

# Ethiopia's Refugee Policy Overhaul: Implications on the out of Camp Policy Regime and Rights to Residence, Movement and Engagement in Gainful Employment

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## 1. Introduction

Ethiopia became the second largest refugee hosting country in Africa – with the count of registered refugees and asylum seekers reaching 905,831 as of 31 August 2018.<sup>1</sup> Displaced from twenty-six countries worldwide and variedly affected by different circumstances,<sup>2</sup> most refugees fled from protracted crisis, famine, instability, forced military conscription and repression in South Sudan, Somalia and Eritrea.<sup>3</sup>

Although Ethiopia acceded to the 1951 Refugee Convention and its 1967 Protocol Relating to the Status of Refugees (hereafter called the Refugee Convention)<sup>4</sup> and has furthermore ratified the Convention Governing the Specific Aspects of Refugee Problems in Africa (hereinafter called the African Refugee Convention),<sup>5</sup> it has, for the

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<sup>1</sup> This figure does not include the over 150,000 Somali refugees who live in Addis Ababa and eastern Ethiopia without going through formal registration by the Administration for Refugees and Returnee Affairs (ARRA).

Available at: <https://data2.unhcr.org/en/documents/details/68014>

<sup>2</sup> Federal Democratic Republic of Ethiopia/ Administration for Refugees and Returnee Affairs. May 2018. *National Comprehensive Refugee Response Strategy (2018-2027)*. P.8. Addis Ababa, Ethiopia.

<sup>3</sup> UNHCR. Ethiopian Factsheet. 30 November 2017.

Available at: <https://data2.unhcr.org/en/documents/details/68014>; last accessed 3.4.2019.

<sup>4</sup> United Nations Treaty Collection. Refugees and Stateless Persons.

Available at:

[https://treaties.un.org/pages/ShowMTDSGDetails.aspx?src=UNTSO&tabid=2&mtsg\\_no=V-5&chapter=5&lang=en](https://treaties.un.org/pages/ShowMTDSGDetails.aspx?src=UNTSO&tabid=2&mtsg_no=V-5&chapter=5&lang=en); Ethiopia ratified the 1951 Refugee Convention and its 1967 Protocol on 10 Nov. 1969.

<sup>5</sup> African Commission on Human and People's Rights. Ratification Table: AU Convention Governing Specific Aspects of Refugee Problems in Africa (10 Sep. 1969). available at:

<http://www.achpr.org/instruments/refugee-convention/ratification/>

most part, pursued a strict encampment policy and adopted restricted service provision approaches in the administration of refugees' affairs. Compared to a range of international legal obligations it has assumed, some limitations involving the implementation of socio-economic, civil and political rights continued to feature nationally – hampering the effective protection refugee rights.

Since 2016, Ethiopia's policy drive in relation to refugees started to gravitate from the current 'camp-based basic services provision' approach to a more 'progressive and rights-centered' model that also considers alternatives to the encampment of refugees. A landmark expression of nine intertwined pledges – proposed on the occasion of the 71<sup>st</sup> UN Summit on Refugees and Migrants held in New York, kindled a new glimmer of hope for the refugee community and furthermore provided a solid political basis and direction for enhanced protection and provision of civil, political and socio-economic services to refugees. At the Summit, Ethiopia rolled a comprehensive approach – committing, in global solidarity, to provide refugees shelter, rights and improved livelihood opportunities.

To carry out the commitments, Ethiopia embarked on the design of a fairly broader policy frame, legislative actions and strategic response mechanisms fostering the peaceful coexistence, greater inclusion and entitlement of refugees. As such, one policy regime that assists refugees to receive enhanced protection and attain quality livelihood is related to interventions focusing on the regulation of practice relating to the Out of Camp Policy (OCP), legal residency, freedom of movement and engagement in gainful employment.

It would be noted in the subsequent sections that over the years, positive advances have been recorded in Ethiopia's policy orientation on refugees.

Yet, in many areas including residency, freedom of movement and engagement in gainful employment, refugees' legal entitlements and experience remained challenged by regulatory gaps and uncertainties.

This entailed that the evolving legal frameworks, institutional response mechanisms, challenges and opportunities need to be

analyzed in the contemporary context in order to understand the full spectrum of their contents and implications on the rights of refugees and recommend informed interventions.

The main objective of this empirical study is to review normative developments, institutional arrangements and experiences in Ethiopia – particularly focusing on the rights of refugees to legal residency, freedom of movement and engagement in gainful employment – both within and outside of the OCP setting. More specifically, the study scrutinizes key features of international and national legal frameworks that are pertinent in the context of the rights of refugees in Ethiopia, new changes in policy and regulatory approaches, and the projected effect of the application of such approaches. Furthermore, the contours of Ethiopia’s OCP regime – including the processes, eligibility requirements, and rights and obligations of refugees granted such status will be examined.

## **2. Methodology and Data Gathering Tools**

In gathering pertinent data for the study and in pursuing the inquiries, reviews and analyses, the researchers have employed qualitative method and deployed a mix of data gathering tools that help capture, understand and interpret the state of refugees in Ethiopia in real life settings. Such empirical approach has been complemented by desk reviews and textual analyses of normative standards and secondary resources that addressed issues of rights and welfare of refugees.

For purposes of gathering data, semi-standardized interviews had been conducted with key informants – involving informed officials and experts at the Agency for Refugees and Returnees Affairs, re-established under Proclamation No.1097/2018, and select non-governmental organizations working on aspects of refugees’ causes. This empirical approach was imperative – considering that most of the themes identified in the study constitute parts of a rapidly evolving policy and practice regime – and often, state documents informing such developments have not been readily available in public domain. Structured focus group discussions were also held with fourteen refugees of Eritrean, Somali, South Sudanese and

Yemeni origins living in Addis Ababa - who held different viewpoints regarding realities and interpretation of experiences that affect them personally - and reflecting on such information which had not been found in records or were not fully captured in contemporary studies. The data was carefully collated and utilized to present the analyses, identify the gaps and understand the contemporary state of implementation of policies and legal frameworks on residency, freedom of movement, employment and the practical application of the OCP regime in Ethiopia.

### **3. Overview of International and Regional Instruments on Refugees**

The global need to protect persons fleeing persecution and searching for refuge dictated that the 1951 Convention should be extended to all refugee problems irrespective of time and place; this was made possible through its 1967 Protocol relating to the Status of Refugees.<sup>6</sup>

For any person to qualify as refugee under the Refugee Convention, certain conditions would need to be fulfilled. Hence, the status of a refugee is determined if it could be shown that he is a person who 'owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, 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'.<sup>7</sup>

The rights and protections arising from the Refugee Convention are predicated on fulfilling all such requirements embedded in the definition. Further, with regard to civil rights, freedoms and socio-economic entitlements, the Convention anchors the principle of non-discrimination - which shapes the interpretation and application of

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<sup>6</sup> United Nations Protocol Relating to the Status of Refugees. 31 January 1967. Article 1.

<sup>7</sup> Refugee Convention. Article 1 (a) (2); Protocol Relating to the Status of Refugees, Article 1.

its provisions both in relation to refugees, between refugees and foreign nationals, and in some cases, between refugees and nationals of the hosting state.<sup>8</sup>

In Africa, the continental legal regime introduces additional *grounds* for acquiring refugee status – beside the basic criteria provided under the 1951 Refugee Convention. Hence, the African Refugee Convention applies ‘...to every person who, owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either a part or the whole of his country of origin or nationality, is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality’.<sup>9</sup> The African Refugee Convention is a regional supplement of the 1951 Refugee Convention; all international rights, privileges and protection regimes are applicable.<sup>10</sup>

The 1951 Refugee Convention does not *merely* provide for ‘status determination’ standards and the non-discrimination principle; it also incorporates other fundamental principles such as non-refoulement and the prohibition of criminalization of refugees because of their movements and possible breaches of immigration laws.<sup>11</sup> The Convention’s provisions only establish *minimum standards* of treatment of refugees; states are therefore encouraged to adopt more favorable conditions for refugees.<sup>12</sup>

#### **4. National legal Frameworks in Ethiopia Governing Refugees’ rights**

Ethiopia acceded to the 1951 Refugee Convention and has furthermore ratified the African Refugee Convention.<sup>13</sup> According to

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<sup>8</sup> Refugee Convention, Article 3, 12-16, 17-30.

<sup>9</sup> African Refugee Convention. Article I (2).

<sup>10</sup> African Refugee Convention. Article VII (2).

<sup>11</sup> Refugee Convention. Article 3, 31 and 33.

<sup>12</sup> The 1951 Refugee Convention and 1967 Protocol Relating to the Status of Refugees with Introductory Note by UNHCR. P.3. Available at: <http://www.unhcr.org/3b66c2aa10.pdf>

<sup>13</sup> Ethiopia acceded to the 1951 Refugee Convention and its 1969 Protocol on 10

Article 9 (4) of the Ethiopian Constitution, international and regional conventions to which Ethiopia is a party are considered part of the domestic laws of the land. Moreover, the Constitution provides any interpretation of the fundamental human and democratic rights under the Constitution shall be guided by international standards.<sup>14</sup> This entails that the drafting, enactment and implementation of any policy action having impact on refugees in Ethiopia must take into account the standards established under international conventions.

For long, the key national legislation regulating the rights of refugees and the administration of refugee affairs had been the Refugee Proclamation No.409/2004.<sup>15</sup> Principally focusing on status determination procedures, this law had not clearly articulated nor adequately extended several rights to which refugees are eligible under the Refugee Convention. Article 21 of the repealed statute only made a 'general reference' to international instruments – without spelling the substantive framework that informs content or facilitates their understanding and enforcement in specific national settings.

On the other hand, until the recent adoption of the 'Roadmap for Implementation of the Ethiopian Government Pledges' (hereinafter referred to as the Roadmap),<sup>16</sup> there was hardly any comprehensive 'policy-like' instrument that informs the strategic direction of the government or addresses the multi-layered issues that surface in implementation of recognized refugee rights.

