

Full Length Research

An Appraisal of Ethiopia's Out-of-Camp Policy towards Eritrean Refugees in the Perspective of Protecting Refugees: Theories and Practices

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Like many other countries, Ethiopia opens its borders for refugees seeking protection in the country. And to administer refugees, the country promulgated 2004 encampment policy (that enforced refugees to don't live and move outside refugee's camps). However since 2010, the country adopted "Out-of-Camp Policy" to the mere Eritrean refugees. Following this many Eritrean refugees are now living in Addis Ababa and other regional cities. Since this policy targeted only the Eritrean refugees, non-Eritreans can't entitle the benefits. Accordingly, asked the question 'is it possible or is there a legal ground to grant this right to the mere Eritrean refugees?' to himself. Hence, this study conducted to examine what seems like the consistency of theories and practices of protecting refugees in Ethiopia based on the adopted international and regional conventions and country's refugee policy. The method what I have employ to do so was qualitative research approach by collecting and analyzing curable secondary sources including books, journal articles, research papers and other relevant official documents. The finding revealed that the country with no having an official duty is on the way of granting and respecting the right to work and education for refugees irrespective of their nationality. These virtuous efforts shouldn't be jumped without appreciation. Inversely, the country failed to execute its official duties. For instance, the country accepts the convention without reservation of freedom of movement and non-discriminatory treatment of refugees. The Federal Democratic Republic of Ethiopia (FDRE) constitution also grants freedom of movement for refugees. So, the adopted 'out-of-camp refugees policy' that privileged only Eritrean refugees is either directly or indirectly correlated with granting freedom of movement. This shows the presence of discrimination among refugees due to their nationality, and which has inconsistency with national, regional and international principles adopted by the country.

Key words: Encampment policy, Ethiopia, Out-of-camp policy, Eritrean refugees

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INTRODUCTION

Grounded in article 14 of the Universal Declaration of human rights 1948, which recognizes the right of persons

to seek asylum from persecution in other countries, certain international and regional convention relating to

the status of refugees¹ have been adopted by party states to open the borders to accept refugees seeking protection in a given country. As a party state to such international and regional convention on the status of refugees, the government of Ethiopia open borders for refugees seeking protection in the country.

The government is committed to protect the rights of refugees and make sure they are treated humanely during their stay at refugee camps and to voluntarily return them to their countries whenever possible in cooperation with the United Nations Refugee Agency (UNHCR), governmental organizations and Non-governmental organization (MoFA², 2014). And with hosting total of 735,165³ refugees and asylum seekers, the country take the rank from Kenya and has become the largest refugees hosting African country and also ranked on the top five globally. The government has allocated land for the 24 camps around Assosa, Dollo Ado, Gambella, Jijiga, Semera and Shire regions and in cooperation with World Food Program (WFP), food rations are distributed monthly to the refugees in camps. The country administers refugees through serious encampment policy (impossible to live outside the camps).

However since 2010, there is an improvement of this serious encampment policy through adopted the "Out-of-camp Policy" to the mere Eritrean refugees or university students. Following the implementation of an out-of-camp policy, 3,810 Eritreans are now living in Addis Ababa, and other regional cities (MoFA, 2014).since the policy privileged only Eritrean refugees, thus, the objective of this study is examining what seems like the consistency of theories and practices of protecting refugees in Ethiopia based on the adopted conventions and the country's constitution refugees policy.

In this study, the method is qualitative research approach. This is because of this research approach seeks to make the most of innumerable of specific information that can be derived from and about that context, by purposely selecting settings and informants

¹As the Convention in article 1 defines, the term "refugee" as any person who "as a result of events occurring before 1January 1951 and owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable, or owing to such fear, is unwilling, to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it".

²MoFA stand as Ministry of Foreign Affairs

³ This number vary from month to month

that differ from one another (Babbieand Mouton, 2003:277). Another justification of the researcher to choose qualitative approach was, according to Creswell (2003) qualitative research is exploratory and is useful to address research questions that require explanation or understanding when the researcher does not know the important variables. About data sources to this study, the researcher utilizes data from published and unpublished credible documents. Eventually, the data gathered from all sources are corroborated a single critically analyzed and processed data.

