



JIMMA UNIVERSITY

COLLEGE OF LAW AND GOVERNANCE

SCHOOL OF LAW

THE PROTECTION OF REFUGEES' RIGHT TO FREEDOM OF MOVEMENT IN ETHIOPIA: CHALLENGES AND PROSPECTS

A Thesis Submitted in partial fulfillment of the requirements for the degree of Master of Law in Human Rights and Criminal Law in the College of Law and Governance, Jimma University, 2021

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DECLARATION

I, **Tessema Chenaki**, declare that '**The Protection of Refugees' Right to Freedom of Movement in Ethiopia: Challenges and Prospects,**' is my own work and that all the sources that I have used or quoted have been indicated and acknowledged by means of complete references.

I further declare that I have not previously submitted this work, or part of it, for examination at Jimma University College of Law and Governance for another qualification or at any other higher education institution.

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DEDICATION

This dissertation is dedicated to those refugees who are confined in the camps in Ethiopia and who strive daily to cope with the challenges of being a refugee and try to make a better life for themselves and their families.

ACRONYMS

ARRA=Agency for Refugees and Returnees Affairs

CRRF = Comprehensive Refugee Response Framework

FDRE = Federal Democratic Republic of Ethiopia

GoE=Government of Ethiopia

GC = General Comment

HRC = Human Rights Committee

ICCPR= International Covenant on Civil and Political Rights

ICESCR= International Covenant on Economic, Social and Cultural Rights

ICJ=International Court of Justice

OAU = Organization of African Union

OCP=Out-of-Camp Policy

UDHR = Universal Declaration of Human Rights

UN = United Nations

UNHCR = United Nations High Commissioner for Refugees

ABSTRACT

The Universal Declaration of Human Rights under article 13(1) states that everyone has the right to freedom of movement within the borders of each State. This right is interpreted by the human rights committee as an indispensable condition for the free development of a person. The international community tried to protect the refugees' right to freedom of movement by adopting the 1951 Refugee Convention and the 1967 Protocol. Despite such international efforts made towards the protection of refugees, the issue has continued to progress. The dynamic nature of refugee crisis makes it necessary to change strategies, adopt new mechanisms and follow new directions towards achieving the intended goals. Hence, the international community adopted the 2016 New York Declaration on refugees and migrants. However, states, including Ethiopia, restrict the right to freedom of movement by establishing camps and authorize the concerned authority to designate areas where refugees should live. Refugees who are restricted to camps clearly do not enjoy freedom of movement as envisaged in international law. Yet the policy of encampment continues to be viewed as the right approach to managing large numbers of refugees in many countries across the world. Sacrificing freedom of movement, it is argued, is a necessary compromise in order to care better for the needs of refugees and their hosts. By keeping refugees in camps, security concerns are addressed, refugees are easier to manage, and the temporary nature of their exile is accommodated. In order to challenge such assumptions, this thesis argues that freedom of movement is a basic human right that is, in turn, vital for the enjoyment of numerous other rights. Thus, denying refugees the ability to move freely, violates their human rights and the law that authorizes the Agency for Refugees and Returnees Affaires to arrange areas where refugees may live contravenes international law and therefore unacceptable.

Key words: refugees, freedom of movement, Out-of-Camp Policy, alternative to camps

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1 CHAPTER ONE: INTRODUCTION

1.1. Background of the Study

The right to freedom of movement is the basic human right enshrined in the international human rights documents. This right has a base in the 1948 Universal Declaration of Human Rights (UDHR) article 13 that is given to every one without any distinction on any grounds of race, religion or nationality. The right to freedom of movement also incorporated in the 1951 Refugee Convention which has a ground on the UDHR article 14¹, in the 1966 International Covenant on Civil and Political Rights (ICCPR) art 12 as well as in the regional human rights instruments such as article 6 of African Convention Governing the Specific Aspects of Refugee Problems in Africa, article 12 of the African Charters on Human and Peoples Rights, article 22 of American Convention on Human Rights. The right to freedom of movement is given to everyone including refugees, and it is basic right to refugees.

The meaning of refugee is incorporated in the Refugee convention as: *“For the purposes of the present Convention, the term refugee shall apply to any person who as a result of events occurring before 1 January 1951 and owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it”*². Although this definition was originally narrowly connected to the events that occurred before 1 January 1951, the 1967 Protocol removed the limitations and gave the convention a universal coverage obliging the states to comply with the substantive provisions of the convention. According to this Protocol, *“the term “refugee” now means any person within the definition of article I of the Convention as if the words “As a result of events occurring before 1 January 1951 and...” and the words “...as a result of such events”, in article I A (2) were omitted. Therefore, the Refugee Convention and the 1967 Protocol shall be applied by the States Parties hereto without any geographic limitation”*.

¹ Article 14 (1), “Everyone has the right to seek and to enjoy in other countries asylum from persecution”.

² The 1951 Geneva Convention relating to the Status of Refugees adopted by the General Assembly of United Nations on 28 July 1951 and entered in to force on 22 April 1954, art. 1 (A) 2

According to the 1951 Refugee Convention and the 1967 Protocol an applicant to be a refugee, four basic conditions must be met. The applicant must be: Outside his/her country of origin/habitual residence, have a well-founded fear of persecution, this fear must be based on one of five grounds such as race, religion, nationality, membership of particular social group or political opinion; and the applicant must be unable or unwilling to avail himself of the protection of that country, or to return there, for reasons of fear of persecution.

The Refugee Convention is both a status and rights-based instrument and is underpinned by a number of fundamental principles, most notably non-discrimination, non-penalization and non-refoulement³. The Convention lays down basic minimum standards for the treatment of refugees without prejudice to states granting more favorable treatment. As a standard, it protects the refugees' right to freedom of movement and freedom to choose place of residence in the form of mandatory obligation on states under article 26 and the restriction is generally in the same circumstances that applied on other aliens.⁴

The right to freedom of movement is characterized as a right of self-determination and hence, an indispensable condition for the free development of a person.⁵ The ICCPR and the UDHR under articles 12 and 13, respectively, require any restrictions on this freedom must be applied without discrimination, including on the grounds of national origin or status.

Ethiopia is party to the major international and regional human rights instruments including the 1951 refugee convention and 1969 OAU Convention which guarantee the right to freedom of movement; and bound the international community to adhere their observance. The freedom of movement is the basic constitutionally protected right given to Ethiopian citizens and any lawfully residing foreigners.⁶ With respect to refugees, Ethiopia adopted particular laws which govern the rights and situations of refugees in Ethiopia such as the 2004 refugees' proclamation and the new 2019 refugees' proclamation. The former law was the most restrictive law that confines refugees in the camps by authorizing the head of authority to designate places and areas

³ United Nations High Commissioner for Refugees (UNHCR), *Rights of Refugees on the Context of Integration: Legal Standards and Recommendations*, legal and protection policy research series, Division of international protection services, 2006, 157

⁴ *Ibid.*, 159

⁵ Human Rights Committee, General Comment No. 27: *Article 12 (freedom of movement)*, adopted at the Sixty-seventh session of the Human Rights Committee, (2 November 1999), para.1

⁶ Constitution of the Federal Democratic Republic of Ethiopia Proclamation 1995, Fed. Neg. Gaz. 1st year No.1 (herein after FDRE Constitution) article 32

where refugees should live⁷. To make flexible the law, Ethiopia revised the most restrictive law and gives protection to refugees' right to freedom of movement and residence under new proclamation.⁸ However, article 28 (2) of the new proclamation authorizes the Agency for Refugees and Returnees Affairs (Agency) to arrange areas and places where the refugees or asylum seekers may live without providing any objective grounds to arrange⁹. This is what initiated the researcher to conduct a research on this specific issue.

1.2. Statement of the Problem

According to the UNHCR report in 2018, there are over 25.4 million refugees and 25.9 million refugees as of 19 June 2019 in the world.¹⁰ This figure indicates the fact that the number of refugees is increasing significantly; despite efforts and policies embarked by the international community. This number is also high in Ethiopia according to the October 31, 2019 UNHCR report as it registered over 700,000 refugees and asylum seekers, most of whom are housed in refugee camps in six regional states.¹¹

Refugees flee from a dangerous situation in the hope of finding safety, security and a chance to rebuild a future. However, for most refugees, life in exile is as bad as and sometimes worse than the conditions fled in the country of origin. Most refugees are confined to camps that are close to borders of their home country. This does not only deprive their right to move but also makes them vulnerable to cross-border attacks. Moreover, refugees who are resettled in different parts of a host state suffer from unemployment, lack of access to justice, lack of education, and other basic rights. In essence, a refugee who reaches a camp is already a person who has suffered a series of serious human rights violations even if ideally the establishment of refugee camps represents an improvement upon the situation which they have fled.

The Proclamation No.1110/2019 guarantees the freedom of movement of refugees throughout the country in accordance with the above international laws. However, the same law authorizes

⁷ Refugees proclamation No.409/2004, Fed. Neg. Gaz. 10th year No.54, article 21(2) (herein after Proc. No.409/2004)

⁸ Refugees Proclamation No.1110/2019, Fed. Neg. Gaz. 25th year No.38, (herein after Proc. No.1110/2019)

⁹ The shift from 'designation' to 'arrangement' has almost similar effect on the refugees freedom i.e. refugees do not enjoy freedom of movement, separates them from socio-economic life of the host community and makes them dependent on aid.

¹⁰ UNHCR, *Report of 19 June 2019*, available at <https://www.bbc.com/news/world-48682783> the Office said that the number of people fleeing war, persecution and conflict exceeded 70 million globally last year-the highest number in the UN refugee agency's almost 70 years of operations.

¹¹ UNHCR, *Faces Funding Shortfall to Meet Needs of Refugees in Ethiopia*, available at www.xinhuanet.com/english/2019-11

the Agency to restrict the movement of refugees by arranging areas and places where they live known as refugee camps without specifying conditions on which the Agency depend to restrict freedom of movement. In addition to a limited right of movement, refugees live in camps that are separated from the social and economic life of host communities forcing them to be dependent on aid, which is the main source of livelihood for them.

It is also not clear whether refugees or asylum seekers who are present unlawfully in Ethiopia have the right to freedom of movement. This is because the stipulation of article 28 says “every recognized refugee or asylum seeker”. The 1951 Refugee Convention to which Ethiopia is party addresses freedom of movement of refugees who are unlawfully in the country of refuge in article 31(2), and that of refugees who are lawfully in the country of refuge in article 26.

Refugees who are restricted to camps clearly do not enjoy freedom of movement as envisaged in international law. Yet the policy of encampment continues to be viewed as the right approach to managing large numbers of refugees in many countries across the world. Sacrificing freedom of movement, it is argued, is a necessary compromise in order to care better for the needs of refugees and their hosts. By keeping refugees in camps, security concerns are addressed, refugees are easier to manage, and the temporary nature of their exile is accommodated.

The problem is not limited to the refugees’ proclamation, but also concerns the constitution as well. The FDRE Constitution does not stipulate whether the right to freedom of movement is subject to limitation or not. As it is already known, there is no general limitation clause in the FDRE Constitution. However, the specific limitation clauses are inserted with respect to each and every right in the constitution. But there is no specific limitation clause with respect to the right to freedom of movement and freedom to choose residence. As a result, the scope, content and limitation of the right to freedom of movement in Ethiopia seem problematic.

1.3. Research questions

This study answers the following questions.

- Do the domestic Laws of Ethiopia adequately protect refugee’s right to freedom of movement?
- What are the implications of the protection of refugee’s right to freedom of movement for refugees and Ethiopia as the host country?

- Does legal designation or arrangement of specific dwelling place for or encampment of refugees consistent with international legal standards concerning the protection of the rights of refugees?

1.4. Objective of the study

1.4.1. General objective

The main objective of the study is to assess whether the limitations on the freedom of movement of refugees enshrined in Ethiopia's laws are consistent with the international laws or not.

1.4.2. Specific objectives

- To assess the Ethiopia's refugee laws in accordance with international legal frameworks concerning the refugee's right to freedom of movement.
- To examine the protection of refugee right to freedom of movement and its implication on the right to self-development of refugees and the obligation of Ethiopia
- To evaluate the justification (if any) behind the need to designate or arrange specific places and areas where refugees should live in the light of international human rights laws.

1.5. Research Methodology

Taking in to account the research questions and the objective of the study, the methodology that better enables the researcher to answer these questions and achieve the desired goal is doctrinal legal research methodology.

The researcher engaged in a desk-based review of primary and secondary sources. The main primary sources for a doctrinal research methodology are laws governing the specific issues in the study area. Thus, the researcher has reviewed the laws such as international refugee laws, the international human rights laws, the regional human rights laws and domestic laws of Ethiopia governing refugees' freedom of movement and the review of relevant jurisprudence of case law. The books, journal articles, reports, research works, commentaries, and Human Rights Committee general comments have also been consulted as the secondary sources of data in answering the above research questions.

1.6. Significance of the Study

This study is useful in many ways. There is scanty empirical research that is indirectly related to the protection of refugees' right to freedom of movement in Ethiopia. This study helps to inform the legislative and the executive (Agency) organs of the government to further understand and

reform and enforce laws to give better protection for the refugees in Ethiopia. Thus, this study is useful to the aforementioned government organs to make aware of the protection of the refugees' right to freedom of movement that makes the refugees self-reliant and minimizes the helping burden of the country. This study is not comprehensive that further research should be done on the refugees' right to freedom of movement in Ethiopia. So, new researchers can use this research as an input to conduct further research. Finally, this research may serve as a reference material for academic purposes.

1.7. Scope of the Study

This study critically assesses the protection of the refugees' right to freedom of movement in Ethiopia particularly focusing on the laws. In so doing, the researcher tried to define the right to freedom of movement, the content, scope and limitations under Ethiopian laws to evaluate whether the refugees' right to freedom of movement is protected in accordance to the international human rights laws standards. However, due to the prevalence of COVID-19 and the current security problems in Ethiopia, this study did not assess the practical application of the right to freedom of movement in Ethiopia as the main objective of the study is to assess the legal frameworks of Ethiopia in protecting the refugees' right to freedom of movement in light with international instruments.

1.8. Literature Review

There is no research conducted directly on the research questions under this study in Ethiopia. However, there are some indirectly related researches that are conducted on refugee protection and freedom of movement.

Accordingly, Mewded Mengesha¹² in 2016 conducted a research on the title "*Human Rights Violations in Refugee Camps: Who's Responsibility to Protect? A case of Ethiopia*" explained the legal basis of the principles of states responsibility in international law and the rights of refugees, the protracted refugee situations in the camps and the Ethiopian legal system with regard to the refugee populations in Ethiopia. In this research as the title indicates whose responsibility to protect, he analyzed as the UNHCR has a major share in the protection of refugees in administration of camps and as a result he concluded that UNHCR should hold responsibility at the situation of any refugees rights violations.