Again, in spite of UNHCR's proactive promotion of the 'Alternative to Camps' (ACP) policy which advocated that refugees should be afforded opportunity to live outside of camps, Ethiopia's 'Out-of-

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November 1969. Available at: <http://www.unhcr.org/uk/3b73b0d63.pdf>

Ethiopia signed and ratified the African Refugee Convention on 10 September 1969 and 15 October 1973, respectively. Available at: <http://www.achpr.org/instruments/refugee-convention/ratification/>

<sup>14</sup> Constitution of the Federal Democratic Republic of Ethiopia. Federal Negarit Gazeta. 1<sup>st</sup> Year No.1. August 21, 1995 (hereinafter the FDRE Constitution) Article 13 (2).

<sup>15</sup> Refugee Proclamation No.409/2004. 10<sup>th</sup> Year No.54. Addis Ababa, 19<sup>th</sup> July 2004 (hereafter called as the Repealed Refugee Proclamation No.409/2004).

<sup>16</sup> Administration for Refugees and Returnee Affairs (ARRA). 17 February 2017.

*Roadmap for the Implementation of the Ethiopian Government Pledges*. Addis Ababa, Ethiopia.

Camp policy' (OCP) has been applied only in a limited context in respect of Eritrean refugees – discriminating against refugees of other nationals. Concrete political commitment to fairly *expand* the OCP regime was secured only recently.

Against this background, a new Refugee Proclamation (hereinafter the Refugee Proclamation) was adopted by the House of Peoples Representatives in February 2019; in its preamble, the Proclamation stated one of the most fundamental objectives for adopting the new refugee law regime is to effectively implement the international and regional obligations to which Ethiopia has committed – in this case referring to the 1951 Refugee Convention and its Protocol and the African Refugee Convention.<sup>17</sup>

It would be shown in the subsequent discussions that in a nutshell, the protective regime of the Refugee Proclamation fundamentally diverges from the preceding legislation. While both have covered, in greater detail, the substantive and procedural dimensions of 'status determination' processes, the new regulatory framework managed to outline a comprehensive set of 'rights and obligations'.

## **5. Evolution, Drivers and Overhaul of Ethiopia's 'new' Policy Orientation on Refugees**

Until very recently, the practice in Ethiopia in the provision of refugees' rights had featured a fragmented approach – mainly focusing on basic protection and care services to refugees living in designated camps – without assuring their meaningful inclusion in the socio-economic lives of host communities. As stated above, Ethiopia shelters one of the largest refugee populations in Africa – currently standing close to one million. Most refugees remain in camps conforming to the national encampment policy's general requirement – while a small fraction is formally extended the right to reside outside refugee camps, and many others continue to live, informally, outside of designated camps.

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<sup>17</sup> Refugee Proclamation No.1110/2019. February 27, 2019. 25<sup>th</sup> Year No.38, Para.3. Addis Ababa.

Despite Ethiopia's vast humanitarian experience and the adoption of open-door policy in accommodating refugees over the decades, no comprehensive framework had been designed which discerns – with sufficient forethought – that very often, refugees flowing into the country would reside for a longer period of time. Nor had the country adopted a clear strategy which acknowledges that the traditional humanitarian response mechanism cannot, in the long term, proffer viable solutions that advance refugees' livelihood opportunities or strengthen the host communities' resilience. This is particularly evident in the formulation of the pertinent legal instruments.

Since 2007, Ethiopia's new 'policy' drive started to gravitate towards the accommodation of 'select' refugees outside of camps and the enhancement of self-reliance schemes beyond the provision of life-saving assistance. The new national policy and legal architecture appears to respond to several components of refugees' civil, political and socio-economic rights provided under international instruments – and contemplates to design specific mechanisms for managing longer-term displacement of refugees.

Broadly, three intertwined factors and developments contributed in tandem in pushing forward a new policy move that seeks to address refugees' multifaceted challenges on the basis of international law and in tune with the principles of equitable sharing of responsibility which, among others, requires the international community to promote economic opportunities in host countries.

The first is the protracted nature of the refugee situation in the country, which, evidently, made it impossible to satisfy their long-term requirements through humanitarian interventions and the implementation of camping schemes alone. As it is itself an origin, transit and destination to international migrants, Ethiopia has more than enough national interest and moral pressure emanating from this factual setting to extend broad protection to refugees transiting through or arriving in its territory.

The second factor is related to the growing number of refugees crossing into the country as the result of unresolved crises and newly emerging conflicts in neighboring countries. Often, such occurrences are attended by weariness and repeated failure on the



part of the international community to sufficiently provide for financial provisions needed to run basic refugee programs; in fact, such programs have been exposed to inherent risks of re-prioritization and re-allocation as new refugee crises emerge in many parts of the world.<sup>18</sup>

The third rational underpinning, at least in the context of early formulation of the OCP scheme in relation to Eritrean refugees, is the ‘predominantly urban background’ of refugees’ demography. This made their accommodation in remote camps exceptionally challenging – not infrequently prompting onward movements to cities and other countries mainly through irregular migration.<sup>19</sup>

The pinnacle in Ethiopia’s initiatives in designing a new policy framework is attended by the adoption of concrete measures involving three interconnected interventions that are also relevant in the context of refugees’ rights to residence, movement and engagement in gainful employment. These are the drafting of new legal instrument providing for expanded framework of rights and entitlements; the adoption of a roadmap that features a structured approach for implementation of rights and opportunities in longer term context; and the launching of a national strategy (and institutional platform) on Comprehensive Refugee Response Framework which intends to apply international standards to large-scale influx and protracted refugee situations.

## **6. The immediate drive: the United Nations General Assembly on Refugees and Migrants**

Evidently, a scheme for reforming the national refugee response mechanism had already been high on the agenda of the Ethiopian government for some time – even before 2016.<sup>20</sup> However, the real

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<sup>18</sup> UNHCR. Ethiopia Fact Sheet. November 2017: of the total funding requirement of USD 335.4 M for UNHCR’s program in Ethiopia as of November 2017, only 27% was secured.

<sup>19</sup> Key Informant Interview with Mr. Haileselassie Gebremariam. Head of Legal Services and Refugee Status Determination Unit, ARRA. 26 December 2017 (hereafter KII with Mr. Haileselassie Gebremariam)

<sup>20</sup> Although the amending proclamation was actually adopted in August 2017, the task

drive in embracing actionable measures was occasioned against the background of Ethiopia's participation and pledges announced at the United Nations General Assembly on Refugees and Migrants congregated with objective of improving ways in which the international community responds to refugee situations.<sup>21</sup> In profound expression of solidarity and support for refugees, the assembly adopted the New York Declaration for Refugees and Migrants in which many countries, including Ethiopia, resolved to take successive and tangible measures so as to minimize the challenges faced by refugees – taking into account different national realities, capacities and levels of development and respecting national policies and priorities.<sup>22</sup> Countries also committed to take specific measures to realize programs for humanitarian financing that are adequate, flexible, predictable and consistent – and which would also enable host countries to respond both to the immediate humanitarian needs and their longer-term development needs.<sup>23</sup>

In this context, it was agreed under Annex I of the New York Summit Declaration to implement a Comprehensive Refugee Response Framework (CRRF). The CRRF outlines the steps to be taken towards the achievement of a global compact on refugees – providing for a more equitable and predictable arrangement among countries of origin, transit and destination in addressing large movements of refugees – based on principles of 'international cooperation' and 'burden sharing'.<sup>24</sup> The CRRF also tasked host states – in cooperation with UNHCR, global financial institutions and other relevant partners – to take specific actions to foster refugees' *self-reliance*. This entails expanding opportunities for

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of revising Ethiopia's law on registration of vital events offering refugees access to documentation-related services predates initiatives under the Roadmap; in a similar tune, the government had already been considering the expansion of the out of camp policy long before a specific commitment was tabled in the context of the Leaders' Summit in New York.

<sup>21</sup> New York Declaration for Refugees and Migrants. 19 September 2016. Seventy-first Session Agenda Items 13 and 117. Resolution adopted by the General Assembly (hereafter New York Declaration for Refugees and Migrants).

<sup>22</sup> New York Declaration for Refugees and Migrants. Para.21.

<sup>23</sup> New York Declaration for Refugees and Migrants. Para.21; Annex I: Comprehensive Refugee Response Framework.

<sup>24</sup> Annex I: Comprehensive Refugee Response Framework. Para.7 and 13; New York Declaration for Refugees and Migrants. Para.68.

refugees to access education, health care, livelihood opportunities and labour markets in a manner which *also* supports host communities, and to invest in human capital, self-sufficiency and skills as essential steps towards enabling long-term solutions.<sup>25</sup>

In responding to the global call, Ethiopia co-hosted, on September 20, 2016, a high-level meeting on refugees in New York. On the occasion of the Leaders' Summit on Refugees, Ethiopia committed to deliver on *nine sets of pledges* that anticipate substantially expanding the protection, socio-economic services and opportunities provided to refugees living within its jurisdiction.<sup>26</sup> Rights related to residency, movement and engagement in gainful employment are specifically stated and variedly accommodated.

Given that the 'political commitment' under the pledges has been announced before the adoption of the new proclamation, it was evident that the implementation of the pledges would entail taking specific legislative measures in this regard. Today, the Refugee Proclamation has already been adopted by the House of Peoples Representatives, while work on drafting of implementing instruments has also commenced by ARRA; in tandem, a draft Ten Years Strategic Document and connected to the Roadmap has been developed to guide the implementation of Ethiopia's pledges at the national level.<sup>27</sup> Most importantly, the national chapter of the CRRF was formally launched in November 2017, paving the way for synchronized institutional leadership and response in implementation of the pledges – particularly in relation to the rights of refugees to residence, movement and gainful engagement.

## **7. Ethiopia's Pledges and the Roadmap: Residency, Movement and Gainful Employment**

Ethiopia's commitments under the compact on refugees – offered within the framework of the New York Declaration and Leaders'

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<sup>25</sup> New York Declaration for Refugees and Migrants. Para.38.

<sup>26</sup> ARRA. *Roadmap for the Implementation of the Ethiopian Government Pledges*. Note 16.

<sup>27</sup> ARRA. *National Comprehensive Refugee Response Strategy (2018-2027)*. Note 2.

Summit – entails two undertakings: clarification of the promises and establishment of an implementation roadmap directing the programme of actions required in the particular setting of each of the interventions – which, in time, are expected to be subsumed under the CRRF.

