohibit return to a situation where the person right suffers torture or other cruel, inhuman and degrading treatments or punishment and nearly all of the ICCPR provisions apply to non-national, and refugee and art. 12(2) of ICPR also stated that everyone shall be free to leave any country including his own and art 13 also imposed on the state party to convention not arbitrarily expelled person from its territory except where compelling reason of national security otherwise require.<sup>41</sup>

Art.3 of the convention against torture (CAT) also provide for protection from refolement in situation where there is substantial risk of torture, in an absolute and broader manner. So that it contains no exclusion or derogation provision which requires that person be considered as not deserving of protection under treaty.<sup>42</sup>

The other human right law is Convention on the Right of Child (CRC), which protect a child asylum seeker and refugee by introducing the principle of the best interest of the child in every activity on which the child may be affected under Art 22.

## **2.6 Regional Refugee Instruments**

Due to various reason, despite the existence of refugee instruments at international level, different region of the world have refugee instrument which complementary to the international refugee instruments.

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<sup>41</sup> ICCPR, Art 7, 12 and Art 13

<sup>42</sup>Gorlitz brian"the convention and the committee against torture a complementary protection "international of refugee law vol. 11 no 3(1999) p. 48

### **2.6.1 The 1969 OAU Refugee Convention**

Among the regional refugee convention, the OAU refugee convention is one was adopted in 1969. The OAU decided to adopt the OAU refugee convention for a number of reasons. Firstly the 1951 refugee convention, focus on European refugee and not suitable for the African situation and that is Art. 1B (1) of convention geographically limited to events occurring in Europe.<sup>43</sup> Secondly the 1951 convention included time limitation that applied to events occurring before 1951 which is not relevant to African.<sup>44</sup> Thirdly, the meaning of term refugee is very narrow under the 1951 refugee convention.

Due to the above reason, OAU adopted a refugee convention with a wider definition for the term refugee by entitling person fleeing civil disturbance, wide spread violence and war to claim the status of refugees.

In spite of the generosity of the supplementary refugee definition it has established, the criteria of the definition do not cover all instance of plight in African<sup>45</sup>. It cover only man-made disaster by disregarding natural disaster, which have in fact equal impact in forcing people to leave their home land.<sup>46</sup>

Again the refugee problem like refugee status determination procedure and standard, the safety of refugee and a framework for management of refugee affair, the quality of the refugee and lack of mechanism for developing the convention are not covered by it.<sup>47</sup>

### **2.6.2 Other African human right Instrument protecting refugee**

In addition to OAU refugee conventions, some provisions in the other Africa human right instruments have some significance as they grant protection to

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<sup>43</sup>Tariku Kassa the shortcoming of international and regional refugee la (AAU, unpublished ) p.8

<sup>44</sup> Supra note at 35

<sup>45</sup> Tariku kasha, the shortcoming of international and regional refugee law and their effect on refugee (202, unpublished)AAU, law library, p 10

<sup>46</sup> Ibid

<sup>47</sup> id

refugee. These provisions are included in Banjul Charter, the African Charter on the Right and Welfare of Child and the Protocol on the Right of Women in Africa have provision that help in protecting refugees in Africa.

The Banjul charter under art 12 has relevant to protect refugees. Moreover, the African charter on the Right and Welfare of the Child adopt the principle of the best interest of the child in all action concerning the child and obligated any person or any authority to consider his interest as primary one<sup>48</sup>, specifically the same charter stipulate the right of refugee children by obligating states to provide protection for refugee children. Also the optional protocol on the right of women in African obliges states to ensure legal protection of refugee and asylum seeker of women.<sup>49</sup>

## **2.7 American Refugee Instrument (Cartagena Declaration on Refugee)**

Cartagena Declaration on (1984) was adopted in the wake of the civil war - related refugee crises that affected Central America in the 1980s by government representative distinguished academics and lawyers from the region.

This Declaration is adopted by American and central American countries to express their concern to the problem raised by military attacks on refugee camps and settlement, which have occurred in different parts of the world and to propose to the government of the central American countries, Mexico and panama that they hand their support to the measure on this refugee matter which have been proposed by the high commissioner to the UNHCR Executive committee and to ensure that the countries of the region establish a minimum standard of treatment for refugee on the basis of the provision of the 1951 convention and 1967 protocol and the American convention on human rights taking into consideration the conclusion of the UNHCR executive committee particularly.<sup>50</sup>

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<sup>48</sup>Convention right of child

<sup>49</sup><sup>41</sup>CEDAW and convention of AFRICAN WOMEN

<sup>50</sup> UNHCR-

The other objects of the declaration are to express its concern at the situation of displaced persons within their own countries. In this convection, the colloquium calls on national authorization and the competent international organization to offer protection and assistance to those person and to help relieve the hardship which many of them influx.

## **2.8 CONCLUSION**

Before 1951 convention there is no agreed legal definition of refugee. But after 1951 different international and regional instrument come into being and an attempt to define the term refugee were made at different time. From these instrument the 1951 convention define refugee as any person who owing to well-founded fear of being persecuted for reasons of race , religion , nationality, membership of particular local group or political opinion or outside of the country of their nationality or outside of the country of nationality or unable or unwilling to return it. The concept of

asylum is also defined as the protection by a nation to someone who has fled his/her homeland for political reason.

The protection of the status of refuge is not necessarily intended to be permanent. There are certain circumstances when a person once recognized as a refuge cannot longer be continued to avail himself to protection of host country due to cessation of refuge.