¹² Mewded Mengesha, *Human Rights Violations in Refugee Camps: Who's Responsibility to Protect? A case of Ethiopia*, Lund University, JAMM04 Master Thesis, (2016)

The other research was conducted by Naol Abera¹³ on the “*role of the comprehensive refugee response framework on the protection of refugee rights in Ethiopia*”. Under this study he discussed that the increasing conflicts and other factors led the increment of the refugees in number in the world in an unprecedented manner. Hence, the world community has now come to an agreement by which the current refugee crisis is to be addressed significantly through global cooperation and shared responsibility among states of the world. Due to this understanding the world took commitment and signed the New York Declaration on the Global Compact and the Comprehensive Refugee Response Framework (CRRF) on Refugees and Migration. He discussed that as the CRRF is different from the past refugee responses by providing a more systematic and sustainable response that benefits both refugees and host community, Ethiopia has signed this declaration on 2017 and made nine pledges to take measures for the better protection of refugee rights in Ethiopia. As to the specific area to the current study, Naol discussed highlight the refugees’ right to freedom of movement based on the repealed proclamation No.409/2004 which restricts the freedom of movement; and he recommended the ratification of the new proclamation on the refugee protection in Ethiopia because he conducted this research at the time when the new proclamation was on the draft stage.

None of the above literatures particularly deal with the current study on the protection of refugees’ right to freedom of movement in Ethiopia. None of them addressed the scope, content and limitation of the refugees’ right to freedom of movement, and the challenges and prospects for the protection of this right in Ethiopia based on the new adopted law that means based on Proclamation No.1110/2019. These literatures serve as inputs to this work. Thus, the current study is aimed to assess the new proclamation on the protection of refugees right to freedom of movement and residence in light with international human rights standards and to fill the gaps in the prior works, and to show the challenges and to recommend the possible way outs.

1.9. Limitation of the Research

The main concern of this research is to assess whether the Ethiopia’s laws adequately protect refugee’s right to freedom of movement in light with the international laws. However, the researcher faced the scantiness of literatures covering the refugees’ right to freedom of

¹³ Naol Abera, *The Role of Comprehensive Refugee Response Framework on the Protection of Refugee Rights in Ethiopia*, Addis Ababa University School of Graduate Studies, (2019)

movement in Ethiopia. Besides, due to the doctrinal nature of the research the practical point of view may not be addressed except the reports of the concerned bodies.

1.10. Ethical Considerations

The researcher made utmost effort and due care to comply with ethical considerations of the research. To this effect, the researcher has taken due care to get permission and to properly preserve and to utilize data for the purpose of conducting this research only. Further, in the interpretation of data, the researcher provided an accurate account of the information and did not use language or words that are biased against persons because of their background.

1.11. Organization of the Study

The research comprises of four chapters. Chapter one introduces the research, discusses the statement of the problem, research questions and objectives, research methodology, significance of the study, scope of the research, limitation of the research and ethical considerations. Chapter two delves into the status of refugees' right to freedom of movement under international law. The customary international laws, the general principles of law, the Charter of the United Nations and human rights treaties have discussed under this chapter. The brief overview of the legal frameworks governing the refugees' right to freedom of movement at the international and regional level has discussed under this chapter. The critical assessment of the protection of the refugees' right to freedom of movement in Ethiopia is the discussion under chapter three. This chapter analyzes the adequacy and consistency of the domestic legal frameworks in Ethiopia for the protection of refugees' right to freedom of movement. The challenges and prospects in protecting refugees' right to freedom of movement are also addressed under this chapter. Finally, chapter four contains concluding remarks and possible recommendations of the research.

CHAPTER TWO: THE STATUS OF REFUGEES' FREEDOM OF MOVEMENT UNDER INTERNATIONAL LAW

2. An Overview of International Refugee Rights Standards

2.1. Introduction

The starting point of refugee rights is closely linked to the development of international human rights law. This chapter introduces the main sources of refugee rights and standards and the contribution of the main refugee treaties governing the human rights of refugees. In particular, the chapter discusses the international standards and principles by showing the status of the right to freedom of movement under these standards. This is because the rights of refugees under international law are derived from standards and principles of customary international law and conventions.¹⁴ The position of international law is that all rights which accrue to nationals of states should also be extended to refugees.¹⁵ The question that is often raised is whether access to basic rights is assured and applied fairly to all human beings regardless of their status in foreign states. In principle, the cornerstone and authority for international protection of refugees is enshrined in universal human rights law and treaties, which are the most relevant sources of refugee rights.¹⁶ It is cognizant that human rights norms are highly originated from customs or well-known standards or principles contained in the international laws. Thus, customary international law, general principles, the Charter of United Nations and the international human rights treaties are part of the discussion.

2.2. Customary International Law

It should be noted that customary international law is necessary for formalizing coherent and consistent practice among states. A principle or norm of international customary law is accepted as law only if it is recognized as such by states.¹⁷ The majority of states would consider customary international law legitimate only if the norm or standard is universally accepted, which is implied through acceptable and constant practice among states for some time including

¹⁴ Statute of the International Court of Justice, 59 Stat. 1055 (1945), adopted 26 June 1945, entered into force 24 Oct. 1945 (ICJ Statute), at Art. 38(1)

¹⁵ James C. Hathaway, *The Rights of Refugees under International Law*, Cambridge University Press, (2005) 34

¹⁶ *Ibid.*,

¹⁷ *Ibid.*,

an indication of the state's willingness to be committed to the obligations stipulated in the agreement or treaty.¹⁸

A composite list of the human rights argued by senior publicists to have acquired force as matters of customary law includes freedom from (1) systemic racial discrimination; (2) genocide; (3) slavery; (4) extrajudicial execution or enforced disappearance; (5) torture, cruel, inhuman, or degrading treatment; (6) prolonged arbitrary detention; and (7) serious unfairness in criminal prosecution.¹⁹ Of these, only the first freedom from systemic racial discrimination appears to be a clear candidate for customary international legal status.²⁰

Customary international law likely protects refugees from systemic racial discrimination, as well as from subjection to genocide or the most basic forms of slavery or prolonged arbitrary detention. Particularly, the customary law that prohibits prolonged arbitrary detention guarantees refugees' right to freedom of movement. This is because the right to be free from prolonged or arbitrary and indefinite detention is not dependent upon whether an individual is lawfully present in a country.

2.3. General Principles of Law

As it is commonly understood, a popular precept of law is set up not on the premise of uniform state practice but with the aid of the distinctive feature of the consistency of domestic laws across a significant range of states. International regulations can validly emerge in such situations due to the fact that states have already consented to the binding authority of the standard practice within their national spheres of governance.²¹

A general principle of law is accepted as a standard of international law if it is widely used in many states. The main test for establishing a general principle of law is to determine whether or not the proposed standard has been widely used and recognized within the legal system of a member state.

¹⁸ Ibid.,

¹⁹ This list includes those rights identified as matters of customary international law by any of American Law Institute, Restatement of the Law: The Foreign Relations Law of the United States (1987); Brownlie, Public International Law; R. Jennings and A. Watts eds., Oppenheim's International Law (1992) (Jennings and Watts, Oppenheim's); Meron, Human Rights; Schachter, International Law; or P. Sieghart, The Lawful Rights of Mankind (1985) (Sieghart, Rights of Mankind) as cited by Hathaway on foot note 69 of his book.

²⁰ Hathaway, (n 15) 36

²¹ Ibid., 39

Standards and principles of international law generally affirm these rights, and ensure that refugees are protected from arbitrary deprivation of their existence (life), torture, and a broad variety of discriminatory practices. The principle of prohibition of generalized discrimination against refugees is in any event now largely achieved by the binding duty of non-discrimination subsequently codified in the Human Rights Covenants. Art. 2 of each of the Covenant on Civil and Political Rights and the Covenant on Economic, Social and Cultural Rights prohibits discrimination on the basis of a list of grounds, including “other status.” Relying on this open-ended formulation, the duty of non-discrimination has been authoritatively interpreted to establish the general rule “that each one of the rights of the Covenant must be guaranteed without discrimination between citizens and aliens,”²² and specifically to require that rights not be limited to citizens of a state, but that they “must also be available to all individuals, regardless of nationality or statelessness, such as asylum-seekers and refugees.

2.4. The Charter of the United Nations

The Charter of the United Nations as a source of human rights sets out human rights obligations of states on the basis that states are considered as ‘trustees’ of the UN.²³ Under the Charter, states have pledged to ‘take joint and separate action in cooperation with the Organization’ in the protection of fundamental freedoms and human rights.²⁴ The pledge by member states is an indication of states’ intention to be responsible for any violation of human rights in their respective countries.

Under the Charter, states are anticipated to honor their human rights pledge, in situations where failure to honor this pledge may jeopardize conditions of stability and well-being between or amongst states. From this perspective, states have not devoted themselves to an all-embracing human rights task, but are duty-bound to recognize human rights if non-compliance might adversely affect relations among states.²⁵ This interpretation establishes reciprocity of rights and enforceability, since the Security Council is empowered to call for the compliance of states if it is necessary ‘for the preservation of international peace and protection’.²⁶ In *Barcelona Traction*

²² UN Human Rights Committee, “*General Comment No. 15: The Position of Aliens under the Covenant*” (1986), UN Doc. HRI/GEN/1/Rev.7, May 12, (2004) 140, Para. 2.

²³ Charter of the United Nations, San Francisco, the Twenty-Sixth day of June, (1945), arts 75-85

²⁴ *Ibid.*, arts 55-56

²⁵ *Ibid.*,

²⁶ See (n 15) 47

case the ICJ specifically referred to human rights obligations as having *erga omnes* effect.²⁷ According to the Court, the concept of reciprocity refers to obligations of a state towards the international community as a whole implying that all states have an interest in their enforcement.²⁸

Specifically, the Charter's commitment to non-discrimination on the grounds of race, sex, language, or religion is explicit. The Purposes of the United Nations are: ... to achieve international co-operation ...in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion''²⁹ Thus, the UN Charter adds little if anything to the above lists of customary international law and general principles of law.

2.5. Human Rights Treaties

As a principle of international law, treaties signed by member states require that states domesticate the provisions contained in the treaties by enacting relevant national laws, which subsequently forms a classic part of the national legal system. This is essential to ensure that human rights are protected and it is an obligation of states to report on their efforts in domesticating international human rights law.

Member states and signatories to the International Covenant on Civil and Political Rights undertake, amongst other things, to defend via national laws, the right of every human being not to be arbitrarily deprived of freedom of movement.³⁰ This treaty protects freedom of movement of persons lawfully in the country including refugees.

The International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families entered into force on July 1, 2003, though only a small minority of states has thus far ratified it.³¹ To the extent that refugees may avail themselves of this treaty's provisions, it helpfully imposes obligations to provide, for example, emergency healthcare, children's education, fair conditions and employment, and the right to be protected against abuse and attacks. More generally, non-citizens may invoke rights under the various conventions

²⁷ Barcelona Traction, *Light and Power Co. Ltd. (Belgium v. Spain)*, ICJ Reports, 1970, para.3

²⁸ Ibid.,

²⁹ UN Charter, (n 23) art. 1(3) and art 55(c)

³⁰ International Covenant on Civil and Political Rights, UNGA Res. 2200A (XXI), adopted Dec. 16, 1966, entered into force 23 Mar. 1976 (ICCPR), Art. 12(1)

³¹ UNGA Res. 45/158, adopted Dec. 18, 1990, entered into force July 1, 2003. Only twenty five states have both signed and ratified the treaty: www.unhchr.ch

established by the International Labor Organization to regulate migration for employment purposes.³²

The 1951 Refugees Convention along with its 1967 Protocol and the 1969 OAU Refugee convention remain critical sources of protection of refugees. In particular, these treaties set general principles of protection of refugees such as principle of non-refoulement and principle of non-discrimination; and they insulate many key civil and political rights from derogation; and more generally, the Refugee Convention entrenches a broad range of entitlements which are fundamental to avoiding the specific predicaments of involuntary alienage.³³

The principle of *non-refoulement* forms an essential protection under international human rights, refugee, humanitarian and customary law. It prohibits States from transferring or removing individuals from their jurisdiction or effective control when there are substantial grounds for believing that the person would be at risk of irreparable harm upon return, including persecution, torture, ill-treatment or other serious human rights violations. Under international human rights law the prohibition of *refoulement* is explicitly included in the Refugee Convention, Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) and the International Convention for the Protection of All Persons from Enforced Disappearance (ICPPED). In regional instruments the principle is explicitly found in the Inter-American Convention on the Prevention of Torture, the American Convention on Human Rights, and the Charter of Fundamental Rights of the European Union.

As such, the human rights treaties including Refugee Convention must be understood still to be the cornerstone of the refugee rights regime, even as it has been buttressed in important ways by more general norms of human rights law. Thus Refugee Convention protects refugees' right to freedom of movement for unlawfully and lawfully present refugees under article 31 and article 26, respectively.

2.6. Conclusion

To sum up, there is little reason to believe that the freedoms of refugees can be adequately safeguarded simply by reliance on universally applicable norms of human rights law. Customary

³² In 1939, the ILO adopted Convention No. 66, the Convention concerning the Recruitment, Placing and Conditions of Labor of Migrants for Employment, together with the accompanying Recommendation No. 61, Recommendation concerning the Recruitment, Placing and Conditions of Labor of Migrants for Employment. Convention No. 66 never secured sufficient ratifications to enter into force.

³³ See (n 15) 153

international law likely protects refugees from systemic racial discrimination, as well as from subjection to genocide or the most basic forms of slavery. General principles of law likely confirm these rights, and establish in addition the right to be protected from arbitrary deprivation of life, torture, and a broader range of discriminatory practices. The UN Charter, even if viewed as a general source of human rights, adds little if anything to this list. In short, the right to freedom of movement has a vital place under the general international standards with reference to treaty-based human rights laws and most specifically to the Refugee Convention and the Covenants on Human Rights.

2.7. THE PROTECTION OF REFUGEES' RIGHT TO FREEDOM OF MOVEMENT

The right to freedom of movement is contained in article 13 of Universal Declaration of Human Rights (UDHR), article 26 of Geneva Convention on the status of Refugees (Refugee Convention), articles 12 and 13 of the International Covenant on Civil and Political Rights (ICCPR), article 10 of the Convention on the Rights of the Child (CRC) and article 18 of the Convention on the Rights of Persons with Disabilities (CRPD), article 5 of the Convention on the Elimination of All Forms of Racial Discrimination (CERD) and article 15 of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). These above mentioned conventions and declarations dealt with the right to freedom of movement of the specific groups of persons they concerned with. However, the UDHR, ICCPR and Refugee Conventions are the relevant international human rights instruments that govern the refugees' right to freedom of movement.

This chapter tries to confer the general concept, scope and limit of the refugees' right to freedom of movement. Undeniably, the discussion in this chapter mainly focused on the right to freedom of movement from the international perspective since most of the human right provisions in the domestic constitutions of many countries spring out from international human right instruments.

2.8. What is Freedom of Movement?

Freedom of movement is part of the "liberty of man"³⁴ thus making it one of the most basic human rights.³⁵ Freedom of movement is a human right concept which asserts that a citizen of a

³⁴ Stig Jagerskiold, The Freedom of Movement, in the International Bill of Rights: The Covenant on Civil and Political Rights, (Louis Henkin Ed., 1981) 166, as cited by global commission on international migration, available online at <http://www.gcim.org> > accessed on July 19, 2020

state in which that citizen is present has the liberty to travel, reside in, and/or work in any part of the state where one pleases within the limits of respect for the liberty and rights of others and to leave that state and return at any time.³⁶ According to Fitzpatrick the essence of freedom of movement and residence is the right to choose one's own residence and to determine where and when one wishes to travel.³⁷ Hence, looking freedom of movement and residence as two separate freedoms is incorrect assumption. Freedom of movement and residence includes the right to free travel and at the same time the right to choose one's own residence. The right to freedom of movement and residence is not only about freedom to move and reside but it is also the freedom to remain in the place of one's choice.