The Roadmap was adopted by the government’s focal arm – the Administration for Refugees and Returnee Affairs (ARRA) – in collaboration with several stake-holding institutions. It depicts particulars of the commitments undertaken, estimate of timeline for implementation, potential sources of funding for program components – and governmental agencies, relief organizations and donor partners responsible for carrying out the programs.

Under the pledge on the ‘*expansion of the out of camp policy*’, Ethiopia undertook to further enlarge the scheme (which had hitherto applied ‘only to Eritreans’) to all refugee nationalities hosted in the country by up to 10% of the current refugee population. This is mainly intended to enhance refugees’ movement, self-reliance and livelihood opportunities, increase access to training, education and services, and thereby discourage their perilous movement onward to Europe.

Ethiopia’s second pledge permits refugees, both inside and outside camps, ‘*access to employment*’ within the bounds of domestic laws and the issuance of ‘*work permits to refugee graduates*’ in areas permitted for foreign workers. Mainly, this pillar entails taking measures that focus on legal and administrative reforms so as to allow such refugees the right to work and to use refugee IDs as residence permits for purposes of issuing work permits.<sup>28</sup>

Under the pledge on ‘*self-reliance*’ and ‘*land access*’, Ethiopia undertook to further expand its previous experience in providing 1,000 ha of irrigable land allocated to refugees and host communities, and now make available 10,000 ha of irrigable land. This would allow their engagement in crop production and benefit 20,000 households or 100,000 persons – within the bounds of national laws and subject to legal frameworks outlining the terms and conditions.

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<sup>28</sup> ARRA. *Roadmap for the Implementation of the Ethiopian Government Pledges*. Note 16. pp.3-4.

The commitment on ‘*job creation*’ intertwines Ethiopia’s national industrialization agenda with the humanitarian provision of employment opportunities to refugees within newly developed industrial parks. This requires the building of new industrial park infrastructure in collaboration with international development partners to generate job opportunities that could employ up to 100,000 persons, of which 30,000 would be dedicated to refugees granted work permits. It offers such refugees the chance to live a normal life in a county closer to their home, integrate their livelihoods with host communities and avoid taking the risk of dangerous paths in onward movements.<sup>29</sup>

Nearly *all* the assurances rolled by Ethiopia require a careful legislative overhaul – centering on the old refugee law and policy regime which had served as the basis for the provision of limited rights and opportunities. The whole architecture of commitments presumes that a clear and comprehensive legal direction would be offered informing content on each of the deliverables.

For the most part, this is addressed through adoption of the Refugee Proclamation No.1110/2019 and endorsement of the national strategy on CRRF. Nevertheless, while such measures represent fundamental treads in the protection and implementation of refugees’ rights, uncertainties remain in terms of whether the new legal regime fully corresponds with the rights of refugees under international instruments and how far it goes in facilitating smooth implementation of the objectives defined under the roadmap itself.

This justifies a thorough examination of the relevant provisions of the new Proclamation having impact on refugees’ rights to residence, movement and engagement in gainful activities, and analyses of shortcomings of the Proclamation in relation to the pledges.

## **8. The Out of Camp Policy and Residence and Movement Rights**

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<sup>29</sup> ARRA. *Roadmap for the Implementation of the Ethiopian Government Pledges*. Note 16. pp.10-11.

## 8.1 International Standards

While the experiences vary across jurisdictions, many national laws require stricter compliance with encampment of refugees in designated geographical locations (i.e. in camps or settlements). However, it is broadly recognized that the provision of humanitarian assistance in refugee camps is the exception, and not a long-term platform for accommodating the socio-economic needs and protection requirements of refugees. A very common feature, living in camps entails 'some degree of limitation on the rights and freedoms of refugees and their ability to make meaningful choices about their lives'.<sup>30</sup> Consequently, the approach adopted by a spectrum of international actors has mainly gravitated towards the adoption of alternative solutions.

The right to freedom of movement and freely choose residence is one of the fundamental rights provided under the Refugee Convention.<sup>31</sup> 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 and choose residence, 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.<sup>32</sup> However, this provision has often been interpreted as furnishing a leeway to implement encampment policies that particularly affect refugees – as well as for justifying

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<sup>30</sup> UN High Commissioner for Refugees (UNHCR). 22 July 2014. *UNHCR Policy on Alternatives to Camps*. UNHCR/HCP/2014/9. P.3. Available at: <http://www.refworld.org/docid/5423ded84.html>

<sup>31</sup> Refugee Convention. Article 26.

<sup>32</sup> A., Grahl-Madsen. 1997. *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. Available at: <http://www.unhcr.org/3d4ab5fb9.pdf>

discriminatory treatments among refugees – both of which are against the objectives and spirit of the Refugee Convention.

As beneficial as this right is to refugees, its implementation has been affected across jurisdictions – primarily because of restrictive policies adopted by states that oblige the encampment of refugees in designated areas.

For years, the United Nations High Commissioner for Refugees (UNHCR), the lead global institution dedicated to saving and protecting refugees, has promoted the Alternative to Camps Policy (ACP) whenever possible – while also ensuring that refugees are protected and assisted effectively.<sup>33</sup> The basic premise of this policy stresses that the ACP would ‘remove restrictions’ against refugees and enhance their opportunity to ‘live with greater dignity, independence and normality as members of the community, either from the beginning of displacement or as soon as possible thereafter’.<sup>34</sup>

For UNHCR, while camps still represent important tools in facilitating ‘the rapid provision of protection and life-saving assistance in the event of large-scale refugee influx, they are nevertheless 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.’<sup>35</sup> The ACP affords refugees a wider opening for self-reliance measures and represents a more sustainable approach in ensuring their lives in communities.

Quite recently, the significance of this approach was reiterated under the New York Declaration for Refugees and Migrants. Under the Declaration, it was agreed between states, including Ethiopia, that ‘refugee camps should be the exception, and to the extent possible, temporary measures in response to emergency’, and therefore the international community should ensure ‘the delivery of assistance to refugees and host communities is adapted to the relevant context’.<sup>36</sup>

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<sup>33</sup> UNHCR. *Policy on Alternatives to Camps*. Note 30. p.6.

<sup>34</sup> *Ibid.* p.4.

<sup>35</sup> *Ibid.*

<sup>36</sup> New York Declaration for Refugees and Migrants. Note 21. Para.73.

## 8.2 Ethiopia's Policy and Practice

The pertinent laws that regulate residency rights of foreigners in Ethiopia are the Immigration Proclamation No.354/2002 and Immigration Council of Ministries Regulation No.114/2002. Under the laws, all foreigners are required to be registered and receive temporary or permanent residence permit;<sup>37</sup> however, 'refugees' are precluded from such process as they are considered a special category, and if anything, their affairs would be regulated *solely* based on the Refugee Proclamation.<sup>38</sup> Hence, there shall be no extension of rights to refugees as provided to other foreigners under the immigration laws – to the extent that such regime proffers better rights.

Under Article 28 (1), the new 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. On the other hand, sub-article 2 gives ARRA the mandate to 'designate places and areas in Ethiopia within which refugees and asylum seekers may 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.

In practice, though, the Head of the National Intelligence and Security Services (NISS) under whom ARRA had operated under the repealed law, had routinely designated refugee camps across the country, a measure which has had the effect of curtailing freedom of movement and residency of refugees. In this light, it could be submitted that the general encampment policy practiced in Ethiopia is inconsistent with the 1951 Refugee Convention; it also runs counter to the objective and spirit of the Convention which prohibits 'refugee-specific' restrictions on freedom of movement and residency. It also follows, based on analyses of the Refugee Proclamation and practical application of residency rights of refugees, that in Ethiopia, the grant of a refugee status does not automatically entitle a person the *right to move freely or choose a place*

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<sup>37</sup> Immigration Proclamation No.354/2002. 3 July 2003. 9<sup>th</sup> Year, No.75. Addis Ababa (hereafter Immigration Proclamation). Articles 13 and 15.

<sup>38</sup> Immigration Proclamation. Article 14 (1) (b).



*of residence* in much the same way as *other foreigners* having legal residency status. This is a fundamental deviation.

A consolation is, however, provided under Article 28 (3) of the new Refugee Proclamation which explicitly provided that ARRA *may facilitate enabling conditions* for recognized refugees and asylum-seekers to use their right of movement.<sup>39</sup> This anticipates an exercise of discretionary system for permitting refugees living in designated camps to move from place to place or reside outside of camps.

Clearly, the legislative design under Article 28 (3) is a reaction to the contemporary practice on the ground – where ARRA’s administration of a permit system has been applied for years now – allowing refugees to *temporarily and permanently leave* camps under various schemes.<sup>40</sup> However, it should be clear that for the larger population of refugees, the right to freedom of movement and residency is *still* conceived in the context of pursuit of the encampment policy and its restrictive impacts. Only time will show if, as per the broader objectives framed under the National Comprehensive Refugee Response Strategy, Ethiopia can actually *transition* from the camp-based approach to a more integrated system which works on the provision of protection and assistance services in off-camp settings. In the meantime, Ethiopia’s practice generally falls short of the international standards.

As far as analysis of current practices is concerned, a refugee living in camp can apply for temporary leave at any time; temporary passes could be sought in connection with case processing (in Addis Ababa), for medical reasons, to visit family, or when a refugee has to leave camp on considerations of security, or to live in OCP setting.

Generally, in relation to refugees’ right to movement and choose own residence, Ethiopia’s exercise is informed by broader and

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<sup>39</sup> Note here that under a daft regulation circulated before, the right to freedom of movement of refugees was coined as a ‘right’ exercised subject to the acquisition of permit from authorities (not an entitlement facilitated by the government); on the other hand, an additional sub-provision which does not have parallel under the Refugee Proclamation was also included providing a clear legal basis for the Administration to pursue the OCP regime and issue permits to refugees whether individually or as a group.

<sup>40</sup> So far, ARRA’s provision of *temporary and permanent leaves* to refugees had not been based on clear legislation.

pragmatic considerations. It is conceived, and this was clearly reiterated during the interviews with ARRA official, that in the longer-term, the pursuit of 'encampment policy' engenders negative implications on resources, national security setting and the environment, and may well foster a mind-set of dependency and lack of perseverance, not to mention *also* that for many refugees (mainly from Eritrea), voluntary repatriation has not been an option.