The study organized into the following sections. In introductory part firstly, the profile of refugees in Ethiopia and then secondly, the theoretical notions as well as the actual application of protecting refugees in Ethiopia and finally, remarkable conclusion of the paper has been drawn.

THE PROFILE OF REFUGEES IN ETHIOPIA

The Horn of African regions experienced with political instability, human rights abuses and oppressive governments, civil war, drought, famine, and economic hardship, which aggravate the flow of refugees in the region (Dagne *et al.*, 2012; and UNHCR, 2014). In the region as Rutinwa (2003) and UNHCR⁴ (2015) noted that the problem of Somalia is more complex than other countries and it makes Somalia is the largest refugees producing country following by South Sudan, Eritrea and Sudan. On the reverse, Ethiopia and Kenya are the two top refugee-hosting countries, even in Africa. Ethiopia also ranked on the top five refugees hosting countries in world. Basically, the history of Ethiopia in hosting refugees goes back to the date of 615 AD when Prophet Muhammad's earliest disciples and of course with his daughter Makiya, have sought refuge in Ethiopia (Administration for Refugee and Returnee Affairs (ARRA), 2011).

According to UNCHR (2016), Ethiopia is hosting 735, 165 refugees and asylum seekers those collected from 19 origin countries, but also there is a largest number of undocumented refugees⁵, mainly Somalis, living in Addis Ababa. The vast majority (99.1%) refugees arrived in Ethiopia are from South Sudan (284,016), Somalia (251,101), Eritrea (154,491), and Sudan (38,853)

⁴UNHCR stand as United Nations High Commission for Refugees

⁵Moret, J. S.,Baglioni, and D. Efionayi-Müder D. (2006).*The Path of Somali Refugees into Exile: A Comparative Analysis of Secondary Movements and Policy Responses. Swiss Forum for Migration and Population Studies (SFM 46)*,

(UNHCR, 2016). Causes which exposed people being refugees in these four countries are in somewhat similar, but serious than Eritrean. For South Sudanese, natural disasters, war and political instability; for Somalia, civil war and insecurity; for Eritrea, Ethio-Eritrean war, in 1998-2000, but recently human right abuse and forced conscription into the army; and for Sudan civil war (Rutinwa, 2002:4).

The documented statistical data of refugees reveals that since 2010, the influx of Eritrean refugees coming into Ethiopia has shown a steady increase and inversely, the number of refugees from Somalia, Sudan and later from South Sudan, increased dramatically (Zetter and Ruaude, 2016) and there are also informal arrivals of a largest number of undocumented refugees, mainly Somalis, living in Addis Ababa (Moret, Baglioniad Efionayi-Mäder, 2006). It indicates that though the diverse nature of problems prevails in the aforementioned refugees producing countries, the extent of threat to live in Somalia and South Sudan is so serious than Eritrea. In this profile (amount and causes) of refugees, the government of Ethiopia promulgated out-of-camp policy to the mere Eritrean. The scope of this out-of-camp policy is largely unclear for stakeholders (national and international NGOs), those works on the assistance of refugees in the country and also accessing official document of the policy is not easily (Samuel Hall Consulting, 2014). Nevertheless, the policy benefit Eritrean refugees after they stayed at the refugees camp for a minimum of 6 months, granted no criminal record and can demonstrate their ability to sustain themselves without the assistance from the government of Ethiopia or the UNHCR and also if they have relative or sponsor who cover their costs are allowed to leave the camps and reside elsewhere in the country (ibid). This freedom of movement granted to Eritrean refugees without permitting the right to work, which also prohibited for all refugees regardless of their nationalities. With this regard, what seems like the theoretical and practical application of protecting refugees in Ethiopia has clearly discussed as fellow.