Thus, the Human Rights Committee defined Liberty of movement as an indispensable condition for the free development of a person. The committee stated that this right interacts with several other rights enshrined in the Covenant, as is often shown in the Committee's practice in considering reports from States parties and communications from individuals³⁸.

The committee also commented that everyone lawfully within the territory of a State enjoys, within that territory, the right to move freely and the question whether an alien is "lawfully" within the territory of a State is a matter governed by domestic law, which may subject the entry of an alien to the territory of a State to restrictions, provided they are in compliance with the State's international obligations.³⁹ In that connection, the Committee has held that an alien who entered the State illegally, but whose status has been regularized, must be considered to be lawfully within the territory for the purposes of article 12(2) of the ICCPR. Once a person is lawfully within a State, any restrictions on his or her rights guaranteed by article 12, paragraphs 1 and 2, as well as any treatment different from that accorded to nationals; have to be justified under the rules provided for by article 12, paragraph 3.⁴⁰

³⁵ Ibid.,

³⁶ Postema Gerald, *Racism and the law: the legacy and lessons of Plessey*, Oxford University Press (1997) 40

³⁷ Fitzpatrick Joan, *Human Rights Protection for Refugees, Asylum-Seekers, and Internally Displaced Persons, A Guide to International Mechanisms and Procedures*, New York, USA, Transnational Publishers Inc, (2002) 11

³⁸ GC No.27, (n 5) para.1

³⁹ Ibid., Para.4

⁴⁰ Ibid. para.3 of article 12 of the ICCPR provides objective grounds on which the differential treatments can be applied by the states.

2.8.1. The Scope of the Right to Freedom of Movement

The right to freedom of movement has three components.⁴¹ The first one is the right to freedom of movement within a country, which includes the right to choose where to live within the country. People must be able to move freely and choose a place of residence within a country without restrictions, including establishing a purpose or reason for doing so. Governments have a duty to ensure that a person's freedom of movement is not unduly restricted by others, including private persons or companies. The right applies to all persons lawfully within state territory, not only to such state citizens. In the international context, the right to freedom of movement within countries is an important consideration as it relates to the special needs of internally displaced persons including with regard to return, reintegration and resettlement options. International law does allow a country to impose restrictions on who may enter it. A country may allow entry to a non-citizen on conditions that allow the person lesser rights of freedom of movement to those of citizens, provided those restrictions comply with the country's international obligations. For example, some work visas impose conditions on a visa holder to reside and work in a particular region. However, a non-citizen lawfully within Ethiopia whose entry into Ethiopia has not been subject to restrictions or conditions is entitled to the same right to freedom of movement as an Ethiopian citizen. For the purpose of this thesis, this component is the subject of the discussion under this paper.

The second component is the right to leave any country, regardless of your citizenship. The freedom to leave a country pertains to short, long term and permanent departures. It cannot be made dependent on establishing a purpose or reason for leaving. Citizens have a right to obtain passports or other travel documents from their country of citizenship. The right to leave, and to possess a passport, may be restricted, most notably if the person's presence is required due to their having been charged with a criminal offence.

The third one is the right to enter a country of which you are a citizen: The UN Human Rights Committee has stated that in no case may a person be arbitrarily deprived of the right to enter his or her own country, and that there are few, if any, circumstances in which deprivation of the right to enter a person's own country could be considered reasonable.⁴² Thus, the right to enter a

⁴¹ Attorney Generals Department, *The Right to Freedom of Movement and Residence in the Australian Human Rights Framework*, prepared by the public sector education program (2008)

⁴² *ibid.*,

country of which you are a citizen is the third most important concept of the right to freedom of movement and residence.

2.8.2. Limits of the Right to Freedom of Movement

In spite of the claim to universality and inalienability, human rights are not exercised in an absolute manner.⁴³ There is a limitation imposed on the exercise of rights for the sake of making an optimal “utilization” or enjoyment of rights.⁴⁴ Limitations can take various forms such as restriction, suspension, or derogation from. Each of these forms affects the exercise of rights in different ways and to a varying degree. Thus restrictions circumscribe the manner, or place, and the extent to which rights can be enjoyed or exercised in a particular set of circumstances, often in normal times. Suspension leads to the temporary non-application of one or more rights because of an unusual difficulty in which a state finds itself.⁴⁵

Derogation refers to the possibility of acting in a manner deviating from the accepted standards of behavior vis-a-vis rights. It entails acting like there are no human rights at all.⁴⁶ Under article 4 of the ICCPR, countries may take measures derogating from certain of their obligations under the covenant, including the right to freedom of movement in time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed. Such measures may only be taken to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, color, sex, language, religion or social origin.

Further, the right can be restricted under domestic law on any of the grounds in article 12(3) of the ICCPR, namely national security, public order, public health or morals or the rights and freedoms of others. The Human Rights Committee has stated that restrictions should not only serve the permissible purposes; they must also be necessary and proportionate to protect them and must be the least intrusive means of achieving the desired result. Thus, it is often

⁴³ Hollamby Gordon., “*The Limitation Clause*” in Nel. F. and Bezuidenhout (eds.), *Policing and Human Rights* (2nd Ed.). Lansdowne: Juta & Co. Ltd, (2002)

⁴⁴ Ibid.,

⁴⁵ Tsegaye Regassa, *Making Legal Sense of Human Rights: The Judicial Role in Protecting Human Rights in Ethiopia*, *Mizan Law Review*, Vol. 3, No. 2, (2009) 288

⁴⁶ Ibid.,

underscored that limitations should meet the requirements of the principles of legality; necessity; rationality; proportionality; and sanctity of life, dignity, and equality.⁴⁷

Most human rights instruments permit States to place restrictions on freedom of movement and residence during situations of tension and disturbance in limited situations.⁴⁸ However, failure to act within these limits will make a decision to confine refugees in a designated areas or places arbitrary; in other words, a decision that is not in accordance with the law and incompatible with standards protecting liberty and security of person will be in violation of the right to freedom of movement. Freedom of movement may only be limited where such restrictions are: Provided by law that is to say the right to move is written in national legislation, and are necessary to protect: national security which is only endangered in cases of grave political or military threat to the entire nation; public order, public health or morals which can only be justified if the health dangers are acute (for example, the case of Corona virus or Covid-19); and must not be inconsistent with other State obligations under international law. Therefore any interference with the rights to freedom of movement and choice of residence must be balanced. It must pursue a legitimate aim and be proportional to that aim.⁴⁹

The International Covenant on Civil and Political Rights (ICCPR) requires that the right to freedom of movement and residence might be restricted, either by way of derogation under article 4 of the ICCPR, or to protect national security, public order, public health or morals or the rights and freedoms of others, as allowed by article 12(3). Any limitations to freedom of movement rights should be reasonable, proportionate and serve a legitimate State interest.⁵⁰

Under article 4 of the ICCPR, countries may take measures derogating from certain of their obligations under the Covenant, including the right to freedom of movement ‘in time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed.’⁵¹ Such measures may only be taken ‘to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, color, sex, language, religion, social origin or nationality.

⁴⁷ Ibid.,

⁴⁸ *Who are Internally Displaced Persons, A Module on the Training of Internally Displaced Persons*, p. 3, available in <http://www.internaldisplacement.org>

⁴⁹ Ibid.,

⁵⁰ Ibid.,

⁵¹ ICCPR, (n 29) art.4

Further, the right can be restricted under domestic law on any of the grounds in article 12(3) of the ICCPR, namely national security, public order, public health or morals or the rights and freedoms of others.⁵² The Human Rights Committee has stated that restrictions should not only serve the permissible purposes; they must also be necessary and proportionate to protect them and must be the least intrusive means of achieving the desired result.⁵³

Limitations placed on freedom of movement must be shown to be necessary not in abstract, but in the particular factual circumstances. There is at least a presumption that the personal freedom of refugees will generally be unimpaired in country of asylum. The permissible rationale of movement restrictions derives from the object and purpose of the laws governing the issues.

2.9. Refugees' Right to Freedom of Movement

Article 26 of the 1951 Convention provides that member states should ensure that refugees lawfully in its territory have the right to freedom of movement. However, this right is subject to the national laws applicable to foreigners in similar circumstances as refugees.⁵⁴

Although refugees are granted refugees status and allowed to enjoy international protection in the country of asylum, restrictions on their freedom of movement and their rights to choose a place of residence are usually imposed on them through regulations and legislation. It is often illegal for refugees to live outside designated areas without authorization. For example, an official in Malawi lamented that refugees were breaking the law that requires that refugees are confined to camps and are not allowed to move freely.⁵⁵

Zambia, Kenya and Uganda's national refugee laws have provisions that restrict refugees to camps and criminalize the right of refugees to move freely and to choose a place of residence without express authorization from the responsible government official.⁵⁶ According to Hathaway, Burundians in Tanzania were not only forced into camps, but 'said their requests to

⁵² Ibid, art. 12(3)

⁵³ Ibid., art.12(4)

⁵⁴ Refugee Convention, (n 2) Art.26: 'Each Contracting State shall accord to refugees lawfully in its territory the right to choose their place of residence and to move freely within its territory subject to any regulations applicable to aliens generally in the same circumstances.'

⁵⁵ Willy Gidala, *African Eye News Service*, Nov. 8, 2000, quoting Deputy Commissioner for Relief and Rehabilitation

⁵⁶ Human Rights Watch, '*Hidden in Plain View*,' Nov. 2002: 'Refugees in these countries who violate the rules requiring them to live in camps and who move to urban areas – Nairobi and Kampala in particular – have been essentially abandoned by the host governments, and have been subjected 'to beatings, sexual violence, harassment, extortion, arbitrary arrest and detention'.

leave the camp in order to locate their spouses and children or to return to their home areas to sell their possessions were repeatedly ... denied by camp commanders.⁵⁷

Hathaway further asserts that enforcing the laws and policies to restrict refugees' free movement and where to live, is becoming increasingly difficult because the refugee camps are not enclosed, allowing refugees to leave the designated camp and become self-settled among the host communities in the surrounding villages.⁵⁸ Sommers confirms that most refugees simply become self-settled in violation of the law and are ready to face the consequences of living outside the camps without authorization.⁵⁹

Furthermore, even in situations where refugees are allowed to live in urban settings and not necessarily restricted to camps, they often times find it hard to enjoy their freedom of movement. In Zambia, for instance, only certain categories of refugees such as professionals, traders and students are allowed to live in urban areas, but not even these persons have the freedom to move freely considering that most of them, despite satisfying the criteria, are unable to afford the exorbitant fees for the permit.⁶⁰

It should be noted that Article 26 is only applicable to persons that have been granted refugee status and therefore, are legally living in the country of refuge. It does not have an effect on the conditions imposed on asylum seekers whose application for legal status is still pending. States should not discriminate between or against refugees when applying Article 26. In as much as a refugee is restricted in his freedom to seek employment, this could additionally entail a limit to select his place of residence.⁶¹

2.10. Freedom of Movement upon Arrival

Assuming the refugee somehow gained entry to a state, is he entitled to freedom of movement within that state? The answer varies along with the lawfulness of his presence in the country concerned. The 1951 Convention differentiates between unlawful and lawful presence with respect to freedom of movement. The 1951 Convention addresses freedom of movement of refugees who are unlawfully in the country of refuge in article 31(2), and that of refugees who

⁵⁷ Ibid., (n 15) 698

⁵⁸ Ibid., 699

⁵⁹ Sommers, M., 'Young, Male and Pentecostal: Urban Refugees in Dar es Salaam, Tanzania,' *Journal of Refugee Studies*, Vol.14, 4 (2001) 348

⁶⁰ Ibid., (n 15) 700

⁶¹ Ibid., 91

are lawfully in the country of refuge in article 26. As to those who are unlawfully in the country of refuge, the discussion will start with the lack of freedom of movement because of detention.

2.10.1. Unlawfully Present Refugees

Article 31(2) of the 1951 Refugee Convention is confined to refugees who are unlawfully in their country of refuge; come directly from a territory where their life or freedom was threatened in the sense of article 1 of the 1951 Convention; present themselves without delay to the authorities; and show good cause for their illegal entry or presence. Unlike this article, article 9 of the ICCPR applies to everyone, including refugees and asylum seekers.⁶² Article 9(1) provides that: Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.

In view of the fact that article 9 applies to everyone, article 9 will be addressed first; subsequently article 31(2), including the question as to the added value of this provision in relation to article 9.

2.10.1.1. ICCPR Article 9 and the Detention of Refugees

Article 9(1) addresses both liberty and security of person; this paragraph discusses only liberty of person that is, freedom from confinement of the body.⁶³ Deprivation of liberty includes police custody, remand detention, administrative detention, confinement to a restricted area, and imprisonment.⁶⁴ In this regard, the HRC in Oleg-Volchek case notes that art 9 (3) of the Covenant applies to persons arrested or detained on criminal charges and accordingly assessed whether administrative detention falls under art 9. Then the Committee notes that the concept of administrative detention has to be understood within the meaning of the Covenant, hence, it falls under criminal charge.⁶⁵ Actual deprivation of liberty is subject to the requirements that it is not arbitrary and is authorized by domestic law.⁶⁶ The HRC in above case referred paragraph 12 of its general comment No.35, in which it clarified the notion of arbitrary detention, indicating that “arbitrariness” is not to be equated with “against the law”, but must be interpreted more broadly

⁶² HRC, GC. No. 35: Article 9 (Liberty and Security of Person), Para. 3

⁶³ Ibid.,

⁶⁴ Ibid., Para 5

⁶⁵ Oleg-Volchek v. Belarus, HRC, Comm. No.2337/2014, UN.Doc CCPR/c/129/D/2337/2014, para.6.5(16 Oct 2020)

⁶⁶ GC N.35, Para 11, (The HRC cautions that the latter does not automatically entail the former, i.e. detention may be legally permitted yet be arbitrary)

to include elements of inappropriateness, injustice, lack of predictability and due process of law, as well as elements of reasonableness, necessity and proportionality.⁶⁷

The ICCPR does not provide an enumeration of permissible reasons for depriving a person of liberty, but the HRC addressed detention during proceedings for the control of immigration in its General Comment on article 9. It deems such detention not *per se* arbitrary, but detention “must be justified as reasonable, necessary and proportionate in the light of the circumstances and reassessed as it extends in time.”⁶⁸ As to refugees’ who unlawfully enter a state’s territory, the HRC observed that they may be detained for a brief initial period in order to document their entry, record their claims and determine their identity if it is in doubt. To detain them further while their claims are being resolved would be arbitrary in the absence of particular reasons specific to the individual, such as an individualized likelihood of absconding, a danger of crimes against others or a risk of acts against national security. The decision must consider relevant factors case by case and not be based on a mandatory rule for a broad category; must take into account less invasive means of achieving the same ends, such as reporting obligations, sureties or other conditions to prevent absconding; and must be subject to periodic re-evaluation and judicial review.⁶⁹

By way of conclusion, on this point, detention can only take place on an individual basis; individual circumstances must be examined, and group-based detention decisions are prohibited.

2.10.1.2. Freedom of Movement of Unlawfully Present Refugees

Both detention and measures short of detention that nonetheless restrict the movement of refugees are covered by article 31(2) of the 1951 Convention. The provision reads as: The Contracting States shall not apply to the movements of such refugees restrictions other than those which are necessary and such restrictions shall only be applied until their status in the country is regularized or they obtain admission into another country. The Contracting States shall allow such refugees a reasonable period and all the necessary facilities to obtain admission into another country.