As the refuge crisis increased in the world as general and regional as particular the problem of refuge has been hot issue. To avoid this problem a number of international and regional instruments were adopted. Among those instrument the 1951convection relating to the status of refuge and its protocol of 1967,the OAU convection of 1969, which is especially concerned with the problems in Africa. The other instruments which give protection of refuge are international and regional human rights instruments and American refuge declaration.

### **CHAPTER THREE**

#### **THE RIGHTS OF REFUGEE PROTECTED UNDER INTERNATIONAL INSTRUMENTS**

### 3.1. Introduction

Refugees are person in exile- a person who is 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 problem for states in protecting refugee according to their obligation under the international and national instruments. They may even force to undermine the essential principles of international protection due to the number of refugees. On the other hand issues of protection of refugee has of two component, which means legal and political as pact of refugee protection

When we talk about legal aspect refugee protection it is a wide and complex concept. Therefore the purpose of this chapter is make general overview with regard to the right of refugee protected under international instrument such as non-refoulment, expulsion, exemption from penalties, non-discrimination and other protection granted by the international instrument.

### 3.2 Right of Refugee

#### 3.2.1. Non-Refoulement

Right of non-refoulment is one of the rights of refugee prohibited state 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 the accounts of race, religion, nationality, membership of a particular social group or political opinion.<sup>51</sup>

According to article 33(1) of the 1951 convention non-refoulement is clearly stated by saying that no state member to present convention acting contrary to this provision or expel or return (refouler) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on the account the above intention grounds.

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<sup>51</sup>Erika faker , cokeertark cited above p.89

### **3.2.2 Exemption from Penalties**

The second protection available to refugee is exemption from penalties because of illegal entry or presence. The manner in which refugee enter the territory of another state may vary in consideration.

In certain situation 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.<sup>52</sup> In majority of the case however, a refugee crosses the frontier to escape his pursuer or the compelling situations and he rarely has the time or the desire to observer immigration formalizes.

Art. 31 of the 1951 Convection Relating to the status of refugee provide: - the contracting states shall not impose penalties on account of their illegal entry or presence or refugee, who coming directly from a territory where their life or freedom was threaten in the sense of Art.1 enter or present in their territory without authorization, provide they present themselves without delay to the authority's and show good cause for their illegal entry or presence <sup>53</sup>

### **3.2.3 Non- expulsion**

As provided under art.32 of the 1951 convention states parties have undertaken no expel of a refugee lawfully in their territory save on ground of national security or public order.<sup>54</sup> Decision 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 be represented for the purpose before competent authority or a person or person specially designated by the competent authority.<sup>55</sup>Moreover the contracting states shall allow such

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<sup>52</sup> Ibid

<sup>53</sup> Ibid

<sup>54</sup> Ibid

<sup>55</sup> The 1951 refugee convection art 32(1,2)

a refugee a reasonable period within which to seek legal admission in to other country the contracting states reserves the right to apply during the period such international measures as they may deemed necessary.<sup>56</sup>This provision benefits the refugee when he has to fulfill the requirement that he is in the ground of lawful in their territory. On the other hand such person has to be admitted in to the territory in accordance with applicable law.

#### **3.2.4. The Freedom of Movement**

Freedom of movement is subjected to regulation alien generally in the some circumstance.<sup>57</sup> Again, imposing restrictions on the movement of refugee is prohibited unless they are necessary and shall only be applied until their states in the country are recognized or they obtained admission in to other country.<sup>58</sup>This is the right of refugees to choose their place of residence within their territory and to move freely in their host states. This right is recognized under the Art.12 (1&3) of the Banjul charter and Art. 12 of ICCPR Freedom of movement is especially important issues with regard to protected refugee situation in countries with limited national sources and /or limited legal framework for protecting refugee, who nonetheless host a large refugee population.

#### **3.2.5. The right to liberty and security of a person**

Every refugee has the right to liberty and security of a person. Detention of refugee as a principle prohibited. There are only two permissible exceptions in which he/she is detained:-

- 1) To identify when his/her identity may be undetermined or in dispute.
- 2) To determine the elements on which the claim for asylum is based in preliminary interview obtain essential facts.

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<sup>56</sup> The Banjul charter and ICCPR art 12(2.3 and 12) respectively

<sup>57</sup>Supra note 45

<sup>58</sup> The 1951 conventions art 28 (1)

### **3.2. 6. The right family life**

Family is seen as the natural and fundamental unit of society and is entitled to protection by the society and states.<sup>59</sup> In respect to this right granting derivative states to depends on dependents relatives is essential and thus where an individual is granted asylum his/her dependent relative will also receive protection through him or her.<sup>60</sup>

### **3.2.7. Issuance of travel documents**

The contracting states shall issue to refugee lawful staying in their territory travel document for the purpose of travel outside their territory, unless compelling reasons of national security or public order or otherwise require. Hence, article 28 obliges contracting states to issues travel document to refugees in their territory in accordance with the provisions of the schedule.

The provision also empowers states in their direction to issue travel document, to refugee not linked to them by the nexus of lawful stay.

### **3.2. 8. Prohibition of discrimination among refugees**

Art. 3 of the 1951 convention provide that the contracting state shall apply the provision of this convention to refugee without discrimination as to race, religion or country of origin” this means that state parties to the convention must ensure that the rights protected by the convention are enjoyed by all refugees, regardless of their nationality, ethnic or racial origin. For instance, freedom of religion (art. 4) is the access to court (Art.16) must apply to all refugees.

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<sup>59</sup> Ibid

<sup>60</sup> Ibid

### **3.3 .CONCULSION**

To avoid refugee problems the international and regional instrument adopted certain specific rights or protection. Among those rights of refugee the non refoulement is a prohibition from returning or asylum seeker to territories where there is risk that his or her life or freedom would be threatened on account of race, religion, nationality, membership of particular social group or political opinion.