Ethiopia's national discernment in this regard notwithstanding, the encampment policy has been the subject of reviews and criticism by the UN Human Rights Committee and the UNHCR itself. Of course, both had praised the limited opening Ethiopia offers to refugees under the OCP and 'urban refugee' regimes for certain nationalities and vulnerable refugees. However, they also expressed concern that the difficulties encountered by others - which still preclude long term solutions - warrant the promotion of integration of refugees through all mechanisms, facilitating their freedom of movement from camps to urban centers when needed, and the expansion of OCP scheme to include refugees of all nationalities equally.<sup>41</sup>

As indicated above, Ethiopia has pursued the OCP scheme for years with regard to certain group of refugees as alternative to encampment policy; this constitutes exception to the discretionary power and practice of NISS/ARRA in relation to the encampment of refugees. In fact, in the past, Ethiopia has largely tolerated a *de facto* OCP state with respect to refugees from Somalia, informal (not legally permitted) stays of South Sudanese refugees outside camps, is considering extending OCP status to Yemeni refugees, and has *formally* allowed thousands of Eritrean refugees to live in OCP settings - subject to certain requirements. In effect, the OCP has facilitated greater enjoyment of the right to freedom of movement and residency of a fraction of the refugee community in Ethiopia.

Still, it is important to note that the placement of refugees in the cities - which incidentally facilitates freedom of movement - is *also* attended by a few restrictions imposed on movement *outside* of the designated cities (indicated in a refugee's ID) - and is enjoyed *only* in

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<sup>41</sup> Human Rights Committee. 19 August 2011. *CCPR/C/ETH/CO/1*, 102<sup>nd</sup> Session. *Submission by the United Nations High Commissioner for Refugees for the Office of the High Commissioner for Human Rights' Compilation Report - Universal Periodic Review: Ethiopia*. P.4.

compliance with prior written authorization request submitted by a refugee and issued by ARRA. In the current context, a challenge remains since regulations would yet provide details of how the right to freedom of movement is actually facilitated, whether the existing practice continues as is, and what the government's discretion would be like.

So far, though, OCP refugees interviewed during this study concurred that securing a permit (cooperation letter) to travel outside a refugee's designated city is rarely a problem. Generally, the permit is issued by ARRA on the same day as the request – although there are variations from camp to camp. While authorities tolerate some deviations, a refugee who is caught moving further and outside residency city – without holding a letter from ARRA – risks detention.<sup>42</sup>

### **8.3. The Management of OCP and Freedom of Residence and Movement**

In principle, Ethiopia has accepted that the OCP regime should be extended to all nationalities and has expressed commitment in this regard. Yet, a major break in this regard only came with the adoption of the Roadmap in 2017.

Over the years, Ethiopia has experimented on procedures – steadily relaxing the encampment of refugees and allowing greater exercise of the right to freedom of movement. With regard to Eritrean refugees, the OCP intends to foster three intertwined objectives, namely, family reunification, improved livelihood opportunities and strengthening of people to people relationship which forms part of Ethiopia's broader agenda on normalization of state-to-state relationship.<sup>43</sup>

The earliest thesis of Ethiopia's policy shift in relation to 'strict encampment rule' could be traced to the adoption of the 'open-

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<sup>42</sup> Focus Group Discussion with six Eritrean refugees living in Addis Ababa. 8 December 2017. Refugees Resource Center. Addis Ababa (hereafter FGD with Eritrean refugees).

<sup>43</sup> KII with Mr. Haileselassie Gebremariam. Note 19.

accommodation' approach in the post-1991 period – hosting more than 160,000 Somali refugees who fled civil war, sectarianism and persecution following the fall of the Said Barre regime in Somalia. The refugees 'settled' in camps and across urban centers in Ethiopia – mainly in Addis Ababa and Jijjiga areas without registration or support by ARRA. In 2008, limited efforts by ARRA to regularize the 'OCP-like' *de facto* regime involving Somali refugees and to issue residence permits was discontinued after a cluster of refugees were accommodated.<sup>44</sup> In November 2004, the Shimelba Refugee Camp in Tigray, the first of its kind hosting Eritrean refugees in northern Ethiopia, was opened – bringing refugees who had been in the collection centers from as early as 2000.<sup>45</sup>

In the early phases, the 'exclusive focus' on Eritrean refugees was prompted by several factors including their strong historical and cultural ties with Ethiopia – making relationships with the host community easier, the existence of networks such refugees could use to sustain themselves in cities, and the potential security risks that could come with opening the scheme to others, especially Somalis.<sup>46</sup> According to ARRA, though, the most significant driver was that *only* Eritrean refugees had persistently demanded for the opening of such opportunity (between 2004-2007) which swayed the institution to assess the situation and seek governmental endorsement; no similar appeal was submitted by any other refugee nationality, except the Yemenis who recently pleaded for similar treatment.<sup>47</sup>

Contrary to many narratives – including the Roadmap itself, it was disclosed during the interviews with ARRA that the OCP program has actually been implemented in relation to Eritrean refugees since as early as 2007; while proper record may be in short-stock on exact numbers, tens of thousands of Eritreans have benefitted from the OCP regime.<sup>48</sup> This represents a fundamental departure from the enforcement of strict encampment policy in relation to all other refugees – except those who were extended special leave on account of medical, protection and humanitarian grounds.

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<sup>44</sup> Ibid.

<sup>45</sup> Ibid.

<sup>46</sup> Samuel Hall Consulting. 2014. *Living out of Camp: Alternatives to Camp-based Assistance for Eritrean Refugees in Ethiopia*. P.17.

<sup>47</sup> KII with Mr. Haileselassie Gebremariam. Note 19.

<sup>48</sup> Ibid.

In 2017, the ‘relative success’ of the OCP experience with Eritrean refugees and its alleged impact in ‘enhancing self-reliance’ was recognized that Ethiopia resolved to steadily expand the scheme to refugees of other nationalities. The ‘new’ OCP scheme – now being re-considered within the framework of the Roadmap and the newly adopted Refugee Proclamation – took this process to new heights.

Designed by the government in tune with the UNHCR’s ACP approach,<sup>49</sup> the policy symbolizes a praiseworthy achievement in the country’s ‘liberal’ approach in hosting refugees and in extending enhanced opportunities to *a fraction of refugees* – especially in relation to the exercise of freedom of movement, and possibly, in ensuring sustainable livelihood. This national measure is conceived as a key mechanism for carrying out Ethiopia’s undertaking under international instruments and as important device in its gradual shift to the ACP model.

Still, it would be noted that apart from the Roadmap and the National Comprehensive Refugee Response Strategy documents, there is hardly any specific legal framework on which implementation of the OCP regime is predicated. Its future implementation would, therefore, be based on the programmatic and strategy-focused documents – a critical challenge from the point of instituting a legally predictable scheme.

### **8.3.1 Conditions for the Grant of OCP Status**

The Roadmap only indicates that the eligibility requirements for the grant of OCP status will be detailed in the future in relation to refugees moving from *other countries*. However, in a passing note on the historical account of the OCP, the Roadmap narrated three basic conditions which ought to be fulfilled by any *recognized Eritrean refugee* to receive OCP permit: having the necessary means to financially support oneself; ability to submit relatives or friends who can commit to support the refugee (as guarantor); and having no criminal record whilst being sheltered in camp. Other standards

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<sup>49</sup> ARRA, *Roadmap for the Implementation of the Ethiopian Government Pledges*. Note 16. P.2

have also been applied, namely that one must have lived in camp for at least forty-five days.

Over the years, a modest experience is already garnered in the administration of the OCP regime on Eritrean refugees to comprehend its actual workings, evaluate the preconditions and converse on the scheme's purposes in incidentally serving the recognized right of refugees to movement and choice of residence.

Departing from its stated objectives and the practice, the OCP could be viewed as 'partial local integration' – potentially leading towards full integration – short of durable solutions. Hence, it is commonsensical that the eligibility standards had started with requirement of recognition of a *refugee status* and living in camp for at least 45 days (trimmed from the original 6 months – which was subsequently reduced to 3 months). Exceptionally, though, vulnerable persons such as women at risk, elderly, handicapped, and 'high profile' individuals have been permitted to apply for OCP right away – after registration is completed.<sup>50</sup>

Participation in OCP program is based on a refugee's voluntary decision – which is expressed by presenting oneself at ARRA's local functionary and by filling out and signing required forms *in person*; communication or expression of consent through intermediary is not permitted.<sup>51</sup>

When originally launched in 2007, the concept of 'guarantor' was narrowly construed to apply only in the context of 'nuclear family'. Hence, a refugee would be allowed to benefit from the scheme only when he could present as guarantor a husband, wife, father, mother or a child living in Ethiopia; however, as the demand increased, this was expanded to include grandparents and proximate relatives, and eventually, friends, acquaintances and even self-guarantee procedures.<sup>52</sup>

If a third party guarantor is preferred by a refugee, such person could be an Ethiopian national or a foreigner lawfully residing in Ethiopia; the sponsor must be willing to sign a form prepared by ARRA (in Addis Ababa) – in theory expressing consent to

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<sup>50</sup> KII with Mr. Haileselassie Gebremariam. Note 19.

<sup>51</sup> Ibid.

<sup>52</sup> Ibid.

undertake such responsibility for the upkeep of the refugee. A copy of his/her ID and a photograph must also be submitted. Only then can the refugee be granted leave from camp and relocate in a city of own choice. The refugee can also choose to be one's own guarantor.<sup>53</sup>

The sponsor can always request ARRA to be relieved of her/his obligation; the refugee would then be asked if he could proffer another guarantor – and if not, he needs to get back to camp – unless he signs a form as own-guarantor. In practice, ARRA rarely presses refugees to go back to camp unless s/he wants to – in which case a travel pass would be issued.