THEORETICAL AND PRACTICAL PROTECTION OF REFUGEES IN ETHIOPIA

This section uncovers theoretical and practical protection of refugees in Ethiopia in line with the country adopted regional and international conventions and also the country's legislation. To make it clear this article firstly clarifies theoretical issues and then what seems the real ground.

THEORETICAL PROTECTION

The theoretical explanation of the article delimited on the

legal documents which aimed to protect refugees in Ethiopia. These are forwarded considering the adopted international and regional convention of the country as well as the national policy of refugees' proclamation NO.409/2004 and the Federal Democratic Republic of Ethiopia (FDRE) constitution.

About the adopted international and regional convention, as stated in the introductory part, Ethiopia is a party state to the 1951 Convention on the Status of Refugees (but with reservation), the 1967 Protocol, and the 1969 Organization of African Unity Convention.

The 1951 convention, which is the centerpiece of international refugees protection today entered into force on 22 April 1954, and has been subject to only one amendment in the form of in 1967 Protocol. Starting from 10 Nov 1969, Ethiopia being a party state to the convention. All articles stated on the convention are not practiced. It is not through violating the convention rather the convention itself set a legal ground that grant right to party states as they have no a duty to enforce all articles stated on the convention. Article 42 of the convention noted at the time of signature, ratification or accession states have the right to reservation. However, this article does not give absolute right to reserve any part of the convention as states wish to reserve. As noted in Article 42(1) of the convention, there are total of sixteen articles, which are not open for reservation. One of these articles for example, the principle of non-discrimination that explains as fellow.

Non-discrimination: In the convention Article 3 dealt about the principle of applying the provisions of the convention to refugees without discrimination regarding to race, religion, or nationality of refugees. Without accepting this nondiscriminatory principle being a party state to the convention has never possible. As a party state, Ethiopia accepts this principle as it is. And also the country ensured its commitment through formulating refugees' proclamation No.409/2004 which declares the principle of non-discrimination. Article 3 of Ethiopia's refugee proclamation No.409/2004 states that "the proclamation shall be applied without discrimination as to race, religion, nationality, membership of a particular social group, or political opinion". Therefore, although some articles like treatment of refugees with non-discrimination principle are mandatory for every state to be a party state of the convention, there are other articles which are open for reservation. Subsequently, Ethiopia adopts the convention through considering few articles of the convention recognized only as recommendations and not as legally binding obligations, which does means through 'reservation'⁶.

⁶ *The provisions of Articles 8, 9, 17 (2), and 22 (1) of the Convention are recognized only as recommendations and not*

The right to Work: Regarding to the right to work for refugees, Ethiopia maintains reservations to the 1951 Refugees Convention, notably to Article 17 (2), and there are no provisions under Ethiopia's law for local integration of refugees. The 1995 Constitution also offers the right to work and other labor-related rights only to citizens. Similarly, Article 21(3) of Refugee Proclamation No. 409, refugees in Ethiopia is only allowed to work and access education insofar as Ethiopia's laws allows other foreign nationals in Ethiopia to do so. Ethiopia's Ministry of Labor and Social Affairs only grants work permits to foreigners when there are no qualified nationals available and in practice does not grant work permits to refugees.⁷ In short, in Ethiopia restriction of the right to work for refugees has a legal foundation.

The right to Education: In article 22 of the 1951 convention on the status of refugees, granting the right to education for refugees. Ethiopia ratified the convention with respecting this article in reservation. One out of five articles (the provisions of Articles 8, 9, 17 (2), and 22 (1)) of the convention which are reserved and recognized only as recommendations and not as legally binding obligations by the government of Ethiopia is the right to education.

Freedom of Movement: This right found on Article 26 of the 1951 convention on the status of refugees and in 1967 protocol. Although freedom of movement is open for reservation when states sign or ratify the convention, Ethiopia ratified the convention without respecting this article in reservation. The country reserved only five articles of the provisions of the convention Articles 8, 9, 17 (2), and 22 (1). Only these reserved articles of the convention recognized merely as recommendations and not as legally binding obligations by the government of Ethiopia is the right to education. Thus, the convention explicitly bind legal obligation to grant freedom of movement for any refugees in Ethiopia.