The other protection available to refugee is exemption from penalties because of their illegal entry or presence and also the decision to expel are further required to be in accordance with due process of law except where compelling reasons of national security . There are also other rights adopted under instruments, such as freedom of movement of refugee to choose their place of residence within their territory and move freely in their host states. They have also the right to liberty and security of person. The right to family life, granting derivative status to dependent relatives is also respected and thus, where an individual is granted asylum his/her dependent relatives will receive protection through him or her.

The right of issuance of travel document is also adopted as the right of refugee. The contracting states shall issue to refugees lawfully staying in their territory travel documents for the purpose of travel outside their territory, unless compelling reasons of national security or public order or otherwise require.

Finally, the prohibition of discrimination among refugee is protected, this means the states parties to the convention must ensure the principle of non-discrimination which recognized by the convention for all refugee regardless of their nationality, ethnic or racial origin.

## **CHAPTER FOUR**

### **ETHIOPIA'S REFUGEE LEGAL FRAMEWORK AND ITS GAPS**

#### **4.1 Introduction**

Ethiopia has expressed its desire to be part of the effort of the international community to protect refugee by signing both the UN and OAU refugee conventions. More importantly the fact that Ethiopia has committed itself to these refugee instruments both at international and regional level demonstrate the desire of the country to assume the shared responsibility of protecting those who are in a danger of persecution. Apparently being a party to these regional and international treaties impose duty on Ethiopia to respect and protect refugee. That again means that Ethiopia should undertake various measures at a national level to fulfill her obligation imposed by international law based on this Ethiopia is take legislative

measure to ensure the refugee protection at national which is called the refugee proclamation no, 409/2004.

But even though Ethiopia takes this legislative measure in order to fulfill her international obligation, still there are some problems and gaps in this refugee law, which may affect the effective protection of the right of refugee recognized under international refugee instrument in which Ethiopia is party. So the main purpose of this chapter is to critically analyze those problems in detail and its possible effects on the protection of refugee right.

## **4.2 Definition of refugee under Ethiopia law**

The refugee proclamation no. 409/2004 incorporated refugee definition from both the 1951 convention and the 1969 African refugee convention by using exactly the same words. Art. 4 of the proclamation adopted a combined definition of refugees given by the above two instruments.

Art .4 provided that any person shall be considered as refugee where:-

- ✓ Owing to a well-founded fear of being persecuted for reasons of race ,religion, nationality, membership of a particular social group or political opinion he is outside his country nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country,
- ✓ Not having a nationality and being of his former habitual residence, he is unable or owing to a well-founded fear of being persecuted for reason of race religion, membership of a particular social group or political opinion, he is unwilling to it or owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his country of origin or nationality ,he is compelled to leave his place of habitual residence in order in seek refuge in another place outside his country of origin or nationality, in case of refugee coming from Africa.

The definition of refugee provided under art 4 of the proclamation has the following elements. The first element is “any person owing to a well-founded fear of being persecuted” the phrase “well-founded fear of being persecuted” is the key phrase of the definition of refugee. The term well-founded fear under this provision is contain subjective element and objective element to define or in determining who is refugee and whether well-founded fear exist or not.

#### **a) Subjective element**

In will be necessary to take into account the personal and family background of the applicant, his membership of a particular racial, religions, social or political ground and his own interpretation of the situation and personal experience of the applicant to assess the credibility of well-founded fear to determine his refugee status by take in to account the above elements.

#### **b) Objective element**

Under this the term “well found fear implies that, it not only the frame of mind of the person concerned that determine his refugee status, but his frame of mind must be supported by an objective situation in the country of his origin here the fear must be reasonable to get the status of refugee. In generally the applicant fear should be considered well-founded it he can establish to a reasonable degree that his continued stay in his country of origin has become intolerable to him for the reason stated in the provisions.<sup>61</sup>Therefore an attempt to determine the existence of “well-founded fear” must take into consideration both subjective element and objective element.

The second criteria or definitional element is “persecution. “There must be a risk that would be harmful and inconsistent with the basic duty of protection owed by state to its own population i.e. duty to respect, protect and promote the human right of its citizen

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<sup>61</sup>Refugee proclamation no.409/2004, (art.4(1))

The third criteria definitional element under proclamation is for reason of race, religion, nationality membership of a particular social group or political opinion and similar ground” In order to be considered as a refugee a person must show well -founded fear of persecution for one or more of the reasons state under this criteria i.e. It may be religion, race, color and etc. It is immaterial whether the persecution arises a combination of two or more of the above reason.<sup>62</sup>

The fourth criteria used to define and determine refugee is “is outside the country of his nationality”. It is a general requirement for refugee states that an applicant for refugee status must be established. That mean an applicant who has a nationality be outside the country of his nationality to be considered as a refugee.<sup>63</sup>There is no exception to this rule because international protection cannot come into play as long as a person is within the jurisdiction of his home country.<sup>64</sup>Therefore an applicant alleges fear of persecution in relation to the country of his nationality should be established that he does not in fact possess the nationality of that country <sup>65</sup>

The fifth definitional element of refugee is “and is unable or owing to such fear is unwilling to avail himself of the protection of that country. “The term unwilling refers to refugee who refuses to accept the protection of the government of the country of their nationality. It is qualified by the phrase “owing to such fear.” where a person is unwilling to avail himself of the protection of his home country.<sup>66</sup> Whenever the protection of the country of nationality is available and there is no ground based on well-founded fear for refusing it, the person concerned is not in need of international protection or not refugee.