Article 31(1) identifies the beneficiaries of the immunity from penalties for illegal entry or presence, and the sub-article 2 of art 31 continues to spell out what else states should refrain

⁶⁷ Oleg-Volchek v. Belarus, para.7.3

⁶⁸ GC (n 64)., para 18

⁶⁹ Ibid.,

from doing regarding the same persons (unlawfully present refugees), that is, not applying any other restrictions to their movements than those which are strictly necessary; and article 31(2) sets limits to restrictions the state concerned may apply to the freedom of movement of those who subjected themselves to the authorities in conformity with article 31(1). As to individual refugees, they must satisfy the various qualifying criteria enumerated in article 31(1): coming directly from a territory where their life or freedom was threatened, presenting themselves to the authorities without delay, and showing good cause for their illegal entry or presence.

Restrictions on freedom of movement for unlawfully present refugees are allowed, provided they are “necessary” meaning that in the sense of article 31(2), it is worth noting that the drafters had suggested restrictions to cover “security” and “special circumstances.” Another restriction can be derived from article 31(2), which provides that any measures taken under article 31(2) may only be applied until the status of the refugees is regularized or until they obtain admission into another country. A third restriction is that any restrictive measures that are taken should not be of a discriminatory nature: the 1951 Convention prescribes in article 3 that the provisions of the Convention shall be applied without discrimination as to race, religion, or country of origin. Nonetheless, if restrictions are induced by considerations of public health, for instance, when a group of refugees has been exposed to a contagious disease in their country of origin, it would seem this requirement would have to yield. Lastly, any measure taken to restrict the freedom of movement of refugees under article 31(2) can only be of a temporary nature since “restrictions shall only be applied *until* their status in the country is regularized or they obtain admission into another country”.

2.10.3. Lawfully Present Refugees

The 1951 Convention distinguishes between, different modes of attachment to the country of refuge, each of which corresponds to particular entitlements. Confined to those who are physically present in the country of refuge, the Convention predicates entitlements on simple presence, lawful presence, lawful stay, and durable residence.⁷⁰ The modes of attachment should keep the fact of differentiation of the levels in the convention assuming that the drafters did differentiate those levels of attachment on purpose.

⁷⁰ Marjoleine Zieck, *Refugees and the Right to Freedom of Movement: From Flight to Return*, 39MIC. J. Int.l L. 19(2018) 80 available at <https://repository.law.umich.edu/mjil/vol39/iss1/3>

Robinson suggests lawful presence as the mere fact of lawfully being in the territory, even without intention of permanence, must suffice.⁷¹ Grahlmsden similarly includes those who are temporary present: A refugee may be “lawfully in the territory of a Contracting State,” even if he is not “lawfully staying there.” The expression used in the present Article 18, and also in Articles 26 and 32, comprises all refugees who are physically present in the territory, provided that their presence is not unlawful. It includes short-time visitors and even persons merely travelling through the country.⁷²

The right to freedom of movement guaranteed in article 12(1) of the ICCPR is also predicated on lawful presence, and the question is what “lawful presence” should be taken to mean under the ICCPR? Presence is lawful when an alien has entered a state’s territory in accordance with its legal system and/or is in possession of a valid residence permit; the presence of an alien who entered the state illegally, but whose status is regularized, is lawful too.⁷³ The HRC explicitly stated that the question of whether an alien is “lawfully” within the territory of a state is a matter governed by domestic law, which may subject the entry of an alien to restrictions, which need to be in compliance with the state’s international obligations,⁷⁴ such as for instance the 1951 Convention. The Human Rights Committee also noted that the notion of “lawful presence” in article 12 appears consequently to be identical to that used in the 1951 Convention: a presence that is not unlawful.

2.10.5. Restrictions to the Refugees’ Right to Freedom of Movement

Article 26 provides two rights the right to freedom of movement and the right to choose one’s place of residence, and subjects both rights to “*any regulations applicable to aliens generally in the same circumstances.*” This Article prescribes equal treatment as aliens; in case particular restrictions apply to “certain classes of aliens,” provided they find themselves in the same circumstances as those aliens. From the perspective of refugees: article 26 grants freedom of movement and choice of residence to refugees, but allows restrictions provided these also apply to other aliens in the country of refuge. It does not, in other words, indicate whether particular

⁷¹ Nehemiah Robinson, *Convention Relating to the Status of Refugees: Its History and Interpretation: A Commentary* 19 (1955), <http://www.unhcr.org/home/PUBL/3d4ab67f4.pdf>

⁷² Atle Grahlmsden, *Commentary on the Refugee Convention 1951, Articles 2–11, 13–37*, art. 7(2) (UNHCR 1997) (1963) (qualifying this provision as one of the most important provisions of the 1951 Convention that gives refugees the full protection of international law, which places refugees on an equal footing with persons with an effective nationality).

⁷³ *Celepli v. Sweden*, HRC, Comm. No. 456/1991, UN doc. CCPR/C/51/D/456/1991 (Jul. 26, 1994)

⁷⁴ *Ibid*

restrictions are compatible with the rights granted in article 26 as long as they apply, in essence, in a non-discriminatory manner to refugees and other aliens alike, if their presence in the country is lawful.⁷⁵

A comparable exception to article 26, which has been suggested by a contemporary commentator, is to confine the freedom of movement of asylum seekers to an assigned area if it is restricted to “situations of mass influx, or to the procedural situation of investigating the identity of, and possibly security threat posed by an individual seeking recognition of refugee status.”⁷⁶ This and the same applies *ipso facto* to the unsettling example given by Robinson on the confinement of refugees in camps seems plainly wrong, since these two specific concerns were addressed by the drafters and accommodated in article 31(2) of Refugee Convention.

In short, article 26 does not exclude restrictions to refugees lawfully in its territory regarding choice of place of residence and ability to move freely within its territory, provided these restrictions affect refugees and other aliens in the country alike. Beyond that, any whim regarding restrictions, provided it is applied in a non-discriminatory manner, would go, unless, of course, the restrictions would violate article 12 paragraphs (1) and (3) of the ICCPR.

2.10.6. Restrictions on Freedom of Movement Based on ICCPR Article 12

The main question is how any restrictions on the right of liberty of movement and the freedom to choose residence that are justified under article 12(3) and, in times of a public emergency, under article 4 ICCPR, would affect the scope of the same rights given in article 26 of the 1951 Convention.

Article 12, paragraph 3, provides for exceptional circumstances in which rights under paragraphs 1 and 2 may be restricted. This provision authorizes the State to restrict these rights only to protect national security, public order (*ordre public*), public health or morals and the rights and freedoms of others. To be permissible, restrictions must be provided by law, must be necessary in a democratic society for the protection of these purposes and must be consistent with all other rights recognized in the Covenant. With respect to those other rights, of particular relevance in the present context is ICCPR article 2(1), which prohibits discrimination on virtually any ground

⁷⁵ Zieck (n 68), 83

⁷⁶ Reinhard Marx, *Article 26, in Zimmermann*, 1164. Marx refers to EU law the Reception Directive (of 2003)—that entitles EU member states to restrict the right to move freely within their territory. The relevant Directive has been superseded by a recast version: Directive 2013/33/ EU of the European Parliament and of the Council laying down standards for the reception of applicants for international protection (recast) of 26 June 2013.

including national origin.⁷⁷ The HRC explicitly addressed the issue of freedom of movement in this respect: Once an alien is lawfully within a territory, his freedom of movement within the territory and his right to leave that territory may only be restricted in accordance with article 12, paragraph 3. Differences in treatment in this regard between aliens and nationals, or between different categories of aliens, need to be justified under article 12, paragraph 3.

2.11. Objective Grounds for Restriction of Freedom of Movement

2.11.1. On the Ground of Legality Principle

The Human Rights Committee under its general comment expressed that the law itself has to establish the conditions under which the rights may be limited. State reports should therefore specify the legal norms upon which restrictions are founded. Restrictions which are not provided for in the law or are not in conformity with the requirements of article 12(3) would violate the rights guaranteed by paragraphs 1 and 2 of art 12 of the ICCPR.⁷⁸

In adopting laws providing for restrictions permitted by article 12, paragraph 3, States should always be guided by the principle that the restrictions must not impair the essence of the right; the relation between right and restriction, between norm and exception, must not be reversed. The laws authorizing the application of restrictions should use precise criteria and may not confer unfettered discretion on those charged with their execution. For instance, the HRC in one case notes that the presidential decree ordered to expel all Turkish citizens affiliated with the school Colégio Esperança Internacional in Angola without consideration of individual cases and the lack of an effective remedy for the authors to challenge their expulsion, to submit arguments against their expulsion and to have their case reviewed by the competent authority, amounts to a violation of article 13 of the Covenant.⁷⁹

2.11.2. On the Ground of Necessity

Article 12, paragraph 3, clearly indicates that it is not sufficient that the restrictions only serve the permissible purposes; but they must also be necessary to protect them. Restrictive measures must conform to the principle of proportionality; they must be appropriate to achieve their

⁷⁷ UN Human Rights Committee, “*General Comment No. 15: The Position of Aliens under the Covenant*” (1986), UN Doc. HRI/GEN/1/Rev.7, May 12, (2004) 140, Para. 2

⁷⁸ GC, No. 27, (n 5), para.12

⁷⁹ *A.G., I.Y., I.O., S.U., B.K., Y.C., T.M., H.A., S.M., M.K., R.K., A.K., B.D., G.C., A.D., E.A., and M.B. v. Angola*, HRC, *Comm.No.3016/2018-3122/2018, CCPR/c/129/D/3106/2018-3122/2018, (18 Dec.2020)*

protective function; they must be the least intrusive instrument amongst those which might achieve the desired result; and they must be proportionate to the interest to be protected.⁸⁰

Nogales and Lang in their paper stated that COVID-19 policies in the European Union and the United States have severely restricted free movement, migration, and asylum rights, in particular putting into jeopardy the human rights of refugees.⁸¹ Both the European Union and the United States have locked down their borders in response to the COVID-19 pandemic. At least some aspects of these closures violate international law, and all raise the question of whether public health is an adequate legal justification for the measures taken in the name of the COVID-19 pandemic that restricts the human rights of migrants, including asylum seekers. The border closures also raise the question of whether public health is the actual reason for restricting entry, or whether it is merely a vehicle for disguising otherwise unlawful political choices.⁸²

The principle of proportionality has to be respected not only in the law that frames the restrictions, but also by the administrative and judicial authorities in applying the law. States should ensure that any proceedings relating to the exercise or restriction of these rights are expeditious and that reasons for the application of restrictive measures are provided.⁸³ Regarding the right to movement within a country, the Committee has criticized provisions requiring individuals to apply for permission to change their residence or to seek the approval of the local authorities of the place of destination, as well as delays in processing such written applications.

2.11.3. On the Ground of Consistency

The application of the restrictions permissible under article 12(3) needs to be consistent with the other rights guaranteed in the Covenant and with the fundamental principles of equality and non-discrimination. Thus, it would be a clear violation of the Covenant if the rights enshrined in article 12, paragraphs 1 and 2, were restricted by making distinctions of any kind, such as on the basis of race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. In examining State reports, the Committee has on several occasions found that measures preventing women from moving freely or from leaving the

⁸⁰ Ibid., (n 5), para.14

⁸¹ Jaya Ramji-Nogales and Iris Goldner Lang, *Freedom of Movement, Migration, & Borders*, Temple University, vol.19, No.5, (2020) 599

⁸² Ibid.,

⁸³ Ibid., (n 5), para.15

country by requiring them to have the consent or the escort of a male person constitute a violation of article 12.⁸⁴

Any such differences in treatment would, however, be incompatible with article 26. In the absence of a substantive ban against restrictions to the rights concerned in article 26, any measure that restricts the freedoms granted in ICCPR article 12(1) that can be considered to be lawful in the sense of article 12(3) would also be lawful under article 26 unless the measure taken is refugee-specific in which case the measure could be deemed lawful under the ICCPR but not under the 1951 Convention. Article 26 may thus ward off any measure that does not treat refugees and aliens alike, but in the absence of any other delimitation, in principle virtually any restrictive measure short of denying rights altogether could be taken, provided it affects aliens and refugees alike. The absence of a substantive delimitation may be countered by the safeguards comprised in article 12(3), which requires that any restriction should be provided by law, and satisfy a number of other conditions. The same applies to the more intrusive restrictions that would be allowed in times of public emergency under ICCPR article 4. These too are strictly delimited.⁸⁵

Is there other ground other than mentioned above to limit the refugee's right to freedom of movement and residence? Or is confining refugees in the camps or designating places and areas where refugees should live a legal ground?

2.11.4. Confining Refugees in Camps?

The 1951 refugee convention makes no reference of any kind to 'refugee camps.' The 1969 OAU refugee convention also offers nothing regarding the term 'refugee camp'. Once an individual has entered a country and has been recognized on either a *prima facie* or individualized basis as a refugee, his or her rights and duties as a refugee under international law do not change based on whether he or she is located in a city or a refugee camp. The same international standards, originating from the Refugee Convention or the OAU Refugee Convention or other forms of human rights law apply irrespective of where a refugee lives within a particular country.⁸⁶ The Refugee Convention affords refugees the right to freedom of

⁸⁴ Ibid., para.18

⁸⁵ Zieck (n 68), 87

⁸⁶ UNHCR's Executive Committee (ExCom) has reiterated the importance of respecting other human rights of refugees, not merely those established in the Refugee Convention, on numerous occasions. *See, e.g.* "Conclusion on Safeguarding Asylum," ExCom Conclusion No. 82 (1997) para. (vi) (Reiterating "the obligation to treat asylum-

movement, subject to any restrictions applicable to aliens generally in the same circumstance. While the Refugee Convention provides for this right, it has been better elaborated upon and is more protective in the ICCPR, which is complementary to the Refugee Convention on this subject, and to which Ethiopia is party. The Human Rights Committee has recognized that the ICCPR must apply "without discrimination between citizens and aliens."⁸⁷ The term "aliens" includes asylum seekers and refugees. The Committee further notes that, "Aliens have the full right to liberty and security of the person.... They have the right to liberty of movement and free choice of residence.... These rights of aliens may be qualified only by such limitations as may be lawfully imposed under the Covenant."⁸⁸

This right to freedom of movement can only be restricted as "provided by law" if "necessary to protect national security, public order, public health, or morals, or the rights and freedoms of others."⁸⁹ This right can be understood as: Every non-citizen (including an asylum seeker or refugee) who is lawfully present in a country must enjoy the right to freedom of movement. Limits enacted in law can be placed on this right if a non-citizen is not lawfully present; and became a threat to national security, public order, public health, etc. The governments cannot discriminate between the freedom of movement rights of non-citizens and citizens as well as different categories of non-citizens, unless non-citizens present a threat to national security, in which case the limits on the right must be enacted in law. UNHCR's Executive Committee has encouraged "States to intensify their efforts to protect the rights of refugees . . . to avoid unnecessary and severe curtailment of their freedom of movement."⁹⁰

Camp confinement policies are not the same as arbitrary and indefinite detention. However, there are some important comparisons to be drawn that should guide governments when confining refugees to camps. The ICCPR sets forth the following protection against arbitrary and indefinite detention: Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedures as are established by law.⁹¹ It also requires that detained

seekers and refugees in accordance with applicable human rights and refugee law standards as set out in relevant international instruments.").

⁸⁷ *GC No.15, (n 21)* Para. 2.