A refugee must be able to sustain himself/herself economically and s/he/the sponsor is required to sign undertaking to this effect; but, there is no defined minimum threshold of financial capability, or evidentiary requirement that s/he needs to demonstrate. Besides, ARRA does not indulge on checking whether or not the refugee or his sponsor would actually be able to provide sustenance or other support. There is no requirement of living together.<sup>54</sup>

When the scheme started, only Debremarkos was availed in the 'basket of choices' for purposes of resettling OCP beneficiaries – although this was subsequently expanded to other towns; according to ARRA, the proposal to restrict the choices was predicated on certain ground-facts that had to be taken into consideration. This mainly involved service provision capacity of the cities/towns to which refugees wish to move – the main concern being that if too many refugees decide to settle in the same area, this would not only strain local service infrastructure, it might also generate indigenous resentment. Yet, this consideration was substantially relaxed by the government since most of the demand put forward by refugees had focused on Addis Ababa.<sup>55</sup>

Today, virtually no restriction exists in terms of where an Eritrean refugee wishes to settle within the framework of the OCP – although, in practice, peripheral locations which have traditionally

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<sup>53</sup> KII with Mr. Haileselassie Gebremariam. Note 19; FGD with Eritrean refugees. Note 42.

<sup>54</sup> Ibid.

<sup>55</sup> KII with Mr. Haileselassie Gebremariam. Note 19.

been used as 'gateways' for illegal immigration remain outside the scheme's scope.<sup>56</sup> Change of OCP residence is possible if, for whatever reason, a refugee wishes to be transferred from one city to another; however, compliance with the same procedures is required.

A refugee applying for OCP should not have a criminal record whilst living in camp. While what constitutes a criminal record is not difficult to conceptually describe, generally, the commission of minor crimes has not been regarded as ground warranting the exclusion of refugees from the scheme.<sup>57</sup>

There is no clear and predictable procedure outlining a timeframe within which an application for OCP permit would be handled. Qualitative data congregated from OCP refugees in Addis Ababa had shown diverse experience.

OCP refugees don't have reporting obligation to any government institution – including ARRA, except in the context of visits required to renew/replace a Refugee ID. However, UNHCR's system requires refugees to update their status every two months.<sup>58</sup>

### **8.3.2 Rights and Obligations of Refugees in OCP State**

Participation in OCP does not entail 'change' in a refugee's protection status. In fact, the refugee will continue to have the same standing and enjoy all rights as before. Yet, in practical terms, it was observed during the study that for many refugees, involvement in the OCP has not added a great deal of value – apart from the reconnect in cultural and political contexts. Given the nature of the practice, therefore, it is now evident that most positive testimonials in contemporary literature about 'enhanced livelihood opportunities' OCP refugees acquire are disputed on facts.

As OCP beneficiaries, refugees commit to sustain themselves financially, and therefore, no amenities, monetary or in-kind, are provided to support their life in cities – as would have been the case

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<sup>56</sup> FGD with Eritrean refugees. Note 42. During the FGD with Eritrean refugees, it was disclosed that exceptions apply in relation to such places like Gambella, Moyale and Zala Ambessa.

<sup>57</sup> KII with Mr. Haileselassie Gebremariam. Note 19.

<sup>58</sup> FGD with Eritrean refugees. Note 42.



in refugee camps or with *Urban Refugees* supported by UNHCR. By moving out of camps, refugees forfeit their 'entitlement' to food rations, free medical and educational services, and other facilities offered in camps. Refugees are also expected to hand over their 'ration card' – which would be replaced by standard Refugee ID that is valid for three years and indicates a holder's OCP status.

A very important consideration from refugees' point of view is also that once a refugee chooses to settle outside a camp, the personal file would be transferred to UNHCR's office in the cities. This way, any potential window for resettlement to third countries remains active. Hence, it would be conjecturing – as noted during the interviews with refugees in Addis Ababa – to assume that 'OCP' and 'third country resettlement' options are incompatible or OCP refugees are unevenly treated. Many refugees take the view that living in camps offers faster resettlement opportunities just because refugees live on UNHCR's continued assistance – which compels the organization to prioritize. As Hall rightly noted, refugee cases would still be communicated to the city and handled by UNHCR's sub-office, and therefore, beneficiaries from OCP could apply for resettlement where all cases would be handled similarly.<sup>59</sup>

While OCP status is only deemed a type of 'semi-durable' arrangement 'potentially' promoting access to sustainable livelihood, any OCP beneficiary can always opt to return to a refugee camp if, for any reason, s/he does not wish to continue life in a city.

A greater facilitation the OCP scheme might be, on the way forward under the Roadmap and the Refugee Proclamation, a few challenges remain affecting freedom of movement and residency. First, there is still no clearly defined guideline directing the application of OCP to all nationalities; no eligibility criteria is set for refugees entitled to benefit from OCP, nor are mechanisms placed to prepare refugees' adjustment to urban life and improved livelihoods through clearer interventions. While this detail may be worked out under strategy documents or particular action plans, in the meantime, the encampment policy and the limited practice of granting 'temporary

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<sup>59</sup> Samuel Hall Consulting. Note 46. P.39.

passes' to refugees would be employed as a basis for the exercise of the right to freedom of movement.

This would mean, again, that in the meantime and pending the adoption of a comprehensive OCP regime, a great majority of refugees would live in camps in isolation; such practice would continue to raise issues of compatibility with the Convention which unequivocally establishes the right to freedom of movement and to freely chose residence – subject *only* to regulations applied in respect of aliens in similar circumstances.

## **9. Gainful Employment and Opportunities of 'enhanced' livelihood**

Neither the Refugee Convention nor Ethiopia's repealed refugee law positively provided for refugees' right to engage in gainful employment on a par with nationals. In consequence, over the years, refugees partaking in the OCP regime have faced severely restricted opportunities of access to the Ethiopian job and petty trade/retail markets. Naturally, such legislative setting precludes refugees' local integration prospects as it withdraws from them one of the most fundamental means of sustaining lives in cities and of building self-reliance.

In actual practice, it was also discovered during the interviews that the biggest challenge OCP refugees encounter is related to sustaining livelihood. In the cities, they are often confronted with major financial strains that ensue from their protracted situation; unable to cope with the challenges, many refugees had in fact approached ARRA to facilitate the provision of basic support – although they had signed commitment pledging self-sufficiency.<sup>60</sup> The very policy framework designed to facilitate self-reliance was not able to fully achieve its objectives in relation to the majority – since refugees have not been afforded the right to engage in wage-earning employment, self-employment or retail trade activities on par with nationals. The absence of sustainable arrangements, Hall observed, forces refugees not to have perspective and horizons to

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<sup>60</sup> KII with Mr. Haileselassie Gebremariam. Note 19.

strive for – explaining why many of them perilously continue secondary migration to Europe or Israel.<sup>61</sup>

OCP refugees have had clear understanding of the limits of the repealed law as far as engagement in gainful employment is concerned. While many rely on remittances from friends and families abroad which, in the long term, may not be sustainable, no so few also engaged, illegally, in wage-earning employment and in retail trading activities to cope with challenges of livelihood in OCP settings. In fact, during the interviews and FGDs with refugees, it was revealed that the drawback under the previous legislation had forced many Eritreans to unlawfully receive employment (both in casual or regular labour) and involve in small-scale business ventures unlawfully ‘using’ Ethiopian business licenses.

In relation to gainful employment, it was identified from the interviews and FGDs with refugees that the previous law’s prohibitive language had engendered three negative implications. First, many individuals and businesses have been very reluctant to hire refugees in skilled or semi-skilled labour – for fear of legal reprisals. Second, when the occasion arises, many refugees had reportedly been subjected to abuses – such as labour overexploitation and improprieties relating to timing or amount of wages paid. Since the contractual basis for the refugees’ engagement in gainful activities has also been questionable in the eyes of the law, such refugees would hardly pursue grievances before judicial bodies, this creating a sense of indifference and disincentive in actively seeking employment. Third, not so few refugees also ‘rent’ business licenses issued to nationals and engage in various commercial activities,<sup>62</sup> while such incidences are normally tolerated by authorities, in so doing, refugees operate in a state of uncertainty and risk facing both administrative and criminal sanctions.<sup>63</sup>

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<sup>61</sup> Samuel Hall Consulting. Note 46. P.10.

<sup>62</sup> FGD with Eritrean refugees. Note 42.

<sup>63</sup> Under Article 49(2) of the Commercial Registration and Business Licensing Proclamation No.980/2016, any person engaged in business activity without having a valid license shall, without prejudice to the confiscation of merchandise, service provision and manufacturing equipment, be punished with fine from Birr 150,000 to Birr 300,000 and with rigorous imprisonment from 7 years to 15 years.

Such a depressed picture of the legal setting notwithstanding, several humanitarian organizations continued to offer OCP refugees skill trainings and facilitate self-employment and income generating opportunities by providing, among others, financial assistance,<sup>64</sup> – even when it was evident that these schemes could not lead to formal employment or establishment of businesses. In this regard, the widely endorsed expectation has been that the law would be changed at some point and that the skills could be utilized as capital in the future.

Today, substantive ambiguities and contentions still prevail, but it is assuring to witness that the new Refugee Proclamation has been composed of provisions which may well afford refugees wider opportunities for engagement in gainful employment – both generally and in relation to OCP.<sup>65</sup>

This legislative development has far-reaching implication on the right of refugees to movement, to choose own residence and enhancement of socio-economic standing. This fact, therefore, warrants a thorough exposition of provisions of the new Refugee Proclamation in relation to international standards.

As discussed in the preceding sections, one of Ethiopia's commitments featured under the Roadmap relates to permitting refugees, both inside and outside camps, *access to employment within the bounds of domestic laws* and the issuance of *work permits to refugee graduates in areas permitted for foreign workers*. This intervention intends to institute for refugees the right to work and use refugee ID as residence card for purposes of issuing work permit.

This stipulation under the new Proclamation is very progressive and a fundamental departure for two important reasons. First, there was no provision under the repealed refugee law which specifically covered the right of refugees to work; Article 21 had only made a

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<sup>64</sup> FGD with Eritrean refugees. Note 42.