The sixth and last definitional element to determine refugee under proclamation is “who, not having a nationality and being outside the country of his former habitual residence as a result of such event, is unable

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<sup>62</sup>Id

<sup>63</sup>Id

<sup>64</sup>Refugee proclamation no.409/2004, (Art,4(2))

<sup>65</sup>Refugee proclamation no.409/2004, (Art,4(1))

<sup>66</sup>Id

or owing to such fear is unwilling to return to it<sup>67</sup>.Therefore under Ethiopian refugee law refugee mean, any person or group of persons who fulfill the criteria under the provision of Art 4 and art 19 the refugee proclamation.

### **4.3 The sources of Ethiopian refugee law**

#### **4.3.1 The treaties ratified by Ethiopia**

The FDRE Constitution<sup>68</sup>under Art 9(4) provides that “all international agreements ratified by Ethiopia are an integral part of the law of land”. Moreover, Art 13(2) provides “the fundamental rights and freedoms specified in this chapter (chapter three) shall be interpreted in a manner conforming to the principle of universal declaration of human rights, international convention on human rights and international instruments adopted by Ethiopia.”

As we have seen in the introduction part of these chapter, Ethiopia is one of the countries which are parties to the 1951 convention relating to the status of refugee, its 1967 protocol and the 1969 OAU refugee convention it acceded to the 1951 convention and its protocol on 10<sup>th</sup> Nov, 1969, by reserving its Art 8.9 17(2) and 22(1). Additionally, Ethiopia is a party to other human rights instrument which has on the issue of asylum seeker/ refugees such as UDHR, CRC, and CEDAW, African women protocol, Banjul Charter and son on. So Ethiopia is under obligation to observe all these refugee and non-refugee human right instruments when dealing with the issue of refugees.

#### **4.3.2 The FDRE Constitution**

Though the constitutional guarantee of the right to be granted asylum is common in many countries around the world, there is no express reference of asylum in FDRE constitution which is the supreme law of the land.<sup>69</sup>

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<sup>67</sup>Refugee proclamation no. 409/2004, (Art,4(2))

<sup>68</sup>The constitution of the federal Democratic Republic of Ethiopia,25<sup>th</sup>Aug 1995 Neg .Gez 1<sup>st</sup>year.No1 (here in after FDRE constitution)

<sup>69</sup> Yonatan supra note 140,p.44

However even if the constitution doesn't expressly say anything about refugee or asylum seeker, the constitution is relevant to the right of refugee because the ratified refugee instruments become integral part of law of the land, by its art 9(4) of the FDRE constitution. Moreover, most of the rights provided under chapter three of the same constitution use the expression "---every person - -- "which may well include a liens including refugees and asylum seekers.<sup>70</sup> The constitution under art 32 also expressly provides "the freedom of movement within Ethiopia and the freedom to choose residence".<sup>71</sup>

### **4.3.3 The proclamations**

The main legal instruments concerning refugee of in Ethiopia is the refugee proclamation (proclamation no 409/2004) which incorporated many of the provisions of the 1951 refugee convention and the 1969 OAU refugee convention. Moreover immigration proclamation (proclamation no 354/2002 and SIRAA Establishment (proclamation no6/1995) are also important instruments as far as the protection of the right of refugee in Ethiopia are concerned. However for the sake of our discussion we will focus only on the refugee proclamation which regulates wide areas related to refugees on the same language with the ratified refugee instrument.

## **4.4 The right of refugees under proclamation**

As per the proclamation, its objective is "...to establish a legislative and management frame work for the reception of refugees, ensure their protection and promote durable solution has provided different protection for the refugees".<sup>72</sup>In order to achieve this general objective, the proclamation provides the following rights for refugee.

### **4.4.1 Non-refoulement**

The most important legal protection provided by the proclamation is protection against being forcibly returned to a country where they may be

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<sup>70</sup>Giza chew supra note 36,p.283

<sup>71</sup>Ibid

<sup>72</sup>Paragraph 3, the preamble of the refugee proclamation

subject to persecutions for race, religion, nationality, membership of 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, <sup>73</sup>The idea of this provision shows that protection system that indicates non-refoulment. There are two exceptional circumstances where a refugee could not avail himself the protection afforded to him under these provisions the first is where a refugee who are found himself in Ethiopia is regarded as a danger to the security of the country. <sup>74</sup>In the absence of clear definition, this phrase has to be construed narrowly and restrictively and that return of a refugee is only resorted to if no other solution can be found and it such measures are fully justified in order to protect the legitimate interest of Ethiopia.

The second instance where it is possible to return a refugee to his country of origin without breaching the obligation under the proclamation it where having been convicted by a final judgment of particularly serious crime, constitutes a danger to the community.<sup>75</sup>In this regard the proclamation no 409/2004 of Ethiopia in its article 9(2) does not provide definition for-a term “serious crime”. However, the court which determines the return of the refugee in questions may if it thinks or interpret the term as crime that carries a death penalty or rigorous imprisonment for fifteen years or more or where there as possibility of the person in respect of whom the crime was committed dying as stated under criminal procedure code of Ethiopia.