⁸⁸ *Ibid.*,

⁸⁹ ICCPR, (n 29) art 12(3)

⁹⁰ ExCom General Conclusion on International Protection No. 65 (1991) (c)

⁹¹ *Ibid.*, (n 29) art 9(1)

individuals have access to a court to determine the lawfulness of the detention: Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.⁹² Similarly, the African Charter on Human and Peoples' Rights states that, "*Every individual shall have the right to liberty and to the security of his person. No one may be deprived of his freedom except for reasons and conditions previously laid down by law. In particular, no one may be arbitrarily arrested or detained*".⁹³ The right to be free from arbitrary and indefinite detention is not dependent upon whether an individual is lawfully present in a country. UNHCR has repeatedly reminded governments that the detention of asylum seekers, some of whom may enter a country unlawfully, is inherently undesirable. Refugees should not be arbitrarily detained.

Interpreting the Refugee Convention and norms of international human rights law, UNHCR's *Revised Guidelines* define detention as "confinement within a narrowly bounded or restricted location, including prisons, closed camps, detention facilities or airport transit zones, where freedom of movement is substantially curtailed, and where the only opportunity to leave this limited area is to leave the territory."⁹⁴ In addition, UNHCR *Guidelines* state that, "persons who are subject to limitations on domicile and residency are not generally considered to be in detention."⁹⁵ Finally, UNHCR notes that, "the cumulative impact of the restrictions as well as the degree and intensity of each of them should also be assessed."⁹⁶

2.12. Alternatives to Camps

The UNHCR introduced a policy on alternatives to camps whose purpose is to pursue alternatives to camps, whenever possible, while insuring that refugees are protected and assisted effectively and are able to achieve solutions.⁹⁷ Pursuing alternatives to camps means working to remove such restrictions so that refugees have the possibility to live with greater dignity, independence and normality as members of the community, either from the beginning of

⁹² Ibid., art 9(4)

⁹³ African Charter on Human and Peoples' Rights, OAU Doc. CAB/LEG/67/3/Rev.5, art.6

⁹⁴ UNHCR, *Revised Guidelines on Applicable Criteria and Standards Relating to the Detention of Asylum Seekers*, February 1999, para.1 (noting that "the detention of asylum seekers is, in the view of UNHCR inherently undesirable.").

⁹⁵ Ibid.,

⁹⁶ Ibid.,

⁹⁷ UNHCR, *Policy on Alternatives to Camps*, unhcr/hcp/2014/9, entered into force 22 July (2014) 4

displacement or as soon as possible thereafter. The possible alternatives to camps are also as diverse as the refugees and the communities, cultures and laws and policies of the countries where they reside. They will be defined by the degree to which refugees are able to exercise their rights, such as the ability to move freely, choose where to live, work or open a business, cultivate land or access protection and services.⁹⁸

Host governments may claim upon the establishment of camps for reasons of public order or security. Camps may be seen as providing better control over the presence and movement of refugees and as a way easing the potential for tension between them and local communities.⁹⁹

Policies restricting refugees to camps may also be motivated by concerns that refugees will compete with nationals for limited economic opportunities and scarce resources, such as water or land as well as pressure on infrastructure such as schools, roads and health centers.

Economic and social factors in the host country are important to consider when looking at more relaxed refugee policies. In countries of the global South, areas that host refugees are themselves plagued with poverty, characterized by a lack of resources and infrastructure for social services, and corresponding difficulties in accessing economic markets. In this context, analysis of the costs and benefits of local integration to host communities are critical in policy formation. Given the severity of the economic crises and the environmental degradation facing many of the major African refugee hosting countries, the basic issue that emerges is, can these countries be able or be expected to establish policies, legal frameworks and institutions which could allow the absorption of hundreds of thousands of refugees living within their territories into their societies permanently?¹⁰⁰

Host governments may also consider that allowing refugees to settle in communities and participate in the economy makes it less likely that they will return home in the future. Camps can also be an essential part of UNHCR's operational response, particularly during emergencies.

⁹⁸ Ibid., 4

⁹⁹ Ibid.,

¹⁰⁰ Tom Kuhlman, "*The Economic Integration of Refugees in Developing Countries: A Research Model.*" *Economic Integration of Refugees*, London: Oxford University Press, 1991 available at <http://jrs.oxfordjournals.org/content/4/1/1.abstract>

Camps can facilitate the rapid provision of protection and life-saving assistance in the event of a large-scale refugee influx. The establishment of camps can also facilitate the identification of people with specific needs and the delivery of services to them.¹⁰¹

While camps are an important tool for UNHCR and host governments, they nevertheless represent a compromise that limit the rights and freedoms of refugees and too often remain after the emergency phase and the essential reasons for their existence have passed. Different authors argue that the above mentioned socio-economic factors do not hinder the success of alternatives to camps. Among others, Kuhlman's theoretical paper on the economic integration of refugees in developing countries identifies the following characteristics of successful integration: the socio-cultural change refugees undergo permits them to maintain an identity of their own and to adjust psychologically to their new situation. The friction between host populations and refugees is not worse than within the host population itself. He also argued that refugees do not encounter more discrimination than exists between groups previously settled within the host society.¹⁰²

The UNHCR's experience has shown that camps can have significant negative impacts over the longer term for all concerned.¹⁰³ Living in camps can engender dependency and weaken the ability of refugees to manage their own lives, which perpetuates the trauma of displacement and creates barriers to solutions, whatever form they take. Camps can also distort local economies and development planning, while also causing negative environmental impacts in the surrounding area. In some contexts, camps may increase critical protection risks, including sexual and gender-based violence (SGBV), child protection concerns and human trafficking. Camps may not either contribute to security, where they become venue for the forced recruitment or indoctrination of refugees.¹⁰⁴

Enabling refugees to reside in communities lawfully, peacefully and without harassment, whether in urban or in rural areas, supports their ability to take responsibility for their lives and for their families and communities.¹⁰⁵ Refugees bring personal skills and assets, as well as the qualities of perseverance, flexibility and adaptability demonstrated through their flight and survival. Refugees who have maintained their independence, retained their skills and developed

¹⁰¹ UNHCR, (n 95), 5

¹⁰² Catherine Grant, *Shifting Policy on Refugees from Encampment to Other Models*, Institute of Developing Studies, (2016) 3

¹⁰³ Ibid.,

¹⁰⁴ Ibid., 5

¹⁰⁵ Ibid., 6

sustainable livelihoods will be more resilient and better able to overcome future challenges than if they had spent years dependent on humanitarian assistance, whatever solutions are eventually available to them.¹⁰⁶

Refugees can better contribute to the communities where they are living when they are supported in achieving self-reliance in a way that is adapted to local conditions and markets.¹⁰⁷ In many situations, the presence of refugees has stimulated local economies and development. Moreover, community-based protection activities and livelihoods and education programs that also involve local people can promote social cohesion, reduce xenophobic attitudes and create a better protection environment. Where people work, study and play together, they are better equipped to resolve differences and live peacefully.

2.13. Conclusion

As discussed in this chapter freedom of movement is a liberty of man that makes it one of the most basic human rights. This right is defined by the HRC as an indispensable condition for the freed development of a person. The scope of this right has three components such as the right to move freely in the country and to choose where to live, the right to leave a country, and lastly the right to enter the country of his national. Nevertheless, this right is not absolute right; hence, it is subject to limitation clauses on the ground of legality principle, necessity and consistency. The right to freedom of movement is also subject to derogation clause pursuant to article 4 of ICCPR. While the international human rights instruments guaranteed freedom of movement to all persons without discrimination, states claim for the restriction of this right to refugees. Accordingly, refugees are confined in the camps and their freedom of movement is curtailed. Host governments confine refugees in the camps for reasons of public order or security, to control refugees in the emergency situations and to ease potential tension between them and local communities. However, these would not represent a compromise of limiting the freedom of movement of refugees. Limiting freedom of movement and confining refugees in the camps engender dependency and weaken the ability of refugees to manage their own lives, distort local economies and causes negative environmental impacts. If their freedom of movement is lawfully protected, they able to take responsibility for their lives and communities, and they can better

¹⁰⁶ Ibid.,

¹⁰⁷ Ibid.,

contribute to the communities where they are living when they are supported in achieving self-reliance in a way that is adapted to local conditions and markets.

CHAPTER THREE: THE PROTECTION OF REFUGEES’ RIGHT TO FREEDOM OF MOVEMENT IN ETHIOPIA

3. Introduction

These days, one major problem the world facing is the issue of refugees which some are using it for political consumption, while others are using it as a source of income both by ‘sheltering’ and smuggling refugees.¹⁰⁸ Currently Ethiopia hosts about 769,310 refugees and asylum seekers as of July 31, 2020 constituting one of Africa’s largest refugee populations, according to the UN refugee Agency.¹⁰⁹ Most of refugees are accommodated in 26 refugee camps, largely depending on humanitarian assistance.

Ethiopia has a long standing history of hosting refugees. The country maintains an open-door policy for refugee inflows and allows humanitarian access and protection to those seeking asylum on its territory.¹¹⁰ In 2004, the first Refugee proclamation was enacted based on the international and regional refugee conventions to which Ethiopia is party. Ethiopia’s parliament adopted revisions to its existing national refugee law on 17 January 2019, making it one of the most progressive refugee policies in Africa.¹¹¹ The law provides refugees with the right to freedom of movement, the right to work, access social and financial services, and etc.

This chapter discusses the legal framework of Ethiopia regarding protection of refugees’ right to freedom of movement, thereby assessing their adequacy and consistency with international Refugee laws and Human Rights laws. Then it discusses the challenges in the refugee protection and the possible futures to refugees in Ethiopia.

3.1. The protection of refugees under Ethiopian laws

Ethiopia is a party to the major core international human rights treaties including the 1951 refugee convention and 1969 OAU Convention which guarantee the rights to freedom of movement; and bound the international community to adhere their observance.

¹⁰⁸ Abdulmalik A. Ahmed and others, *Refugee Protection in Ethiopia*, Yonas Birmata (ed.), Addis Ababa University, Int.l L. ser., vol.1, (2017) 11 available at www.aau.edu.et/clgs/academics/school-of-law

¹⁰⁹ UNHCR, *Ethiopia Fact Sheet*, July 2020 available at <https://reliefweb.int/report/ethiopia/unhcr-ethiopia-fact-sheet-july-2020>

¹¹⁰ UNHCR, *Ethiopia 2020-2021 Country Refugee Response Plan; Global Focus*, available at <https://reporting.unhcr.org/node>,

¹¹¹ Ibid.,

Various legal instruments deal with refugee issues in Ethiopia. The FDRE Constitution,¹¹² international instruments ratified by Ethiopia, the repealed refugee Proclamation No 409/2004, and the new refugee proclamation No. 1110/2019 which adopted many of the provisions of the 1951 Refugee Convention and the 1969 OAU Refugee Convention are among others. Moreover, Immigration Proclamation No 354/2003 and the Out-of-Camp Policy framework may also constitute as additional national instruments to understand how the refugee situation in Ethiopia is handled.

3.1.1. The 1995 FDRE Constitution

The Constitution of the Federal Republic of Ethiopia (FDRE) is the supreme law of the land and therefore, any law or decision of an organ of the state, which is contrary to the provisions contained in the constitution, shall be declared null and void.¹¹³ The Constitution further provides that all international agreements ratified by Ethiopia are an integral part of the law of the land.¹¹⁴ Furthermore, all international agreements ratified by Ethiopia are expected to be domesticated so that they become an integral part of the law of the land. The process of domestication of treaties follows a process of ratification of such treaties by the members of the House of Peoples' Representatives.

Furthermore, Ethiopia reaffirms its commitment to safeguard and promote human rights by providing a list of basic human rights in chapter three of the Constitution in accordance with the provisions contained in the Universal Declaration of Human Rights (UDHR) and all other international instruments adopted by Ethiopia.¹¹⁵

When drafting the Constitution, Ethiopia recognized the universality of international law by highlighting in chapter three the need to rely on international legal instruments when the question of interpretation of the law is raised. Although the constitution is the supreme law of the land, article 13(2) of the constitution gives human rights law supremacy whenever the question of interpretation of international law is raised. We can further infer from this fact that the FDRE Constitution assumes a subordinate position to international law whenever a matter of interpretation of chapter three of the constitution is raised. It is therefore, a requirement under the 1995 FDRE Constitution that all national laws relating to specific aspects of international law

¹¹² FDRE Constitution, (n 6)

¹¹³ Ibid., art 9 (1)

¹¹⁴ Ibid., art 9(4)

¹¹⁵ Ibid., art 13(2)

should be in conformity with the provisions contained in the relevant international legal instrument. In this regard, the Refugee Proclamation of 2004 and 2019, including their subsidiary legislations governing the right to freedom of movement should be in conformity with international refugee law and international human rights law, failing which it would have no legal effect and be repugnant to the constitution of the country.

This means therefore, that the national refugee law should be interpreted in accordance with the provisions of the 1951 convention on the status of Refugees. Failure to ensure conformity of the national laws to international legal instruments would be a violation of the Constitution and the state's intention to uphold and protect human rights. Therefore, the question that remains unanswered is do the domestic Laws of Ethiopia adequately protect refugee's right to freedom of movement in Ethiopia in accordance of international law?

There is no a clearly expressed constitutional guarantee of the right of asylum on the FDRE constitution. However, since the ratified refugee instruments became an integral part of law of the land, by its Art.9 (4), a conclusion can be drawn that this right is protected under the FDRE Constitution.

Furthermore, one could also note that some of the rights in the constitution seem to be limited to only Ethiopian nationals as these provisions employ the phrase 'every Ethiopian'. Such provisions of the constitution include: article 40 (the right to ownership of property), article 41 (regarding economic, social and cultural rights) and article 42 (right to work) which could be interpreted to imply that the enjoyment of these rights is only the preserve of the citizens of the country and should not be extended to aliens, including refugees. This is the clear contradiction to the provision in article 13 of the same constitution that requires the conformity with international human rights law when interpreting human rights standards. The reason is that the international human rights law protects the above mentioned rights as an every one's right under the International Covenant on Economic, Social and Cultural rights.¹¹⁶

On the other hand, most of the rights provided under chapter three of the constitution are couched in a language which goes as 'every person', which may well include aliens including refugees. If this understanding is tenable, refugees could benefit from most of those human rights in the constitution.

¹¹⁶ International Covenant on Economic, Social and Cultural Rights, Adopted by General Assembly resolution 2200A (XXI) of 16 December 1966, *entered into force* 3 January 1976, Arts 3 and 6

The constitution, in its article 32 also expressly provides non- national including refugees the freedom of movement within Ethiopia and the freedom to choose residence in the following words: "*any ... foreign national lawfully in Ethiopia has, within the national territory, the right to liberty of movement and freedom to choose his residence, as well as the freedom to leave the country at any time he wishes,*"¹¹⁷ but the same provision seems to have reserved the right of re-entry to nationals. This is clearly in conformity with international law and extends to refugees who are included in the broad definition of ‘a foreign national lawfully living in Ethiopia’, unless expressly stated that refugees are not considered as ‘foreign nationals’. In the absence of such contrary view, refugees should enjoy freedom of movement and the right to choose place of residence in accordance with article 32 of the FDRE Constitution.