<sup>65</sup> It should be noted that at one point in the early drafting processes, a regulation was introduced wherein a liberal approach was adopted under Article 23(5); the provision provided that notwithstanding contrary stipulations in other laws, recognized refugees may be permitted to establish *commercial or cooperative organizations or engage in business activities* in accordance with the national laws applying to *domestic investors*. However, it will be shown in the subsequent discussions that this provision never made its way to the Refugee Proclamation in the same language.

general cross-reference – indicating that refugees shall be ‘entitled to other rights under the Refugee Convention and African Refugee Convention’, a legal framing approach which often poses difficulty in the interpretation and enforcement of rights domestically. Second, the same provision had *also undermined* any potential for broader protection since it provided that the reference to international instruments notwithstanding, refugees shall *only* be entitled to the *same rights afforded and restrictions imposed on foreigners* in Ethiopia in respect of wage-earning employment.<sup>66</sup>

Under the Refugee Convention, the pertinent standards on refugee’s right to engage in ‘gainful employment’ are composed under three headings. Article 17 on ‘wage-earning employment’ imposes on states to extend refugees ‘the most favorable treatment accorded to nationals of a foreign country in the same circumstances’.<sup>67</sup> Article 18 on ‘self-employment’ requires states to accord refugees ‘treatment as favorable as possible, and, in any event, not less favorable than that accorded to aliens generally in the same circumstances’ as regards the right to engage, on own account, in agriculture, industry, handicrafts and commerce, and to establish commercial and industrial companies. Under Article 19 on engagement in ‘liberal professions’, states are obliged to accord refugees who hold diplomas recognized by competent authorities ‘treatment as favorable as possible and, in any event, not less favorable than that accorded to aliens generally in the same circumstances’.

## 9.1. Wage-earning Employment of Refugees

On wage-earning employment, the fact that the Convention provides for minimum threshold of ‘most favored treatment’ as

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<sup>66</sup> Reservations and Declarations. Convention Relating to the Status of Refugees. Signed at Geneva on 28 July 1951. Available at: <http://www.unhcr.org/cgi-bin/texis/vtx/search?page=search&docid=3d9abe177&query=1951%20Refugee%20Convention>

Ethiopia entered reservation to Article 17 (2) of the Convention which would have exempted refugees who fulfill certain criteria from restrictive measures of employment adopted by host state to protect the national labour market.

<sup>67</sup> No reservation was entered by Ethiopia with regard to this particular sub-article in pursuance of its right under Article 42 of the Convention.

accorded to 'nationals of a foreign country' does not seem to offer much justice in relation to refugees' right to work. In fact, in Ethiopia's specific context under the repealed law, it had implied less-appealing readings – gaps which the new Refugee Proclamation has endeavored to mend.

Article 26(1) of the new Refugee Proclamation *only* recognizes that 'refugees have the right to engage in wage-earning employment in the same circumstance as the *most favorable treatment accorded to foreign nationals* pursuant to relevant laws'. This is, therefore, simply a question of what the relevant laws state on the subject of foreigners' access to the job market and identifying which of the laws offer the most favorable treatment to foreigners.

Not all foreigners living in Ethiopia assume the same status – and among the class of foreign citizens, Foreigners of Ethiopian Origin (FoEO) enjoy the widest protection and set of privileges in the job and professional markets and commercial engagement by virtue of Proclamation No.270/2002,<sup>68</sup> followed by Djiboutian nationals accorded preferential treatment under a bilateral treaty. Literally, this legislation situates FoEO on par with Ethiopian citizens – and allows them unconditional access to job markets – in the private sector and in all civil service agencies (except defence, security, foreign affairs and political establishments) without being required to take out 'work permits'; furthermore, the law allows an unimpeded involvement of FoEO in areas of trade and investment exclusively reserved to domestic investors.

However, it must be emphasized that there is a unique context and set of objectives on which the adoption of this law is predicated. Hence, it may be very challenging to read Article 26 as permitting refugees the *same class of protection* afforded to FoEO – as this would have far-reaching implications. FoEO are foreigners of 'special class' accorded preferential treatment for particular economic, social and political rationales,<sup>69</sup> and the benefits and entitlements are enjoyable

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<sup>68</sup> Providing Foreign Nationals of Ethiopian Origin with Certain Rights to be exercised in Their Country of Origin Proclamation No.270/2002. 5 February 2002. 8<sup>th</sup> Year, No.17. Addis Ababa, Ethiopia.

<sup>69</sup> The intervention is triggered because of the conviction that FoEO who have acquired foreign nationality due to their life circumstances or other facts could be made to contribute to the development and prosperity of the peoples and country of their origin

only by such persons who hold a special Identification Card issued by the government – the objective being to control the enforcement of the rights, privileges and responsibilities.<sup>70</sup> This is not to mention, also, that it is not convincing whether the comparison under Article 27 should, in the first place, be between such ‘uniquely privileged segment of foreigners (FoEO)’ and ‘refugees’, or between ‘the ordinary cluster of foreigners’ lawfully living in Ethiopia’ and ‘refugees’.

While the government’s intentions could not be clearly identified until implementation kicks off in full force,<sup>71</sup> there is little evidence to indicate that Ethiopia’s legal commitment under the new Refugee Proclamation would stretch as far as granting *all refugees* in Ethiopia, currently about one million, automatic and unconditional right of employment across all sectors. If *equal treatment* was indeed the intention, the law could have simply said so – as is the model case under Article 26(4) on refugees’ opportunities in joint projects.

If this reading holds, then, the next question would be one of identifying the circumstances under which foreigners (other than FoEO) are permitted to access Ethiopia’s job-market. Unfortunately, foreigners are not only afforded with very limited opportunities under various laws in Ethiopia regulating access to employment, the entitlements are also subjected to numerous conditions relating to exclusion sectors, expertise and time-frame as discussed below. For instance, under the Federal Civil Servants Proclamation which applies to all ‘government institutions’, *persons who are not Ethiopian nationals* are not eligible to be public servants.<sup>72</sup> The very narrower

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if the legal restrictions pertaining to the enjoyment of certain rights and privileges are lifted. Proclamation 270/2002. Note 68. Preamble and Article 3.

<sup>70</sup> Proclamation 270/2002. Note 68. Article 7.

<sup>71</sup> The recently formulated National CRRF Strategy document states very explicitly that its *vision* is to see refugees and host communities being self-reliant and active participants in socio-economic activities; one of the key objectives (of pertinence to the discussions at hand) is that which speaks about ensuring that economic and social opportunities and benefits are realized by refugees and host communities.

*National Comprehensive Refugee Response Strategy (2018-2027)*. Note 2.

<sup>72</sup> Federal Civil Servants Proclamation No.1064/2017. Article 15; this is without prejudice to Proclamation No.270/2002 providing foreign nationals of Ethiopian origin rights to be exercised in their country of origin – including right to be employed in any sector without work permit – except in national defense, security, foreign affairs and other similar political establishments.

window – permitting such institutions to appoint a foreigner on temporary basis – is limited to circumstances where high level local expertise is lacking.<sup>73</sup> Therefore, refugees could not engage in the public service’s job market – one of the largest employers of labour in Ethiopia’s national context – unless they are accorded same treatment as FoEO.

Special legal regimes *also* apply on contracts relating to employees such as members of the armed forces, police force, judges of courts of law,<sup>74</sup> and prosecutors,<sup>75</sup> – generally restricting or barring foreigners, and by implication, refugees’ access to employment in such professional establishments.

Outside of such *exclusive domains*, there exists restricted possibility where foreigners, including refugees, may receive employment in Ethiopia – subject to the requirement of securing work permit. In this regard, the most pertinent legal instrument is the Labor Proclamation No.377/2003 (just repealed and replaced with a new labour proclamation currently in print) which regulates nearly all relationships based on contract of employment between workers and employers.<sup>76</sup> Article 174 of the Proclamation (substituted by Article 176 under the new Labour Proclamation) obliges all *foreign nationals* (including refugees) to acquire specific work permit before they engage in any type of work in Ethiopia.

Under the Labour Proclamation, the Ministry of Labour and Social Affairs (MoLSA) has mandate to issue directives necessary for implementation of the law in relation to the ‘types of works that require work permit for foreigners’, the ‘manner of employment’ and ‘giving of work permits to foreign nationals’.<sup>77</sup> In a deterring

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<sup>73</sup> Federal Civil Servants Proclamation No.1064/2017. Article 21 (2).

<sup>74</sup> Amended Federal Judicial Administration Council Establishment Proclamation No.684/2010. Article 11 on ‘Criteria for Appointment of Judgeship’ provides that only Ethiopians could be appointed to such positions.

<sup>75</sup> A Proclamation to Provide for the Establishment of the Attorney General of the Federal Democratic Republic of Ethiopia No.943/2016. May 2, 2016. 22<sup>nd</sup> Year No.62. Addis Ababa. Article 11 states the appointment of public prosecutors shall be based on basic principles, including the requirement that the appointee shall have Ethiopian nationality.

<sup>76</sup> Labour Proclamation No.377/2003. February 26, 2004. 10<sup>th</sup> Year, No.12. Addis Ababa. (repealed in 2019)

<sup>77</sup> Labour Proclamation 377/2003. Article 170(1) (e), Article 172(3); (Art.171(1)(e) and 172(3) under the new law).



tone, the law also provided that any foreigner (including refugee) may *only be employed in any type of work* in Ethiopia where he possesses a work permit given to him by the Ministry; such work permit shall be given for an employment in *a specific type of work for three years* and shall be renewed every year, and when the Ministry ascertains that the foreigner *is no longer required for the work*, the permit may be cancelled.<sup>78</sup>

In relation to employment in *investments*, too, employers are required to comply with rigorous preconditions set under national laws and are generally discouraged to retain foreign employees *indefinitely*. For instance, Ethiopia's investment laws – applying to investment activities carried out as sole proprietorship, business organizations or as public enterprise/cooperative society – and registered in accordance with the Commercial Code, place limitations on the employment of foreigners, including refugees – basically, in all spheres of economic activity involving the private sector. Under the Investment Proclamation, the Ethiopian Investment Commission is authorized to issue, renew, replace, suspend or cancel work permits to 'expatriates' representing MoLSA.<sup>79</sup> While any investor may employ 'duly qualified expatriate experts required for the operation of his business', the investor shall be responsible for replacing, within limited period, such expatriate personnel by Ethiopians by arranging the necessary training needed for the job – except when such position relates to *top management* responsibilities. In this light, employers are not only required to convince the Commission about any expat employee's *special expertise* which cannot be availed locally, such companies are also expected to introduce phased departure of all foreign employees, including qualified refugees, from positions they occupy in any enterprise.