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#### **4.4.2 Non -expulsion**

The refugee proclamation no 409/2004 of Ethiopia provide a refugees who are lawfully in the territory of Ethiopia enjoyed the protection against

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<sup>73</sup>Cited by IMAN ABDURAHAMAN, Refugee status Determination in Ethiopia July 2007,seniar Thesis (unpublished,A.A,U. law library Archives)page 59

<sup>74</sup>Ethiopian Refugee Proclamation No 409/2004 Article 2

<sup>75</sup>Ibid

<sup>76</sup> criminal procedure code of Ethiopian Art 63 (1)

expulsion but in this case there are also exceptions to national security and “public order” justify expulsion. Though there is no definition provided for the terms “national security” or public order”, it has to be construed narrowly and restrictively and that expulsion of a refugee is only to be restored if no other solution can be found and if such measures are fully justified in order to protect the legitimate interest of the state.

#### **4.4.3 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 ground of race, religion, nationality, membership of a particular social group or political opinion when it applies provisions of the international refugee instrument and the proclamation more or less similar terms.<sup>77</sup>

#### **4.4.4 Exemption from penalties because of illegal entry or presence**

Exemption from penalties is another protection provided by the proclamation 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 falling place in their country of nationality or habitual residence either before or after entry. In the majority of cases, however refugee crosses the frontier to escape his pursuers or the compelling situation 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 refugee’s illegal entry or presence which came directly from territory where their lives and freedom

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<sup>77</sup> The 1951 Refugee convention Article 3, The OAU Refugee convention Article 4 and Ethiopian Refugee Proclamation Article 3

was threatened.<sup>78</sup> Thus, the Ethiopia government is under international and national obligation not imposing penalties on refugees because of their illegal entry or presence.

#### **4.4.5 Issuance of travel document**

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

Article 28 of the 1951 convention obliges the contracting states to issue travel documents for refugees lawfully staying in their territory for the purpose of travel outside their territory unless compelling reasons of national security or public order otherwise require. Sub article one of the same article permits exception to the obligation to issue for reason of national security or public order.

The federal democratic republic of Ethiopia has issued regulation for issuance of travel documents no. 144/ 2004 which lays down the rules for issuing travel document on its part two and refugee proclamation no 409/2004 under article 21(1) (c) also talks about travel document which reads as follows:

Every one recognized refugee shall be issue with a travel document for the purpose of travelling outside Ethiopia in accordance with international agreement. Therefore Ethiopian is bound to accord issuance of travel document to refugees lawfully staying in its territory.

#### **4.4.6 The right to family unity**

Regarding family unity, the proclamation goes far than the refugee conventions which do not specifically deal with family unity.<sup>79</sup> Family unity is one of the customary international laws.<sup>80</sup> The proclamation recognizes

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<sup>78</sup> The 1951 Refugee convention Article 31 and Refugee Proclamation of Ethiopia Article 13 (5)

<sup>79</sup> Abdi II supra note 33.p.99

<sup>80</sup> Ibid

the right of family unity of both asylum seekers and refugees has the right to enter Ethiopia to re-unite with asylum seekers and refugees.<sup>81</sup> It also envisages that “the rights and duties of asylum seekers and refugee extend to the family members of such person”.<sup>82</sup>

The refugee proclamation article 12(5) provides the right of asylum seeker/refugee to apply individually for being recognized as refugee by him/herself which has much positive implication. That is it gives the chances to a member of family to be recognized as a refugee more necessarily when the head of family is denied the refugee status due to the weakness of his/her side of story during the determination procedure. As we know the women is dominated by male in patriarchal family which is common in Africa, As a result, they may not present their case no matter how much strong evidence they may have.

Despite of all these positive sides, the proclamation couldn't escape from criticism. Regarding its definition of the world family it provides “---any spouse of the refugees and any unmarried child of the refugee under the age at eighteen years”.<sup>83</sup> This provision may be aimed to avoid or minimize the congestion of people under the name of family thereby to claim incidental rights of the refugee/asylum seeker would be given.

However, the point of our argument is the majority of the refugee/asylum seeker Ethiopia has been hosting is from Africa where the term family denotes extended family, let alone ousting the married child and the child who attained the majority age.

If we define family in this way, it is contradictory with the definitional clause we have criticized above: for refugees coming from Africa. If we see this clause it seems that Ethiopia is concerned about African refugees more than any others. But when we refer the definition of family on this proclamation, it ignores the culture of extended family and imposes the one

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<sup>81</sup> See art.12(4) of proclamation

<sup>82</sup> Ibid

See art 2(8) of the proclamation

<sup>83</sup>

which as worse than the nuclear family of Europeans. More surprisingly, Ethiopia has extended family for itself and wants other African people adopt an alien trend.

#### **4.4.7 Durable solutions**

Although the three forms of durable solution are not explicitly provided in the 1951 refugee convention and only repatriation is featured in the OAU refugee convention, the contemporary refugee laws of various countries adopted them.<sup>84</sup> But Ethiopia's refugee proclamation recognizes only repatriation as durable solution.<sup>85</sup> The objective clause in the preamble of the proclamation which provides “- - - to promote durable solution when ever condition permit “, seems the first precursory to evade from the obligation of working toward other forms of durable solution in the country.

#### **4.4.8 The procedure to determine refugees**

The proclamation also provides the procedures for determination of refugee status. The refugee conventions have not set the well-articulated procedures for determination of refugee's status, It has only the Guide line set out by UNHCR.

Unlike the refugee Convention of the 1951, this allows for possibility of detaining of asylum seekers who are inside the country illegally.<sup>86</sup> The proclamation prohibits both detention and criminal prosecution against a person who has applied or is about to apply for refugees status on the account of his illegal entry and presence in the country.<sup>87</sup> This shows how far the proclamation gives better protection regarding detention of asylum seekers.