3.1.2. The 2019 Refugee Proclamation and its Salient Features

Ethiopia has repealed the 2004 Refugee Proclamation in 2019. The reasons why the proclamation needed to be repealed, among others, are to have a comprehensive legal framework in accordance with international standards that contains rights and entitlements embodied in the international conventions provides better protection to refugees and promote sustainable solutions; and the existing refugee proclamation No.409/2004 is not painstaking and does not reflect the current overall developments and progresses made in refugee protection it has become necessary to enact a new refugees proclamation to improve, within available means, comprehensive protection and assistance to refugees.¹¹⁸

As stated above, the new Refugee Proclamation has repealed and replaced the Refugee Proclamation No. 409/2004. As such, the new Proclamation contains many provisions taken from the existing Refugee Proclamation. It also modifies and removes some provisions on refugee status determination while making some additions in accordance with international standards. The provisions related to rights and obligations of refugees are expanded incorporating provisions from the 1951 Convention and the 1969 OAU Convention.

In the first part of the proclamation, the law provides the short title, the definition of the terms and the scope of application of the proclamation. The definition given to the family members is broadened under the new proclamation. It says that the “family members” means... any person the Agency may consider upon assessment as members of a family taking into account the

¹¹⁷ See (n 6), art 32

¹¹⁸ Refugee Proc. No. 1110/2019, (n 8) paras.3 & 4

meaning of the family in the laws of their country of origin and existence of dependency among them.¹¹⁹ Another interesting provision in this section, largely drawn from the pre-existing refugee law, is the distinctions made on the concepts “refugee”, “asylum-seeker” and “recognized refugee”. While the former refers to person(s) who fulfill the refugee criteria under the 1951 UN Convention and/or the 1969 OAU Convention, the latter two terms reflect the status of a person in the cycle of asylum as the one who has applied for refugee status and a person whose status has been determined, respectively. The new Refugee Proclamation shifts the power from the National Intelligence and Security Services to the Agency for Refugees and Returnees Affairs (ARRA) established as per article 33(4) (f) of the Definition of Powers and Duties of the Executive Organs of FDRE Proclamation No.1097/2018 as the primary government body responsible for refugee protection. Despite these and other minor changes, the new Refugee Proclamation largely retains the content and format used in the repealed Refugee Proclamation 409/2004 as regards general provisions.

The next part of the new Refugee Proclamation relates to general principles and criteria.¹²⁰ Under this part, key principles of refugee protection including the principle of non-refoulement, family unity, non-discrimination and provisions regulating expulsion and temporary detention of refugees and asylum seekers are encapsulated. In addition to the principles, it contains provisions covering the definition of refugee, refugee surplus, exclusion, cancellation/revocation and cessation of refugee status. The refugee criteria under the new law differs slightly from the repealed Refugee Proclamation in that it extends recognition of refugee status based on external aggression, occupation, foreign domination or events seriously disturbing public order to refugees originating outside of Africa.

Under the repealed law any person shall be considered as refugee where:¹²¹ ...owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his country of origin or nationality, he is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality, in case of refugees coming from Africa.

¹¹⁹ Ibid., art 2(9)(c)

¹²⁰ Ibid., arts 4-14

¹²¹ See (n 7) art 4(3)

While under the new refugee proclamation; any person shall be considered as a refugee... owing to external aggression, occupation, foreign domination, or events seriously disturbing public order in either part or the whole of his country of origin or nationality, he is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality.¹²² The scope of such recognition under the previous law was restricted to refugees originating from Africa. As a result, it is hoped that refugees from countries afflicted with generalized violence outside of Africa such as in Yemen and Syria will benefit from refugee status without the need to fulfill the 1951 Convention grounds through individual determination. The next part deals with the procedural aspects of Refugee Status Determination.¹²³ Here, the newly introduced provisions include, among others, the expansion of the application period to 30 days; the possibility of late applications on justifiable grounds; the possibility of application by proxy; possibility of withdrawal of application; the time limit for determination of refugee status; due process guarantees during examination of refugee status application; provisions for unaccompanied and separated children, extension of appeal period and possibility of late appeal and the provision on procedural aspects of group recognition or otherwise known as, “*prima facie* refugee status”. The composition of the Appeal Hearing Council is also modified including additional representation.

The most important aspect of the new Refugee Proclamation is the part dealing with the rights and obligations of recognized refugees and asylum seekers. The new law encompasses a broad range of rights and entitlements for refugees and asylum seekers. The repealed refugee Proclamation attempted to list out rights and obligations of refugees and asylum seekers. These include the right to stay in Ethiopia, the right to be issued with identity card and travel document, as well as few other rights scattered throughout the different sections of the Proclamation such as non-refoulement and family unity. However, this list is not comprehensive and as such it has been difficult to implement the rights embodied in the 1951 Refugee Convention and OAU Convention though explicit cross-referencing is made. The new Refugee Proclamation on the other hand, not only makes reference to rights enshrined in these international instruments but also codifies a range of rights drawn from the 1969 OAU Convention and the 1951 UN

¹²² See (n 8), art 5 (1) (c)

¹²³ Ibid., arts 15-21

Convention. These include,¹²⁴ among others, the right to work, the right to education, freedom of movement, the right to property, the right to association, the right to acquire driver's license, the right to access to banking services, access to justice and the right to be treated in the same circumstance as nationals as regards rationing and fiscal charges. This is believed to make implementation of these rights easier and feasible.

It is a generally known fact that the 1951 Refugee Conventions as well as the 1969 Refugee Convention lay down minimum standards of treatment of refugees and in any case State Parties are encouraged to accord protection above these set minimum thresholds. In this regard, a cursory look at substantive provisions of the new Proclamation reveals that it has adopted progressive approach by conforming to the standards set out in the Conventions and in some instances going beyond those standards.

3.1.2.1. The Principle of Non-Discrimination

In the Refugee Convention Article 3 dealt about the principle of applying the provisions of the convention to refugees without discrimination regarding to race, religion, or nationality of refugees. Without accepting this non-discriminatory principle being a party state to the convention has never possible. As a party state, Ethiopia accepts this principle as it is; and also the country ensured its commitment through formulating refugees' proclamation No.409/2004 and Proclamation No.1110/2019 which declare the principle of non-discrimination. Article 4 of Proc.No.1110/2019 provides that "the proclamation shall be applied without discrimination as to race, religion, and nationality, membership of a particular social group, or political opinion, or other similar grounds". Therefore, although some articles like treatment of refugees with non-discrimination principle are mandatory for every state to be a party state of the convention, there are other articles which are open for reservation. Subsequently, Ethiopia under the repealed proclamation adopts the convention through considering few articles of the convention recognized only as recommendations and not as legally binding obligations, which does means through 'reservation',¹²⁵ and the new proclamation seems to withdrawing the reservations.

¹²⁴ Ibid., art 22-43

¹²⁵ The provision of Articles 8, 9, 17(2) & 22(1) of the Convention are recognized only as recommendations and not as legally binding obligations by the government of Ethiopia, 'Reservations and declarations to the 1951 Refugee Convention' www.unhcr.org/cgi-

3.1.2.2. The Right to Work

Regarding to the right to work for refugees, Ethiopia maintains reservations to the 1951 Refugees Convention, notably to Article 17 (2), and there are no provisions under Ethiopia's Refugee Proc.No.409 for local integration of refugees. The 1995 Constitution also offers the right to work and other labor-related rights only to citizens. Similarly, Article 21(3) of Refugee Proclamation No. 409, refugees in Ethiopia is only allowed to work and access education insofar as Ethiopia's laws allows other foreign nationals in Ethiopia to do so. Ethiopia's Ministry of Labor and Social Affairs only grants work permits to foreigners when there are no qualified nationals available and in practice does not grant work permits to refugees.¹²⁶

However, the government of Ethiopia decided to allow refugees and asylum seekers to engage in wage earning employment although the particular provision refrains from affording the same working rights as Ethiopian nationals.¹²⁷ Instead, it defines that refugees will have the right to engage in wage earning employment; and acquire and transfer property and assets, under the same circumstance as the most favorable treatment accorded to foreign nationals. Equally, refugees who have sought asylum in Ethiopia arrived in the country with skills, and have acquired additional capacity since their arrival, that will enable them to become self-reliant, while contributing positively to the economy. With respect to fiscal charges, refugees shall not be subjected to any duty, charge or tax higher than is imposed on Ethiopian nationals.

It is the expectation that the enjoyment of the right to work will provide an opportunity for renewed financial investment by development actors and the private sector within the economy that will primarily benefit Ethiopians, in addition to refugees. UNHCR will continue to work with the Government of Ethiopia and the international community to ensure that resources are made available to create opportunities for the employment of both refugees and Ethiopians. In this regard, the expansion of a network of industrial parks across the country will provide 70% of new job opportunities to Ethiopians, with the remaining 30% reserved for refugees.¹²⁸ Additionally, the new law ensures that the allocation of irrigable land by the Government of Ethiopia for agriculture production as part of joint projects will benefit refugees and Ethiopian nationals on an equal basis.

¹²⁶ These restrictions are allowed under Article 21(3) of Refugee Proclamation No. 409

¹²⁷ See (n 8), art 26

¹²⁸ UNHCR, Additional Provisions within the Revised National Refugee Law in Ethiopia, (2019), available at www.unhcr.org

3.1.2.3. The Right to Education

Article 22 of the 1951 Convention on the Status of Refugees, grants the right to education for refugees. This provision of the Convention is subject to reservations. Ethiopia ratified the convention with respecting this article in reservation. One out of five articles (the provisions of Articles 8, 9, 17 (2), and 22 (1)) of the convention which are reserved and recognized only as recommendations and not as legally binding obligations by the government of Ethiopia is the right to education.

While, the new Refugees Proclamation grants refugees access to education to receive the same treatment as accorded to Ethiopian nationals with respect to access to pre-primary, primary, secondary and higher education's within the available resources and subject to the education policy of Ethiopia.¹²⁹ According to article 24(3) of this proclamation refugees may receive the most favorable treatment as accorded to foreign nationals in respect to education other than primary education, in particular, as regards to studies, the recognition of foreign school certificates, diplomas and degree, the remission of fees and charges and the award of scholarships. The most favorable treatment is one of the components of the principle of non-discrimination under international law.¹³⁰ While non-discrimination can be appreciated in its internal aspect through the treatment accorded to nationals compared with that accorded to foreigners, the most favorable treatment can be appreciated in its aspect through the treatment accorded by the host state to foreigners of other nationalities.¹³¹ Thus, the Ethiopian refugee law provides the most favorable treatment to refugees with respect to access to education other than primary education.

Therefore, the new refugee proclamation brings new changes in comparison to the repealed proclamation with respect to the rights of refugees which are directly linked with the right to freedom of movement. The protection of the right to freedom of movement guarantees the realization of the above mentioned rights of refugees.

¹²⁹ See (n 8), art 24

¹³⁰ Suzy H. Nikiema, *The Most-Favored-National Clause in Investment Treaties*, IISD Best Practices Series, (2017)

¹³¹ *Ibid.*,

3.2. The right to freedom of movement in Ethiopia

The freedom of movement is the basic constitutionally protected right given to Ethiopian citizens and any lawful foreigners.¹³² With respect to refugees, Ethiopia adopted particular laws which govern the rights and situations of refugees in Ethiopia such as the 2004 refugees' proclamation and the new 2019 refugees' proclamation. The former law was the most restrictive law that confines refugees in the camps by authorizing the head of authority to designate places and areas where refugees should live¹³³. Even though, Ethiopia revised the most restrictive law and provides protection to refugees' right to freedom of movement under proclamation No. 1110/2019¹³⁴, article 28 (2) of the new proclamation authorizes the Agency for Refugees and Returnees Affairs (ARRA) to arrange areas and places where the refugees or asylum seekers may live without providing any objective grounds to arrange¹³⁵.

3.2.1. Freedom of Movement under FDRE Constitution

The FDRE Constitution under article 32 explicitly says that any Ethiopian or foreign national lawfully in Ethiopia has, within the national territory, the right to liberty of movement and freedom to choose his residence, as well as the freedom to leave the country at any time he wishes to. As discussed under chapter two of this paper, refugees can present in the country lawfully or unlawfully. Those refugees who are unlawfully present in the host country have the right to freedom of movement provided that they show good cause to their entry and their status has been regularized. When we read the FDRE Constitution article 32, it expressly guarantees the right to freedom of movement for foreign nationals who are lawfully in Ethiopia including refugees. Thus, it is possible to say that unlawfully presenting refugees in Ethiopia have no right to freedom of movement.

Lawfully presenting refugees in Ethiopia have the right to freedom of movement similarly with the nationals of Ethiopia. They have the right to move everywhere in the national borders of Ethiopia and they can choose the place where they should live or reside. They also have the right to leave the country upon the cease of the reasons of well-founded fear of persecution.

¹³² see (n 6) art 32

¹³³ Refugees proc No.409/2004, (n 7) art 21(2)

¹³⁴ See (n 8)

¹³⁵ The shift from 'designation' to 'arrangement' has almost similar effect on the refugees freedom i.e. refugees do not enjoy freedom of movement, separates them from socio-economic life of the host community and makes them dependent on aid.

Notwithstanding the right to leave the Ethiopian country, they have no right to re-entry to Ethiopia. This is because the constitution grants the right to re-entry to its nationals.

3.2.2. Freedom of Movement under the New Refugee Proclamation

Even though the law that regulates the rights of refugees for years, has not spell out the substantive framework (the rights of refugees), the new refugee proclamation that adopted in 2019 under the rights and obligation parts, spells out the number of rights and entitlements that refugees and asylum seekers have in Ethiopia. Article 22 provides that “every recognized refugee and asylum seeker is entitled to the rights and be subjected to the obligations contained in the refugee convention, the OAU Refugee Convention and applicable international laws, and shall be subject to the laws and provisions in force in Ethiopia”.¹³⁶ Accordingly the proclamation lists the number of rights and entitlements and their contents in the respective provisions.

The right to freedom of movement and freely choose residence is one of the fundamental rights provided under the Refugee Convention.¹³⁷ The Convention organizes both sets of rights as they are intrinsically intertwined; residency cannot be exercised effectively without having freedom of movement in the territory of the host country.

Under the Convention, states are required to extend similar protection and restriction as applying to foreigners in the same circumstances. This implies that while host countries may choose to restrict refugees’ right to freely move, such measures must be applied in the same way as is the case with foreigners in similar situations. Host states could not restrict the right to freedom of movement or residency by targeting refugees only, nor can they discriminate against refugees based on race, religion or country of origin.¹³⁸ However, this provision has often been interpreted as furnishing a leeway to implement encampment policies that particularly affect refugees as well as for justifying discriminatory treatments among refugees both of which are against the objectives and spirit of the Refugee Convention.

Under Article 28 (1), the Refugee Proclamation recognizes the right of every refugee or asylum-seeker to movement and freedom to choose residence subject to laws applicable to foreign nationals generally in the same circumstances. The article provides as; subject to laws applicable

¹³⁶ See (n 8) article 22

¹³⁷ Refugee Convention, (n 2) art 26

¹³⁸ Atle Grahl-Madsen, *Commentary on the Refugee Convention 1951, Articles 2-11, 13-37, Article 26, Freedom of Movement*, Published by Division of International Protection of UNHCR, Geneva. (1997) Available at: <http://www.unhcr.org/3d4ab5fb9.pdf>

to foreign nationals generally in the same circumstances, every recognized refugee or asylum seeker has, within the national territory, the right to liberty of movement and freedom to choose his residence, as well the freedom to leave the country at any times he wishes too.