The same restrictive stipulation is also provided under the Industrial Park Proclamation and its implementation regulation.<sup>80</sup> These regimes – regulating employment in one of the potentially largest

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<sup>78</sup> Labour Proclamation 377/2003. Article 174; (Art.176(3) under the new law).

<sup>79</sup> A Proclamation on Investment No.769/2012 (as amended). September 17, 2012. 18<sup>th</sup> Year No.63. Addis Ababa. Art.30 and 37.

<sup>80</sup> A Proclamation on Industrial Parks No.886/2015. 9 April 2015. 21<sup>st</sup> Year No.39. Addis Ababa. Art.13, 14; and Industrial Parks Council of Ministers Regulation No.417/2017.

employers of labour in the country (i.e. industrial parks), *permit* the retention of expat personnel by any industrial park developer, industrial park operator or enterprises located within industrial parks. However, the laws limit the employment of foreigners *only* for top management positions, supervisory, training and other technical functions – and have furthermore imposed on employers the obligation to *replace* such expatriate personnel by transferring the required knowledge and skills through trainings.

On the other hand, Article 26(3) of the Refugee Proclamation provides that refugees who have academic credentials authenticated by the competent government authority, and who are desirous of practicing their profession, may be accorded the *most favorable treatment* given to foreign nationals as regards engaging in employment in areas permitted to foreign nationals. Inspired by an exact phraseology of a corresponding right under Article 19(1) of the Refugee Convention on ‘liberal professions’,<sup>81</sup> this stipulation is meant to carry out the government’s commitment under the Roadmap by issuing *work permits to refugee graduates* in areas permitted for foreign workers by giving *priority* to qualified refugees.

And yet, since the treatment accorded to refugees is generally likened with foreigners (and not necessarily FoEO), this provision, too, does not appear to establish a general (automatic) right of refugees to work or an unconditional right to request for and obtain work permit just by virtue of a refugee status. No doubt, a refugee’s status as holder of recognized diploma offers a slightly enhanced opportunity for employment in the private sector. However, as work permits need to be issued before any expatriate, including refugee graduates, could start work in any professional line, inevitably, the procedures set under the pertinent laws would subject refugee graduates to the same limitations discussed above – in terms of required levels of knowledge/expertise (which ‘cannot be covered’ by Ethiopians), the temporal frame, and even regulations in some liberal professions which forbid practice by foreigners. This negative

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<sup>81</sup> Traditionally, ‘liberal professions’ include those that require special training and the provision of intellectual service, acting on one’s own without being employed by a state or another employer; such may include lawyers, medical doctors, dentists, veterinarians, engineers, architects, accountants, interpreters etc.

reading holds unless it is held, albeit unconvincingly, that under Article 26(3), refugees are treated as having same standing as FoEO. The solution to refugees' predicament should not have been sought in legislative ambiguity.

Conceivably, in relation to gainful employment, the *most progressive* opening is coined under Article 26(4) of the Refugee Proclamation. It provided that recognized refugees and asylum-seekers engaged in rural and urban projects jointly designed by the Ethiopian government and the international community to benefit refugees and Ethiopian nationals, including in agriculture, environmental protection, industry and small and micro enterprises, shall be given *equal treatment* as accorded to Ethiopian nationals engaged in the same projects.

Unlike the sub-articles above, this provision ushers a new chapter in the treatment of refugees *on par with nationals* and is partly triggered by the 1951 Refugee Convention itself<sup>82</sup> and new geo-political developments in the Horn of Africa and international relations – prompting shifts in policy and response mechanisms to existing refugee situations. This is also in reading with the New York Declaration which urged host states to strengthen the nexus between humanitarian responses and development agendas and consider opening labour markets to refugees in close coordination with UN entities and international financial institutions to strengthen the resilience of host countries and communities in employment creation and income generation.<sup>83</sup>

Currently, the most fitting scenario for implementation of this right is being pursued under the *Ethiopia Economic Opportunities Project (EOP)*, a scheme **which** coordinates with one of the few concrete outcomes of the UN Summit on Refugees and Migrants held in New York. Under this mutually beneficial arrangement, a strategy has been designed for implementing investment programs financed by

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<sup>82</sup> Article 17 (3) of the Refugee Convention asks states to give sympathetic consideration to assimilating the rights of all refugees with regard to wage-earning employment to those of nationals, and in particular of those refugees who have entered their territory pursuant to *programs of labour recruitment or under immigration schemes*.

<sup>83</sup> New York Declaration for Refugees and Migrants. Note 21. Para.84-85

international development partners<sup>84</sup> – intertwining the vital requirements of refugees in obtaining employment and decent livelihood opportunities in Ethiopia with the host government’s broader strategies for industrial parks development. The key objective of the EOP is to support Ethiopia’s industrial transformation agenda through the development of industrial parks which anticipate creating jobs in locations adjacent to targeted refugee sites in the North, East and South-Western parts of the country – of which about a third of the jobs would be dedicated to willing and qualified refugees.<sup>85</sup> Whether or not the industrial parks agenda succeeds, the EOP and other similar programs coined in the future in cooperation with development and humanitarian agencies, introduce new operational model in the accommodation and integration of refugees into productive labour forces – and also synchronize with the commitments of international organizations in creating economic resilience in *countries impacted by migration and refugee influx*.

*Evidently, the exercise of the right to work under this sub-article – which assimilates refugees with nationals – is contingent on the effective implementation of investments and labour recruitment programs on the basis of which refugees would enter the jobs-market in Ethiopia. In the specific context of the Ethiopia Economic Opportunities Project, for example, this entails that industrial parks are actually established, refugees possessing the relevant skill profiles are selected, residence permits are issued on the basis of refugee IDs, and identified refugees – and possibly their families<sup>86</sup> – are relocated to new sites situated across the designated industrial parks. Since the Refugee Proclamation offers such refugees the same rights as ‘nationals’, the special conditions attached to work permits in relation to other foreigners – such as permits serving a defined time*

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<sup>84</sup> The partnership mainly involves the European Investment Bank, the World Bank Group, European Union and DFID.

<sup>85</sup> These objectives are clearly included in the Roadmap under the government’s pledge on ‘job creation’.

<sup>86</sup> Under Article 12 of the repealed refugee law (as is the case under the new law), the concept of family unity is already recognized, and as such, members of the family of a recognized refugee are allowed to enter and remain in Ethiopia and shall be entitled to ‘all rights and duties of an asylum seeker’. In the particular context of the discussion at hand, this entails the grant of work and residence permits to members of a refugee’s family – although, for the sake of clarity, the Refugee Proclamation should have provided an explicit provision to such effect.

*frame and expat workers' eventual replacement by a national – would not be applicable. Again, since these class of refugees would also need to move from camps to selected industrial parks or project establishments where the 'joint schemes' operate, the 'equal status' proviso should be read as entitling them to seek employment elsewhere in Ethiopia if, for any reason, they could not continue to work in such facilities or the facilities could not kick off as planned for any reason – as would likely be the case with the industrial parks.*

*A second progressive development under the new Refugee Proclamation also relates to the enhanced status of the right to work offered to certain category of refugees under Article 26(9). The provision provides that none of the restrictions as applying to foreigners in relation to right of work would be applicable on a refugee who marries an Ethiopia national, or have one or more children who possess Ethiopian nationality.*

*Once a refugee is employed – whether within or outside of the scheme designated under Article 26(1) or 26(4), Ethiopia's laws extend benefits and protections to refugees that are as favorable as those availed to nationals. While the labour law imposes obligation on employers not to discriminate between employees on the basis of any condition,<sup>87</sup> in the case of Article 26(4), the new Refugee Proclamation even goes further – entitling refugees to 'rights and obligations' imposed by applicable laws and prohibiting 'any discrimination between refugees and Ethiopian nationals'.<sup>88</sup>*

In conclusion, while Ethiopia's commitment under the Roadmap is widely labeled as positive development and may well ease the challenge few qualified refugees had experienced in the past, for the 'broader' and 'largely unskilled' refugee community, Article 26(1) of the Refugee Proclamation has not really established a right to work – unless it is submitted that they have the same standing as FoEO. Indeed, in this regard, the new Proclamation is clearly impacted by the framing of the Refugee Convention itself as well as the Roadmap wherein Ethiopia *only* undertook to extend access to employment 'within the bounds of domestic laws' (as applying to ordinary foreigners) – which laws, as discussed above, are but very deterring. A more proactive approach would have been to establish a clear legal basis that would have allowed the broader refugee community to join the Ethiopian labour market in phased numerical progression

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<sup>87</sup> Labour Proclamation No.377/2003. Note 76. Article14 (1)(f).

<sup>88</sup> Labour Proclamation No.377/2003. Note 76. Article 25 (6) and (7).

- with due emphasis accorded to facilitating opportunities of enhanced livelihood and self-reliance.

## 9.2. Self-employment

Another gainful activity, vitally complementing the potentially limited opening availed to refugees under 'wage-earning employment', is provided under Article 18 of the Refugee Convention in relation to 'self-employment'. It states that a refugee should receive 'treatment as favorable *as possible and, in any event, not less favorable* than that accorded to aliens generally in the same circumstances, as regards the right to engage on his own account in agriculture, industry, handicrafts and commerce, and to establish commercial and industrial companies'.

This provision implies that refugees shall generally benefit from same opportunities of access as are available to 'foreigners' - if they wish to involve in agricultural, commercial and industrial activities. In Ethiopia, these sectors are regulated by different bodies of national laws - which define rights, obligations and requirements that particularly apply to foreigners. It is, therefore, evident that any understanding of refugees' rights to self-employment and challenges encountered in such setting require sufficient exposition of the rights accorded to *foreigners* under a plethora of domestic laws.

The most important of such legislations - directly impacting the livelihood and economic opportunities afforded to refugees in relation to self-employment - are laws adopted to regulate trade, business and investment operations in Ethiopia.