However what the proclamation lacks as far as the procedural guarantees are concerned is, it does not provide for a right to legal aid, which is an

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<sup>84</sup>Abdi II Supra note 33.p.99

<sup>85</sup> See art 23 of the proclamation

<sup>86</sup> See art 33(2) of the 1951 refugee convention

<sup>87</sup> See art 13(2) of the proclamation

essential component of fair hearing.<sup>88</sup> The importance of legal aid can be corroborated by many factors which asylum seekers may suffer from. That is, the circumstances in which forced asylum seekers to leave their country and the trauma in which they fall are a result of coming to the new environment may be a compelling reason to provide legal aid service.

The proclamation does not provide for a judicial review by ordinary courts. Though the refugee convention don't make judicial review mandatory since the court are assumed to be the most independent and impartial body, absence of their involvement is not only regrettable, but also it amounts to disregarding the role of courts in maintaining justice and protecting human rights.

The proclamation said nothing regarding the need of female officials to interview female asylum seekers. . As we have discussed in the previous chapter, more than half of the refugee population are women. African women are the product of controlled and strict society. As a result they are shy to explain their case to male officials, especially if their case contains issue like rape or which are related with family honor. So though international refugee conventions have provided nothing about this issue, having female interviewer for female asylum seeker is as important as any other procedural guarantees provided by the proclamation. Despite the silence of the proclamation in an expressly manner, we can do the same favor to women by interpreting the provision on "special protection to vulnerable groups"<sup>89</sup> in a wide and accommodative way.

#### **4.4.9 Exclusion from the refugee status**

With respect to exclusion from refugee status- by which an a asylum seeker once recognized as refugee is excluded from such status- to limit protections only to those deserving the case and to avoid the possibility of individuals escaping from prosecution for serious crimes they have committed. The grounds of exclusion provided under the refugee

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<sup>88</sup> Giza chew, supra note 36.p.290

<sup>89</sup> See art I(5) of the OAU refugee convention and Art. I (F) of the 1951 refugee

proclamation are similar with the grounds given by the refugee convention.<sup>90</sup> However the proclamation provides for one more ground of exclusion, which read” --- having more than one nationality, he has not availed himself of the protection of one of the countries of which he is a national and has no valid reason, for not having availed himself of its protection”.

#### **4.5 The gaps of proclamation 403/2002**

Rational of enacting refugee proclamation is for the effective implementation of the obligation 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 to ensure their protection and promote durable solution, wherever condition permit. <sup>91</sup>

Even though, the relational and the objective of this proclamation to ensure and promote the protection of refugee, there are problems and gaps in the proclamation which hinder the effective protection and implementation of the right of refugees recognized by the proclamation itself and under international refugees instruments.

Art 3 of the refugee proclamation stated the principle of non-discrimination which is one the basic principle of international human right law and the refugee law. As per this provision refugee proclamation shall be applied without discrimination as to race, religion, nationality, membership of a particular social group of political opinion,<sup>92</sup> But within this proclamation art. 4(3) proclamation is given priority for African refugee. The fact that most the refugee entered in to Ethiopia is refugee from the African countries, the law must be framed to be applicable to all refugee equally not only to African refugees. So when we see this provision in line with international refugee instruments and even the OAU refugee convention

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<sup>90</sup> See art. 85(4) of the proclamation

<sup>91</sup> Refugee proclamation no 409/2004 preamble party

<sup>92</sup> Refugee proclamation no 409/2004 art .3

which specifically designed to resolving the refugee problem in African do not include this kind of clause which discriminating refugee based on their origin. Moreover, If this provision is applied as it is, it defeat the very objective and nature of the institution of asylum which is a humanitarian institutions.<sup>93</sup>

Further this stand can be strengthened by the principle of non-discrimination on any ground which is provided in all refugee convention and the proclamation itself. Hence, since this limitation is incompatible with the refugee instrument Ethiopia has ratified, this provision shall be reconsidered in line with those conventions ratified because e it may hinder the effective achievement of the purpose and objective of the proclamation.<sup>94</sup>

Art.10 of the refugee proclamation is also adding another exception that can be used as a ground to expel a refugee i.e. the ground of national security and public order. What is added is the term “ public order” which can be vague and elastic and does not have clear cut criteria to identity which act is public order or not unless interpreted restrictively.

As Gizachew comment on this provision, providing for another ground on expulsion might be criticized as a move to make the exception wider and the trend to expand the exception would suggest nothing less than going counter to the contemporary understanding of the international community. Further it is against the rational that “international law provides only a minimum standard while the domestic law of the member’s states is expected to give better protections”.

With regard to the right of refugee under proclamation, the right to movement is empowering the authority to designate area where refugee and asylum seeker must live. It imposed residential restriction. This trend of confined refugee to the camps will deprive refugee the chance to locally integrate with the people of Ethiopia and live a normal life free of

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<sup>93</sup>Gizachew refugee pp.245

<sup>94</sup> Refugee proclamation

confinement.<sup>95</sup> Imposing restriction on the movement of refugee is prohibited unless they are necessary and shall only be applied until their status in country is recognized or they obtained admission into country.<sup>96</sup>

Moreover, the proclamation is going against the constitutional provision which expressly provide non-national refugee the freedom to choose residence in Ethiopia in the following words “any foreign national fully in Ethiopia has within the national territory, that liberty of movement and freedom to choose his residence.”<sup>97</sup>

Another problem with regard to subsidiary and temporary protection. Refugee proclamation is silent with respect to this protection which given for group of people that do not fulfill the strict definition and criteria of the refugee instrument, but who cannot be returned to their home countries because there is real risk that they would suffer a certain types of harm. Under international instruments, there is a commitment that would engage a state non-refoulement, i.e. not turn to home country.