On the other hand, sub-article 2 gives a mandate to the Agency to ‘designate places and areas in Ethiopia within which recognized refugees, persons who have applied for recognition as refugees and family members thereof shall live.’ The provision reads as: notwithstanding to the provisions of sub-art 1 of this article, the Agency may arrange the places or areas within which refugees and asylum seekers may live. The arranged residence place shall be located at a reasonable distance from the border of the country of origin or former habitual residence of the recognized refugees and asylum seekers. A cumulative reading of the two provisions provides that the right of refugees to freely move is the rule and the designation of restricted areas (and hence limitation on freedom movement) is the exception.

The first part of Article 28 ‘...subject to laws applicable to foreign nationals generally in the same circumstances’ suggests that refugees have the right to move freely in Ethiopia and choose a place of residence subject only to regulations that are applicable to aliens in general, in the same circumstances. As to this statement, any restrictions imposed on ‘foreign nationals generally’ would have to conform to international law, for example, the ICCPR. Marx argues that this section of Article 26 of the 1951 Refugee Convention makes it clear that a state may not impose regulations specifically restricting refugees’ freedom of movement unless there are similar regulations affecting aliens in general.¹³⁹ Therefore, applying this to policies of encampment, it suggests that if refugees meet the criteria of Article 28, then Ethiopia is not permitted under the 1951 Convention to have legislation or policy that specifically restricts the movement or choice of residence of ‘regularized’ refugees.

Here one may raise a question, who find themselves in the same circumstances as refugees? The use of the yardstick “in the same circumstances” is the subject of article 6 of the 1951 Convention, which defines this recurring phrase as follows:

For the purposes of this Convention, the term “in the same circumstances” implies that any requirements (including requirements as to length and conditions of sojourn or residence) which the particular individual would have to fulfill for the enjoyment of the right in question, if he

¹³⁹ This argument is supported by Hathaway (2005, 719) and Edwards (2011, 16) agrees: ‘...special restrictions vis-à-vis refugees and stateless persons are not permitted.

were not a refugee, must be fulfilled by him, with the exception of requirements which by their nature a refugee is incapable of fulfilling.

Although article 6 does not refer to aliens, the net result is a fair balance between a general principle of assimilating refugees to other aliens . . . and the equally obvious need to render substantive justice to refugees in the application of those principles.¹⁴⁰

The point is therefore that refugees and other aliens are to be treated on par with respect to freedom of movement and choice of residence. Article 26 prescribes equal treatment as aliens; in case particular restrictions apply to “certain classes of aliens,” these may apply to refugees as well, provided they find themselves in the same circumstances as those aliens. From the perspective of refugees: article 26 grants freedom of movement to refugees, but allows restrictions provided these also apply to other aliens in the country of refuge. It does not, in other words, indicate whether particular restrictions are compatible with the rights granted in article 26 as long as they apply, in essence, in a non-discriminatory manner to refugees and other aliens alike, if their presence in the country is lawful.

As it is discussed somewhere above, Ethiopian laws including FDRE Constitution does recognize the right to freedom of movement and residence of nationals and foreigners equally. Even it does not set any restriction on this right. Since the international human rights instruments and refugee conventions are integral part of the law of the land, the restrictions set on the nationals and non-nationals similarly apply in Ethiopia.

Article 28 contains two separate rights: (a) a right to choose place of residence and (b) the freedom of movement within the national territory of Ethiopia.

Article 12 of the ICCPR and article 26 of Refugee convention concern the right to freedom of movement of persons legally within the territory of a member state and the right to choose a place of residence. These articles have similar restrictions as the articles only apply to persons lawfully within the territory. The Human Rights Committee stated: “The question whether an alien is ‘lawfully’ within the territory of a State is a matter governed by domestic law, which may subject the entry of an alien to the territory of a State to restrictions, provided they are in compliance with the State’s international obligations.”¹⁴¹

¹⁴⁰ See (n 15) 208

¹⁴¹ See (n 5) para.4

Accordingly, once an alien has been regularized he or she is then considered to be lawfully in the territory and recognized refugees should therefore be considered lawfully in the territory.

Marx suggests that ‘lawfully’ in this context refers to the national legal system, meaning the ICCPR accepts the sovereign power of the state to control the legality of aliens (through legislation), i.e., who is lawfully within the territory and who is not; therefore, a state has the ability to refuse entry or remove aliens. Therefore, once a foreigner is lawfully in the Ethiopian national territory he or she has the same claim to freedom of movement as nationals.

The question that is a foreigner in Ethiopia can be answered by referring to the immigration law. This law defines a foreigner as any person who is not an Ethiopian national,¹⁴² and the law also provides requirements for foreigners’ lawful entry in Ethiopia. According to the Immigration law of Ethiopia any foreigner who wants to enter into Ethiopia shall possess: a valid travel document, a valid entry visa or a valid permanent residence permit or an identity card issued by the Ministry if he is covered by Article 14(1) of this Proclamation; and health certificate, as may be necessary.¹⁴³

This law requires also all foreigners to be registered and receive temporary or permanent residence permit. Article 13 of the proclamation the registration of by the Authority all foreigners residing in Ethiopia; a foreigner who enters Ethiopia with an immigrant visa, within thirty days of the date of his arrival; a foreigner who enters Ethiopia with a business or students visa and intends to stay for more than ninety days, within thirty days of the date of his arrival; without prejudice to Article 14 of this Proclamation, anybody who enters Ethiopia without a visa pursuant to Article 4 of this Proclamation and intends to stay for more than ninety days, within thirty days from the date of his arrival.

However, refugees are precluded from such process as they are considered a special category, and if any, their affairs would be regulated solely based on the refugee convention art(14) (1) (b). The law provides that a foreigner who is recognized as a refugee by the Government of Ethiopia and the United Nations High Commission for Refugees may not be required to register.¹⁴⁴

¹⁴² Immigration Proclamation No.354/2003, Art 2(1)

¹⁴³ Ibid., art 3

¹⁴⁴ Ibid., art 14

According to this provision refugees are not required to be registered, and consequently they are not permitted to obtain temporary or permanent residence. As per article 15, those foreigners who are registered under article 13 may obtain residence permit as the case may be.

As stated above, refugees are considered special category of persons under immigration law that precludes them the right to obtain residence permit. The refugee law that regulates the refugees freedom to choose residence authorizes the Agency to designate or arrange places and areas where refugees to live. That means, refugees cannot freely choose the place where to reside and cannot freely enjoy the right to freedom of movement.

3.3. Restriction of Freedom of Movement

Comparatively to the 1951 refugee convention and ICCPR, the FDRE constitution has failed to specify clearly and in detail the scope, limit and content of the right to freedom of movement and residence. The protection of human rights in the domestic law can be valued, among others, based on the incorporation of limitation and derogation clauses. The limitation should comply with accepted international instruments and the constitutional right can be strong when it contains the limitation and derogation clauses because unless these clauses incorporated in the constitution, the government can easily intervene in the constitutionally guaranteed rights.

However, the FDRE Constitution does not provide any limitation clause on the right to freedom of movement and residence. In other words, the FDRE Constitution does not stipulate whether the right to freedom of movement is subject to limitation or not. As it is already known, there is no general limitation clause in the FDRE Constitution. However, the specific limitation clauses are inserted with respect to each and every right in the constitution. But there is no specific limitation clause with respect to the right to freedom of movement and freedom to choose residence. As a result, the scope, content and limitation of the right to freedom of movement in Ethiopia seem problematic.

3.3.1. Derogation

The refugee's right to freedom of movement is subject to derogation clause in Ethiopia. Under article 93 of the FDRE Constitution the council of ministers can declare state of emergency which derogates the rights recognized in the FDRE Constitution including the right to freedom of movement and residence.

The Council of Ministers of the Federal Government shall have the power to decree a state of emergency should an external invasion, a breakdown of law and order which endangers the

constitutional order and which cannot be controlled by the regular law enforcement agencies and personnel, a natural disaster, or an epidemic occur.¹⁴⁵

In doing so, the council of ministers can suspend the rights in the constitution.¹⁴⁶

(b)The Council of Ministers shall have the power to suspend such political and democratic rights contained in this Constitution to the extent necessary to avert the conditions that required the declaration of a state of emergency.

(c) In the exercise of its emergency powers the Council of Ministers cannot, however, suspend or limit the rights provided for in Articles 1(nomenclature of the state), 18(prohibition against inhumane treatment), 25(the right to equality) and sub-Articles 1 and 2 of Article 39 (the right to self-determination) of this Constitution. This shows that the refugees' right to freedom of movement can be suspended or derogated by declaring the state of emergency in Ethiopia.

Now the question is whether the specific laws that govern refugees in Ethiopia limit the right to freedom of movement. If the answer is positive, what would be the constitutionality of such laws?

3.3.2. Limitation of Refugees' Right to Freedom of Movement

As discussed in the chapter two of this paper, the right to freedom of movement is not absolute right and the international human rights law and refugee law provides limitation clauses on it. These laws provide objective grounds on which the right to freedom of movement may be limited. The ICCPR under article 12(3) provides that the right to freedom of movement shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order (ordre public), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant. The 1951 Refugees Convention also provides that each Contracting State shall accord to refugees lawfully in its territory the right to choose their place of residence to move freely within its territory, subject to any regulations applicable to aliens generally in the same circumstances. Therefore, the international human rights law and refugees law provides objective grounds such as the principle of legality, principle of necessity and principle of consistency. Except these grounds, refugee's right to freedom of movement cannot be restricted.

¹⁴⁵ See (n 6), art 93(1)

¹⁴⁶ Ibid., art 93 (4) (b) & (c)

When we come to Ethiopia's refugee law, there are no objective grounds provided in the proclamations. The Ethiopia's refugees proclamation, except giving the power to Agency to arrange areas within which refugee or asylum seeker may live, does not provide grounds on which the Agency may arrange the areas or whether the grounds provide in the international human rights law and refugees law should be taken into account. Thus, the arrangement of places where refugees should live or reside may be taken as the limitation on the refugees' right to freedom of movement in Ethiopia's refugee law.

3.3.3. Arranged Areas or Places where Refugee to Live (Camps)

It is hardly possible to find the definition to the term refugee camp under international law. However, according to the UNHCR's definition refugee camps are locations where refugees reside and where, in most cases, host governments and humanitarian actors provide assistance and services in a centralized manner.¹⁴⁷ Mewded Mengesha under his thesis paper expressed that refugee camp practically refers to designated or arranged areas/places where refugees live in their asylum countries.¹⁴⁸ The defining characteristic of a camp, however, is typically some degree of limitation on the rights and freedoms of refugees and their ability to make meaningful choices about their lives.

The UNHCR's Policy on alternatives to camp clarifies the official stand that camps should be a last resort rather than the default response to refugee influxes. This new policy is very deliberately focused on protection and solutions (we can easily grasp that idea by simply looking at the title of the document itself) for refugees. The key element of the policy is to defend the freedom of movement of all refugees and defend mobility. It also identifies the most common human rights violations that refugees confronted in their day to day lives, such as detention, harassment, eviction and extortion. It focuses on providing refugees access to the livelihood and labor market. It has also an implication in integrating urban refugees into existing public and private services and limiting refugee specific services. And the beauty of this document is, it's a relatively brave move by UNHCR to commit in providing protection and solutions irrespective of national legislations, whether states like it or not. In general, UNHCR clearly states in this document the organizations commitment to adapt a more positive, contractive and more proactive that it has been the past in this matter.

¹⁴⁷ Policy on Alternatives to Camps (n 95), 4

¹⁴⁸ Mengesha, (n 12), 24

Ethiopia currently follows a policy of encampment, with exceptional provisions for out-of-camp (Eritreans and those with special verified protection or medical needs). However, the Government is committed to further out of camp, local integration, and other measures to gradually phase in a more comprehensive response. The ‘Out-of-Camp Policy’ (OCP) introduced in 2010 has provided some Eritrean refugees opportunities to live in Addis Ababa and other non-camp locations. Eligibility criteria include the availability of necessary means to financially support themselves, relatives or friends who commit to supporting them, and also an absence of a criminal record.¹⁴⁹ The new refugee proclamation enables refugees to become more independent, better protected and have greater access to local solutions. Fulfilling these considerable and measurable government commitments to further its duty of care to refugees, relative to its existing national resource constraints, will inevitably be based on the scale-up of equitable responsibility-sharing between UN Member States.

As stated in the CRRF Road Map for the implementation of the Federal Democratic Republic of Ethiopia Government Pledges and the practical application of the CRRF, Ethiopia’s policies are based on three key principles: ‘to maintain its longstanding history of hospitality in hosting refugee, to meet its international obligations as a signatory to both the UN and OAU refugee conventions and to materialize its foreign policy goal of building sustainable peace with all of its neighbors through strengthening people to people relations’.¹⁵⁰

A major shift towards inclusion and protection of refugees in Ethiopia was made during the Leaders’ Summit on Refugees in September 2016 in New York, when the Government of Ethiopia, the day after the adoption of the New York Declaration, made Nine Pledges committing to expand protection and solutions for refugees. The Pledges are in line with the global CRRF objectives and represent the key focus areas and priorities for the application of CRRF in the context of Ethiopia. The Pledges are also aligned with the Government of Ethiopia’s Growth and Transformation Plan (GTP II), and with the current UNDAF.

¹⁴⁹ Ibid.,

¹⁵⁰ UNHCR, Comprehensive Refugee Response Framework (CRRF), The Ethiopian Model, 2019, 4

3.4. Challenges and Prospects in the Protection of Refugees' Right to Freedom of Movement

3.4.1. Challenges

Ethiopia repealed its the most restrictive law by the new refugee proclamation on 17 January 2019. The new refugee law is one of the most progressive refugee policies in Africa and now allows refugees to obtain work permit, access primary education, legally register life events, grants freedom of movement and etc. According to the Filippo Grandi, the UN High Commissioner for Refugees, the passage of this historic law represents a significant milestone in Ethiopia's long history of welcoming and hosting refugees from across the region for decades. He also stated that 'by allowing refugees the opportunity to be better integrated into society, Ethiopia is not only upholding its international refugee law obligation, but is serving as a model for other refugee hosting nations around the world'.¹⁵¹

Even though the law is very appreciable by its content and detailed provision in the protection of refugees, there are challenges in the protection of refugees' right to freedom of movement in Ethiopia. The following may be seen as an illustration;

3.4.1.1. Lack of Adequacy and Inconformity of Laws

The FDRE Constitution under art 32 does not provide any limitation ground with respect to the right to freedom of movement. In the absence of limitation clause in the Constitution, the Proc. empowered the Agency to limit the refugee's right to freedom of movement by arranging the places where refugees should live.

Article 26 of the 1951 Refugee Convention on the Status of Refugees and its 1967 Protocol recognize freedom of movement and this article is open for reservation when states sign or ratify the convention. Ethiopia ratified the convention without respecting this article in reservation. The country reserved only articles 8, 9, 17(2) & 22(1) of the convention. Only these articles of the convention recognized merely as recommendations and not as legally binding obligations by the Government of Ethiopia. Thus, the convention explicitly binds legal obligation to grant freedom of movement for any refugees in Ethiopia. However, using article 28 (2) & (3) of the 2019 Refugee proclamation the country restricts freedom of movement and residence, via allowing authorities to designate or arrange and facilitate areas where refugees and asylum seekers must

¹⁵¹ Filippo Grandi, UNHCR Agency, available at <https://reliefweb.int/report/et>

live. In this regard, it appears to conflict with the constitution and convention on the status of refugees adopted by the country. It infers that restricting freedom of movement and residence for refugees is not legally possible in Ethiopia because of two reasons; first, the refugee law contradicts with the supreme law of the land (constitution) and secondly, Ethiopia adopted the convention without reservation of the provision or article regulating freedom of movement and residence. Even though, the right to freedom of movement under international human rights law can be subject to limitation or derogation from, the FDRE Constitution does not provide limitation on this right. However, lack of limitation clause under FDRE Constitution does not amount to infer as the right to freedom of movement an absolute right.