Under the Roadmap, Ethiopia's commitment is anchored on one fundamental pillar: *augmenting self-reliance* which mainly, if not exclusively, impacts refugees participating in the OCP scheme. In particular, Ethiopia undertook to expand the OCP 'with due emphasis on facilitating opportunities for self-reliance' and on creating 'enhanced livelihood opportunities to OCP refugees - thus enabling them to work, support themselves and reduce dependency on the government or aid agencies'. What is more, in addressing the needs of OCP beneficiaries in relation to self-employment opportunities, Ethiopia has also promised to arrange 'internships

and apprentice opportunities’, ‘improve access to business, finance and start-up capital’, and ‘access to markets’. As part of the self-reliance initiative, Ethiopia also pledged, ‘to make available 10,000 hectares of irrigable land’ within the bounds of national law ‘to allow refugees and local communities to engage in crop production by facilitating irrigation schemes, subject to the availability of external financial assistance’ and to ‘develop a legal and policy framework outlining the terms and conditions for access to land by the refugees.’<sup>89</sup>

For the most part, such agenda, intending to realize the ‘enhanced status’ of refugees in utilizing self-employment opportunities, will be pursued within the framework of discretionary policies and administrative instruments, which may not necessarily be good in itself and of itself. However, what would be more pertinent in the context of refugees’ lived experience and expectation is the question of how the new Refugee Proclamation addresses refugees’ right to self-employment and how far it goes in accommodating the objectives outlined above under the Roadmap.

Article 26(2) of the Refugee Proclamation on self-employment provides that a recognized refugee or asylum-seeker shall have the right to engage, on his own account, including, in agriculture, industry, small and micro-enterprise, handicrafts and commerce, and to establish business organizations, in the same circumstance as the *most favorable treatment* accorded to foreign nationals pursuant to relevant laws. Obviously, this goes above the protection contemplated under the Refugee Convention. The issue, then, is what the relevant legislations provide in terms of the *measure of treatment* accorded to different classes of foreigners to engage in self-employment.

The Commercial Code of Ethiopia – currently undergoing reform – establishes the fundamental right of every person to engage in any commercial activity – subject to compliance with the requirements of the law which may provide conditions relating to nationality. On the other hand, Articles 2 and 3 of the Commercial Registration and Business Licensing Proclamation No.980/2016 – which apply to ‘any

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<sup>89</sup> ARRA. *Roadmap for the Implementation of the Ethiopian Government Pledges*. pp.7-8.

business person, sectoral association, commercial representative and any other person engaged in commercial activity', regulate services dispensed professionally and for gain by any person in relation to activities specified in the Commercial Code. The same law obliges that no person shall obtain a business license without being registered in commercial register and no person shall engage in business activity without having a valid business license.

The Commercial Registration and Business Licensing Proclamation is silent on the subject of the right of foreigners in the context of the discussion at hand; but, Ethiopia's investment laws have been refined over the years to determine trade and investment areas that are exclusively reserved to Ethiopian nationals/domestic investors and in specifying areas which are open to foreigners, including refugees.

Under an investment law which had since been repealed,<sup>90</sup> nearly all commercial activities that would be pertinent to refugees' self-employment opportunities are clearly branded as 'areas of investment reserved for domestic investors'; these had included retail trade, brokerage, most of the wholesale trades, import trade, a significant number of sectors in export trade, non-star designated hotels, motels, pensions, tearooms, coffee shops, bars, non-specialized restaurants, taxi cabs, commercial transport, bakeries, mills, barber shops, beauty salons, goldsmith, tailoring (except on factory-scales), and building and car maintenance services. A subsequently adopted legislation – which is also undergoing reform – followed a different approach,<sup>91</sup> ambiguously leaving such detailing of areas of investment reserved for nationals or left open to foreigners to a regulation that would be adopted by the Council of Ministers. Two regulations, promulgated in 2012 and 2014, strove to specify these sectors.<sup>92</sup>

Under the regulations, areas of investment exclusively reserved for Ethiopian nationals were substantially trimmed, and much the same, areas in which foreigners would not be allowed to engage were

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<sup>90</sup> Proclamation of the Federal Democratic Republic of Ethiopia No.37/1996. 18 June 1996. 2<sup>nd</sup> year No.25. Addis Ababa.

<sup>91</sup> Proclamation No.769/2012. Note 79. Article 7 and 8.

<sup>92</sup> Council of Ministers Investment Regulation No.270/2012 (amended by Regulation No.312/2014).



narrowed to far fewer commercial activities.<sup>93</sup> In consequence, under Article 4 of Regulation 270/2012 (as amended), foreigners – including refugees, would be allowed to invest in areas of investment specified in the schedule attached to the regulation. By implication and *de facto*, all retail trades of vital importance to refugees and engagements in small-scale business activities listed above – which are not specified in the schedule – would be beyond the reach of foreigners, and hence refugees.

The effect of such legislative organization appears to be clear and distressing. Extending refugees the right to engage in agriculture, industry, handicrafts and commerce and to establish commercial and industrial companies as ‘the most favorable treatment accorded to foreign nationals’ *only ends up* offering such refugees very limited choices and opportunities in Ethiopia – submitting, again, that their standing would not be compared with FoEO. In the context of the lived experience of refugees, the impact of such legislative organization would be very painful.

Again, the way out lies in constructive application of the law wherein refugees would be allowed to benefit from self-employment opportunities in phased numerical progression over years –based on structured programs and considering the socio-economic realities on the ground. In practice, though, this would present a serious challenge.

## 10. Conclusions

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<sup>93</sup> Banking, insurance, micro-credit and saving services; Packaging, forwarding and shipping agency services; Broadcasting and mass media services; Attorney and legal consultancy services; Preparation of indigenous traditional medicines; Advertisement, promotion and translation works; air transport services using aircraft with a seating capacity of up to 50 passengers.

Foreigners cannot also engage in the following services: Finishing of fabrics, yarn, warp and weft, apparel and other textile products using certain processes; Tanning of hides and skins below finished level; Printing industries; Manufacture of cement; Manufacture of clay and cement products; Tour operation below grade 1; Construction, water well and mining exploration drilling companies below Grade 1; Kindergarten, elementary and junior secondary education by constructing own building; Diagnostic center service by constructing own building; and Clinical service by constructing own building; Capital goods leasing (excluding leasing of motor vehicles).

The study has analyzed the positive advances as well as challenges observed in the design and implementation of Ethiopia's policy on refugees – particularly focusing on the rights to residence, freedom of movement and engagement in gainful employment. With the successive adoption of policy, sectoral legislation and national strategy, Ethiopia has for the first time endorsed measures – predicating its actions on a comprehensive framework of thinking which seems to acknowledge that the problems of refugees last longer and that the conventional humanitarian response mechanism in camps cannot, in the long term, proffer viable solutions.

In this context, the progressive developments in national policy discourses and the protective regimes designed under the Roadmap and the new Refugee Proclamation could be viewed as commendable measures. Both have fundamentally diverged from the past, liberally provided for an expanded outline of rights, and furthermore contemplated specific interventions for managing longer-term displacement of refugees.

However, the recent progresses in refugee law regime notwithstanding, refugees' entitlements and experience remain challenged by regulatory gaps and uncertainties in many areas – including in the context of rights to residence, movement and engagement in gainful employment. Considering the multilayered pledges undertaken by Ethiopia in 2016, today, it is uncertain if all the assurances could be accommodated within the framework of the recent legislative overhaul, and even more so, whether the new refugee legislation fully corresponds with the rights of refugees under international instruments.

In particulars, the general encampment policy continues in violation of the Refugee Convention; in actual practice, the grant of refugee status in Ethiopia does not automatically entitle a person the right to move freely or choose a place of residence in much the same way as other foreigners with legal residency status. While ARRA may now 'facilitate' the freedom of movement (and residence) of refugees and asylum-seekers, and in fact, this scheme has been utilized widely by many refugees in the past, the procedure remains an exercise of agency discretion, and as such, is not predicated on unequivocal recognition of a right. For the larger population of refugees in Ethiopia, the right to freedom of movement and residency is *still*

conceived in the context of the encampment policy and its restrictive impacts.

On the other hand, it is noted that the OCP scheme has facilitated better enjoyment of the right to freedom of movement and residency of a fraction of the refugee community in Ethiopia. Today, regulation will yet provide details on whether the current OCP practice will continue as it is and furnish guideline that directs the application of OCP to all nationalities and their socio-economic adjustment in urban life settings. But, considering the present trajectory and the strategic designs under the Roadmap and National Comprehensive Refugee Response Strategy documents, it is evident that Ethiopia's transition from camp-based approach to a more integrated system which works on the provision of protection and assistance to *all refugees* in off-camp setting will not be realized any soon. A belated reaction on a comprehensive OCP or ACP regime prompts social isolation and frustration of refugees in camps, and will raise issues of compatibility with the Convention which accords the right to freedom of movement and freely choose residence – subject *only* to such regulations as are applied in respect of aliens in similar circumstances.

In relation to the right of refugees to engage in gainful employment, substantive ambiguities and contentions prevail. But, it is encouraging to observe that the new Refugee Proclamation has been designed to afford wider opportunities to refugees. Potentially, this legislative development could have far-reaching implication on the right of refugees to movement, residence and on the enhancement refugees' livelihood and self-reliance.

However, on wage-earning employment and self-employment, the fact that the new law provided for minimum threshold of 'most-favored treatment' as accorded to 'foreign nationals' would not seem to offer much justice in relation to refugees' right to work and self-employment. While not all foreigners living in Ethiopia assume the same status – and it is true that among the class of foreign citizens, Foreigners of Ethiopian Origin (FoEO) enjoy the widest protection in the job and professional markets and commercial engagements, it would be very difficult to read the Refugee Proclamation as permitting refugees the *same class of protection* afforded to FoEO – as this would have far-reaching implications.

On the other hand, outside of FoEO, it is troubling to note that foreigners (and by implication, refugees) are not only afforded with extremely limited opportunities under various laws in Ethiopia regulating access to employment and commercial activities, such 'entitlements' are also subjected to numerous conditions. In the context of the lived experience of refugees, the impact of such legislative organization is very painful.

Considering the gaps, a well-considered approach on the way out would be to avoid extremes (of complete denial or wholesale permission of rights) and in a constructive application of the law wherein refugees would generally be allowed to benefit from wage-earning and self-employment opportunities in Ethiopia in phased numerical progression over years – based on structured programs and assessment of the socio-economic setting on the ground.

In practice, this may entail starting from recognizing the aforementioned rights of refugees *in principle*, but proceeding to issue work permits and trading licenses only on a case by case and quota basis which may, among others, be determined in light of the socio-economic realities on the ground and the level of commitment of the international community in responsibility and burden sharing.