Subsidiary or complementary protection refers to various types of status granted to people whose claim under the 1951 convention have been rejected after an individual determination, but who have nevertheless been found to be in need of international protection. For example, under art-3 of the convention against torture standards of treatment vary, beneficiaries of complementary protection are entitled to respect for their fundamental human right, including the right to family unity and re-unification, non-refoulement, freedom of movement, the right to security and other fundamental human right which provided under treaties such as the ICCPR, CRC, CAT and others.

The meaning of complementary protection and its ground is diverse from the state to the states. In Spain, complementary protection may be extended to persons who as, a result of serious conflict or disturbances of a political,

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<sup>95</sup>Gizachew

<sup>96</sup>Ibid

<sup>97</sup> FDRE Constitution Art.32(1)

ethnic or religious, have been obliged to leave their country and who do not fulfill the requirements laid down in the definition of refugee.

In Portugal subsidiary protection is available to those who are prevented or don't feel they can return to the country of their nationality or of their habitual residence for reasons of serious insecurity owing to armed conflicts or systematic violation of human right, which are occurring there.

The European Union has recently adopted a directive that regulates the grant of subsidiary protection to those who need it. The significance of the directive is that for the first time, complementary protection is explicitly recognized as having a basis in international obligation, under human right, instruments and fundamental rights and principles. Contrary to this contemporary international protection of refugee and asylum seeker refugee proclamation silent for as the complementary protection or subsidiary protection concerned. This may hinder the effective implementation by Ethiopia of its commitments under international instrument, refugee convention and other instruments because in Ethiopia those who does not fulfill the criteria of refugee cannot be granted this protection which mean they cannot exercise their fundamental right and the right grant for refugees in Ethiopia.

Another problem concerning substantive right of refugee is reservation made by Ethiopia when it accedes to different international instruments. Specifically Art 8.9 and 17 (2) of international refugee instrument which deal with obligation states to exempt refugee from measures which may be taken against person, property or interest of national of foreign states, which allows states in the times of war or order grave and exceptional circumstance to take provisional measures which it considers to be essential to the national security and provision which prohibit states to impose restrictive measure that may be imposed on a liens or the employment of a liens for the protection of national labor to refugee and Art.22 of the refugee convention respectively. The effect of reservation is that Ethiopia is not under obligation to protect or grant the right stated

under the above reserved provisions and Ethiopia will not be duty bound to protect and promote these rights.

Concerning this reservation the report has been show that most refugees are kept at refugee campus and not allowed to work and get public education provision. The fact that refugee children are denied access to public education may well be a discriminatory treatment and a violation of Ethiopia's commitment under international and regional human right instruments and it clearly run counter to the obligation of states under refugee convention.

With regarding to reservation exercise by Ethiopia concerning the right to work, right to property and education, UN committee for the Elimination of racial discrimination expressed concern about refugee children's enjoyments of their to education and recommended that Ethiopia "adopt adequate measure" to ensure their equal access to education.

Art 8(2) the proclamation does not contain provision that require the authority to inform UNHCR on decision affecting asylum seeker and refugees in the provision regarding with withdrawal, cessation and temporary detention.

Moreover, proclamation lacks as far as procedural guarantees are, it does not provides for rights to legal aid, which essential components of fair hearing. The importance of legal aid can corroborated by many factors which asylum seekers may suffer from.

What is more, the proclamation does not provide judicial review by ordinary courts. Though the refugee convention doesn't make judicial review mandatory since the courts are assumed to be most independent and impartial body, absence of their involvement is not only regrettable but also it amounts to disregarding the role of courts in maintaining justice and protecting human right.

## **4.6 Conclusion**

The sources of Ethiopia law of refugee basically include FDRE constitution, international and regional instrument ratified by Ethiopia and enactment of proclamation no. 409/2004. The proclamation defines the term refugee by incorporating the definition provided under both the 1951 refugee convention and the 1969 OAU refugee conventions. The proclamation provides that any person or a group of persons who fulfill the criteria under the provisions of art.4 or 19 of the proclamation as refugee.

As one source of Ethiopian refugee law, the proclamation of 409/2004 incorporates a number of rights and protection of refugee. This proclamation ensures the protection of refugee being forcibly returned to a country where they are persecuted. The other right that refugee enjoys in international and national instrument is non-expulsion which clearly stated under art 10 of proclamation.

Refugee proclamation also requires the government that it cannot impose penalties on refugee because of their illegal entry or presence where they directly come from a territory where their life or freedom is threatened. The another rights of refugee under proclamation are put the government under obligation to issue the travel document to refugee lawfully entered in Ethiopia, unless obligatory reasons of national security or public order require otherwise. The rights of issuing with identity card, non-discrimination and freedom of movement clearly stated under proclamation.

The proclamation is not free from criticisms. It has committed some omissions. Among other, it is silent on the complimentary and subsidiary protections by which the person who could not fulfill the criteria of refugee, but who need protection not less than refugees, are protected and it does not deal with issues such as internal flight, alternative safe country of origin and safe third country. There are also other problem with in the proclamation is a contradictory provision itself.

## **CHAPTER 5**

### **Conclusion and Recommendation**

#### **5.1 Conclusion**

An attempt of protection of refugee at international level was commenced during the League of Nations and led to adoption of a number of international agreements for their benefit in relation specific refuge situation. The 1951 refugee convention was adopted on 28, July, 1951 by the UN general assembly to regulate the legal status of refugee. The convention consolidates previous international instruments in relation to a refugee and provides the most comprehensive codification of the right of refugee at international level. The 1967 protocol was also adopted to ensure the protection of refugee and to eliminate some problem existing in the 1951 convention. The convention and the protocol are principal instruments that reflect a fundamental human value on which global consensus exists and the first and only instruments at the global level which specifically

regulate the treatment of those who are compelled to leave their home because of the problem within their country.