It is also a common understanding that; freedom of movement is a civil and political right under the ICCPR. It does not require the fulfillment of any condition for its fullest realization. Accordingly the FDRE Constitution recognized this right as a civil and political right without authorizing the fulfillment of conditions. However, article 28 (2) & (3) of the Refugee Proclamation authorizes the Agency to arrange places and areas where refugees should live and '*facilitate enabling conditions*' for recognized refugees and asylum seekers to exercise the right to freedom of movement. Accordingly, the refugee law of Ethiopia is inadequate to protect refugees' right to freedom of movement and inconsistent to the international refugee and human rights law.

3.4.1.2. Discriminatory Policy Framework

As article 9 of the FDRE Constitution highlights its supremacy over other laws and also grants freedom of movement without restriction for only Ethiopians. In line with this, Ethiopia adopts the convention without reservation of freedom of movement and residence. Accordingly, explicitly freedom of movement for any nationalities of refugees should be permitted in Ethiopia. Whether or not considering this legal circumstance, Ethiopia improved strict policy of encampment refugees through adopting Out-of-Camp Policy to Eritrean refugees or university students. This propensity of the country in allowing freedom of movement for Eritrean refugees using Out-of-Camp should not be jumped without appreciation, but it could be understand as discrimination of refugees based on their nationality. Treating refugees in a non-discriminatory manner is the principle of both the 1951 Refugee Convention and Ethiopia's refugee law.¹⁵²

¹⁵² Melkamu D. Asabu, An Appraisal of Ethiopia's Out-Of-Camp Policy Towards Eritrean Refugees in The Perspective of Protecting Refugees: Theories and Practices, Int.J.Polit.Sci.Develop.6(3), (2018), 72

Ethiopia's actual political commitment to expand the OCP regime was secured only recently and even, and then the new scheme would apply just to a fraction (10%) of the entire refugee community living camps.¹⁵³ If most (>10%) of the refugees' request to engage in gainful employment the way they are selected might create discrepancy and open for mal-governance. It is not clear to whom the OCP will be applied. Agency for Refugees and Returnees Affaires may arrange the movement of refugees and asylum seekers. But regulations would yet need to provide details of how the right to freedom of movement will be implemented and what the government's discretion should be like.

In conclusion, the country adopts international convention to grant freedom of movement and residence for refugees and also the constitution of the country does not ban this right. The refugee proclamation also in principle does not ban the right to freedom of movement to refugees. Notwithstanding this is the discriminatory treatment of refugees based on their nationality, it is my position that freedom of movement should be allowed gradually even for non-Eritrean refugees.

3.5. Prospects

3.5.1. The Hope of Local Integration

The whole reading of the Refugee Proclamation No.1110/2019 shows that the refugees' right to freedom of movement and residence will be realized progressively. This can be inferred from the preamble of the proclamation which states that "Ethiopia is providing asylum and protection to refugees and promoting the search for durable solutions whenever conditions permit".¹⁵⁴ This paragraph of the preamble gives a hope for the protection of refugees' rights in the future when conditions fulfilled. The provision also dealing with local integration also gives a hope for future.¹⁵⁵ Local integration means a process by which individual refugee or groups of refugees who are lived in Ethiopia for a protracted period are provided, upon their request, with permanent residence permit to facilitate their broader integration with Ethiopian nationals until they fully attain durable solutions to their problems.¹⁵⁶ According to this provision those individual refugees or groups of refugees who are living in Ethiopia for long period of time can

¹⁵³ Ethiopia's Refugee Policy, Journal of Ethiopian Human Rights Law

¹⁵⁴ See (n 8) Preamble, para.1

¹⁵⁵ Ibid. art 41, The Agency may, up on their request, as it is necessary facilitate local integration of recognized individual refugee or groups of refugees who have lived in Ethiopia for a protracted period.

¹⁵⁶ Ibid., art 2(12)

benefit from the process of local integration. However, what legal components are associated with local integration and the lengthy of period living in Ethiopia for local integration remain unclear. The practice shows that those refugees who are lived for Twenty years and above, up on their request, the Agency facilitate the local integration process.¹⁵⁷

The process of local integration along with article 28 (3) of the proclamation which requires the facilitation of enabling conditions for the exercise of freedom of movement in Ethiopia can be seen as a good progress in the future for the protection of refugees' right to freedom of movement. Even if the above provisions are not sufficiently clear, upon the fulfillment of the conditions the refugees' right to freedom of movement will be protected progressively. In other words, the fulfillment of conditions with the Out of Camp Policy makes bright the future of the protection of the freedom of movement and residence in Ethiopia.

3.5.2. The Hope of Self-Reliance

The Global Compact on Refugee (GCR) offers a new ground for hope. It shifts burden sharing to responsibility sharing so that refugees are not seen as burden but as integrating, contributing and right holding members of host countries and communities. This is through four core objectives, such as: to ease pressures on host countries and communities, to enhance refugee self-reliance, to expand access to third countries and solutions, and support conditions in countries of origin for return of refugees in safety and dignity.

Having this in mind, the protection of refugees' right to freedom of movement has a great effect on enhancing the refugees' self-reliance. If the Government of Ethiopia takeaway the provision that restricts the refugees freedom, refugees become self-participate in the gainful activities and become self-reliant as well as contributes on the development of the country.

Thus, there is growing evidence of the economic benefit of refugees to the societies that host them. The GCR builds upon this and promotes the objective of refugee self-reliance through a 'whole of society' approach involving a wider set of government, development, and humanitarian and private sector actors than has traditionally been the case. This objective of self-reliance, however, rests on a set of flawed assumptions.¹⁵⁸ The first is that there is a realistic path to self-reliance for large numbers of people in the remote, often under-developed, border areas

¹⁵⁷ Regional Durable Solutions Secretariat, *Local Integration Focus: Refugees in Ethiopia, Gaps and Opportunities for Refugees Who Have Lived in Ethiopia for 20 Years or More*, available at www.regionaldss.org

¹⁵⁸ Nicholas Crawford and Sorcha O'Callaghan, *The Comprehensive Refugee Response Framework, Responsibility sharing and Self-reliance in East Africa*, (September 2019) 4

where refugees are usually hosted and where local residents are already struggling to build sustainable livelihoods. Second is the expectation that the new, whole of society approach will overcome these difficulties. In each of the four case studies, however, the presence and vitality of the private sector in refugee-hosting areas is nascent and often engaged in unsustainable models propped up by external funding. Third is the assumption that refugees are able to realize the basic rights needed to follow sustainable livelihoods, such as mobility and the right to work. Progress on this front in Ethiopia is uncertain sometimes from a legal standpoint and sometimes because refugees are unable to take full advantage of their rights.¹⁵⁹ Lastly, this objective fails to acknowledge the physical or psycho-social debilities that many refugees have carried with them into camp and their implications for self-reliance.

¹⁵⁹ Ibid.,

4. CHAPTER FOUR: CONCLUSION AND RECOMMENDATION

4.1. CONCLUSION

This thesis has examined the protection of refugees' freedom of movement and its challenges and prospects in Ethiopia. In the first chapter the thesis has discussed that Ethiopia has a long history in the protection of refugees and asylum seekers and showed a long standing hospitality for refugees.

The second chapter dealt with the status of refugees' right to freedom of movement under international standards. This chapter discussed the origin of refugees rights as closely linked to the development of international human rights law and described that the rights of refugees are derived from standards and principles of customary international law and conventions. The position of these standards and principles is that all rights which accrue to nationals of states should also be extended to refugees. This is through treaties signed by member states require that states domesticate the provisions contained in the treaties by enacting relevant national laws, which subsequently forms a definitive part of the domestic legal system. The Charter of the United Nations also as a source of human rights sets out human rights obligations of states on the basis that states are considered as trustees under the UN and orders the states to take a joint and separate actions in cooperation with the organization in the protection of fundamental freedoms and human rights.

As shown in this chapter freedom of movement is a liberty of a human being and hence it is one of the most basic human rights. This right is seen by the HRC as an indispensable condition for the free development of a person. The scope of this right has three components such as the right to move freely in the country and to choose where to live, the right to leave a country, and lastly the right to enter the country of his national. Nevertheless, this right is not absolute right; thus, it is subject to limitation clauses on the ground of legality principle, necessity and consistency. The right to freedom of movement is also subject to derogation clause pursuant to article 4 of ICCPR. While the international human rights instruments guaranteed freedom of movement to all persons without discrimination, states claim for the restriction of this right to refugees. Accordingly, refugees are confined in the camps and their freedom of movement is curtailed. Host governments confine refugees in the camps for reasons of public order or security, to control refugees in the emergency situations and to ease potential tension between them and local

communities. However, these would not represent a compromise of limiting the freedom of movement of refugees. Limiting freedom of movement and confining refugees in the camps engender dependency and weaken the ability of refugees to manage their own lives, distort local economies and causes negative environmental impacts. If their freedom of movement is lawfully protected, they able to take responsibility for their lives and communities, and they can better contribute to the communities where they are living when they are supported in achieving self-reliance in a way that is adapted to local conditions and markets.

Chapter three of this paper has dealt with the main concern of this thesis the protection of refugees' right to freedom of movement in Ethiopia. Ethiopia is party to the major international human rights instruments including the 1951 Refugee Convention. The FDRE Constitution under article 9 provides its supremacy and makes international laws as an integral part of the law of the land. The constitution guaranteed the right to freedom of movement of nationals and non-nationals in the same way without any discrimination.

Ethiopia has repealed the 2004 Refugee Proclamation in 2019. The reasons why the proclamation needed to be repealed are, among others, to have a comprehensive legal framework in accordance with international standards that contains rights and entitlements embodied in the international conventions provides better protection to refugees and promote sustainable solutions; and the existing refugee proclamation No.409/2004 is not painstaking and does not reflect the current overall developments and progresses made in refugee protection it has become necessary to enact a new refugees proclamation to improve, within available means, comprehensive protection and assistance to refugees.

Accordingly, the Refugee Proclamation that adopted in 2019 under the rights and obligation parts spells out the number of rights and entitlements that refugees and asylum seekers have in Ethiopia. Article 22 provides that “every recognized refugee and asylum seeker is entitled to the rights and be subjected to the obligations contained in the refugee convention, the OAU Refugee Convention and applicable international laws, and shall be subject to the laws and provisions in force in Ethiopia”. Accordingly the proclamation lists the number of rights and entitlements and their contents in the respective provisions.

Under Article 28 (1), the Refugee Proclamation recognizes the right of every refugee or asylum-seeker to movement subject to laws applicable to foreign nationals generally in the same circumstances. On the other hand, sub-article 2 gives a mandate to the Head of the Agency for

Refugees and Returnees Affairs (Agency) to ‘arrange places and areas in Ethiopia within which recognized refugees, persons who have applied for recognition as refugees and family members thereof shall live.’ A cumulative reading of the two provisions provides that the right of refugees to freely move is the rule and the designation of restricted areas (and hence limitation on freedom movement) is the exception. Furthermore, sub article 3 of article 28 also authorizes the Agency to facilitate enabling conditions for refugees to use the right to move. This makes my position to conclude that the 2004 repealed proclamation and 2019 refugee proclamation have the same standing and confines refugees in the camps. In other words, the 2019 refugee proclamation has not repealed article 21 (2) of the 2004 refugee proclamation. Simply it changes the term ‘to designate the place’ by the term ‘to arrange the place’ which has the same effect i.e. restricting the freedom of movement by confining refugees in the camps.

In conclusion, the country adopts international convention to grant freedom of movement for refugees and also the constitution of the country does not ban this right. The refugee proclamation also in principle does not ban the right to freedom of movement to refugees. The Out of Camp Policy that Ethiopia adopted in 2010 that benefited only Eritrean refugees and the refugee proclamation provision that govern the right to freedom of movement are inadequate, discriminatory and incompatible with international refugee standards.

4.2. RECOMMENDATIONS

4.2.1. Review of Article 28 (2) and (3) of Refugees Proclamation No.1110/2019

The refugee laws of 2004 and 2019 were enacted with the view to protect the rights of refugees that are covered under chapter three of the FDRE Constitution which provides for the fundamental human rights. Article 28 of the Refugee Proclamation No.1110/2019 guarantees the every refugee right to freedom of movement, subject to laws applicable to foreign nationals generally in the same circumstances. However, sub article 2 and 3 of article 28 restricts the right to freedom of movement by authorizing the Agency to arrange areas or places where refugees should live as well as facilitates enabling conditions to refugees to exercise the right to move. This provision of this article restricts the right to freedom of movement in contrary to the international human rights law and refugee law as well as the FDRE Constitution. The limitation/restriction under international law is based on the legality principle, necessity and consistency principles. The legality principle refers the restrictions those which are provided by law, while necessity principle refers to restrictions necessary to protect national security, public

order (*ordre public*), public health or morals or the rights and freedoms of others, and the consistency principle refers to restrictions those are consistent with the other rights recognized in the Covenant. However, the Ethiopia's refugee law does not consider these objective grounds of restrictions. Therefore, it is my position that article 28 (2) and (3) should be deleted and the objective grounds of restriction shall be included under Ethiopia's refuge law.

4.2.2. Review of Out-of-Camp Policy

The other point of recommendation should be needed is the discriminatory Out-of-Camp Policy. Ethiopia's concrete political commitment to expand the OCP regime was secured only recently and even, and then the new scheme would apply just to a fraction (10%) of the entire refugee community living camps; where Eritrean refugees are more beneficiary discriminating other countries citizens. If most (>10%) of the refugees' request to engage in gainful employment the way they are selected might create discrepancy and open for mal-governance. It is not clear to whom the OCP will be applied. Agency for refugees and returnees affaires may arrange the movement of refugees and asylum seekers. But regulations would yet need to provide details of how the right to freedom of movement will be implemented and what the government's discretion should be like. It is also appreciable if this Out-of-Camp Policy expanded to include refugees other than Eritreans.

4.2.3. Revision of and Amendment to Article 32 of the FDRE Constitution

It is also my position that the FDRE Constitution article 32 that grants the right to freedom of movement and residence of nationals and non-nationals should be reviewed and amended to include the exceptions under international human rights law and refugee law. This is because the silence on the limitation may have two interpretative effects. On the one hand, since the constitution is silent on the limitation on the freedom of movement, no limitation on the rights of refugees; and any law including refugee proclamation that restricts the refugees' right to freedom of movement are incompatible with the constitution and shall be null and void in accordance with article 9. The other way of interpretation is that the government of Ethiopia can use any discretion to restrict/limit the right to freedom of movement in Ethiopia. To my position, it is the result of this interpretation that the refugee proclamations in Ethiopia authorize the Agency to restrict the refugees' right to freedom of movement by designating or arranging the places/areas where refugees should live. Accordingly, the silence of the FDRE Constitution on the restriction of the right to freedom of movement creates discrepancy or lack of clarity, therefore, sub article

3 should be added to article 32 of the FDRE Constitution to include the restrictions those are under article 12(3) of the ICCPR and article 26 of the Refugee Convention.

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