The OAU Convention Governing the Specific Aspects of Refugee Problems in Africa was adopted in 1969 and came into force in 1974 and the convention has proven to be one of the world's most flexible and innovative refugee instrument.

These international and regional instruments grants the basic rights of refugee including non-refoulment ,temporary and subsidiary protection ,family unity ,rights to durable solution ,safe country of origin ,internal flights alternative and safe third country. In addition to the these international and regional refugee instruments ,there are a number of human right instruments that recognizes the fundamental right of individuals including refugee

Ethiopia is also member to most of these legal instruments. It has also adopted refugee proclamation to highlights its commitment to implements its international and regional obligations .Also its adoption facilitates the protection of asylum and the protection of refugee rights. Specifically the objectives to enact this national legislation is for the effectives implementation of the international refugee instruments and establish a legislative framework for the reception of ensure that protection and promote durable solution ,whenever condition permit .However ,this proclamation is suffer from some gaps and problem when we see it in line with international refugee instruments.

As we discussed in chapter four Arts 4(3) of this proclamation gives different treatments between refugee from Africa and other continents by giving the priority for African .But this kinds treatments is against the principle non-discrimination which is recognized as customary international law and recognized under international refugee instruments and proclamation itself. .Arts. 5(4) of proclamation is also provides one ground of exclusion of refugee status other than those provided under refugee convention. It provided that a person shall be not be considered as a

refugee if having more than one nationality he has not availed himself of the protection of one countries of which he is a national and has no valid reason for not having availed himself of its protection .Here this trends of expanding the ground of would suggest nothing less than going counter to the contemporary understanding of the international community in the protection of refugee and asylum. Art. 10 also add other grounds on which a refugee can be expelled from Ethiopia which means by adding the phrase “public order “as a one grounds of expulsion in addition to the grounds under refugee convention. Because, the phrase “ public order” is ambiguous and may broaden the grounds of expulsion and can be counter to international refugee conventions.

On the other hand proclamation grants similar rights and obligation like refugee convention. But concerning the rights of movements and residence the proclamation empower the authority to designates areas where refugee and asylum seeker must be live and it amounts restrict the rights movements and residential place after refugee have got the status. This is also against international convention and FDRE constitution which confer the rights to movements for national and non-nationals under Art.(32). Reservation made by Ethiopia to some provision such as Arts.17(2) and 22 of the refugee convention which specifically deals with rights to work ,rights to education ,right to ownerships of property and other rights will pose their own negative repercussion on the effective protection of refugee .

Similarly as discussed in chapter four the proclamation is silent on areas where majority of people who are not refugee because they fail to fulfill the criteria of refugee under definition , but deserve to protection not less than refugee which is called temporary and subsidiary protection under international instruments.

## **5.2 RECOMMENDATION**

In chapter four an attempt were made to disclose those problems and gaps existing in Ethiopia's refugee proclamation. Under this part the researchers would forward the following recommendation.

As provided under Art.9(4) of FDRE Constitution all international agreements ratified by Ethiopia are an integral part of the law land and Art.13(2) of FDRE constitution also stated that the fundamental rights and freedoms specified in this chapter(means chapter three) shall interpreted in manner conforming to the principles of the Universal Declaration Human Rights , International Covenants on Human Rights and international instruments adopted by Ethiopia .The expression provided that the refugee proclamation should be interpreted in lights of the refugee convention and the OAU refugee convention .

- The clause under Art.4(3) of proclamation give priority for the African refugee is also examined and amended because it is contradicts with proclamation itself and the mandatory principle of non-discrimination under the international law and refugee convention.

Art.5(4) of the proclamation which provide more than one nationality as a grounds of exclusion the refugee status ,which one the components definition under the 1951,convention as well as the proclamation as additional grounds of expulsion misplaced and unnecessary and it must be omitted .

- Art.10 (1) of the proclamation is also adding one additional ground of expulsion which is not founded under refugee convention. This trends is also expanding exception would suggest nothing less than going counter to the contemporary understanding of the international community the protection of refugee. Since any restriction against refoulement should be limited to those exception under the convention and the additional phrase under proclamation which public order is also must be interpreted restrict.
- Art.21 (2) of the proclamation which empower the authority to designate areas where the refugee and asylum seeker must live is also

must be amended. Because it counter the 1951 refugee convention which prohibits imposing any restriction on the movement of refugee after they are recognizing refugee status. Again it contradicts with art 32(1) of the FDRE constitution. In addition confining refugee to campus for a protected time which denies them opportunities to mix up with the local people is run counter to the obligation to states under refugee convention.

- Ethiopia has made reservation to those provision of the refugee convention on the right to work, to education and ownership of property and it has been reported that most of refugee are kept at refugee camps and are not allowed, save under some exceptional situations to work and gate public education provision. The fact that the refugee children are denied access to public education may well be a discriminatory treatment and a violation of Ethiopia's commitment under international and regional human right instruments. In June 22, 2008 the UN committee for the elimination of racial discrimination expressed concern about refugee children's enjoyment of their right to education and recommended that the Ethiopia adequate measures to ensure their access to education and the researchers are also share the recommendation of UN committee concerning the above mentioned problems with regarding to the reservation.
- With regarding to the issue of subsidiary and complementary protection, since Ethiopia is party to the refugee convention and CAT which provided this protection, it should fill this gap by using these two instruments

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