However, using Article 21 (2) of refugees' proclamation No.409/2004 the country restricts freedom of movement and residence, via allowing authorities to designate areas where refugees and asylum seekers must live. In this regard, it appears to conflict with the constitution of the country and convention on the status of refugees adopted by the country. In Article 32 of the Ethiopian Constitution, which stipulates that "any Ethiopian or foreign national lawfully in Ethiopia has the right to liberty of

movement and freedom to choose his residence." Because the Constitution makes no explicit reference to refugees or asylum seekers, the reference to "foreign nationals" presumes inclusion of refugees and asylum seekers within that category (Jemal, 2014). It infers that restricting freedom of movement for refugees is not legally possible in Ethiopia. This is because of two reasons: firstly, the refugees law contradicts with the supreme law of the land i.e. constitution⁸ and secondly, Ethiopia adopts the convention without reservation of this provision or article.

PRACTICAL PROTECTION

In this sub-section the paper try to explain what seems like the existing condition of Ethiopia in protection protecting refuges that entered into the country's boarder. To do so the following four points has been briefly explained as fellow.

Out-of-camp policy as discrimination: Although according to the accepted convention including the 1951 Convention (in article 3), which only amended on the 1967 Protocol, and the 1969 Organization of African Unity Convention (in article 5) as well as the Ethiopia's refugees proclamation (in article 3) Ethiopia is theoretically committed to treat refugees without discrimination based on their identity, in practices the country allowed out-of-camp policy that targeted to benefited the mere Eritrean refugees. Following the implementation of an out-of-camp policy, 3,810 Eritreans are now living in Addis Ababa and other regional cities (MoFA, 2014). It clear discrimination of refugees based on their nationality. It is my hope that like the right to education which was firstly granted to Eritrean to access higher education opportunities and then that extended to non-Eritrean refugees, this out-of-camp policy program may also expanded to other refugee nationalities (UNHCR, 2013). However, the right to education allowed for Eritrean and non-Eritrean refugees in one year difference while this out-of-camp discrimination of refugees started on past seven years and also still not includes non-Eritrean refugees. Either directly or indirectly this out-of-camp policy is related with freedom of movement. Therefore, what seems like the real application of refugees' freedom of movement and the right to work are clearly elaborated bellow.

Freedom of Movement: As Article 9 of the Constitution highlights its supremacy over other laws and also grant freedom of movement without restriction for only Ethiopians. In line with this, the country adopts the convention without reservation of freedom of movement.

as legally binding obligations by the government of Ethiopia, "Reservations and declarations to the 1951 Refugee Convention," www.unhcr.org/cgi-

⁷ These restrictions are allowed under Article 21(3) of Refugee Proclamation No. 409.

⁸ see article 9 of the FRDE constitution

Accordingly, explicitly freedom of movement for any nationalities of refugees should be permitted in Ethiopia. Whether or not considering this legal circumstance, Ethiopia recently improved strict policy of encampment refugees through adopting out-of-camp policy to Eritrean refugees or university students. This tendency of the country in allowing freedom of movement for Eritrean refugees using out-of-camp should not be jumped without appreciation, but it could be understood as discrimination of refugees based on their nationality. Treating refugees in non-discriminatory manner is the principle both 1951 convention, and Ethiopia refugees proclamation No.409/2004. In conclusion, the country adopts international convention to grant freedom of movement for refugees and also constitution of the country does not ban this right. In contrast, because of the refugee proclamation No.409/2004 prohibits it, refugees are not exercising their freedom of movement in Ethiopia. For the time being notwithstanding this is a discriminatory treatment of refugees based on their nationality, it is my hope that freedom of movement like the right to education may also be allowed gradually even for non-Eritrean refugees.

The right to Work: Despite legislative restrictions, the government of Ethiopia has begun to allow programs permitting greater self-reliance for refugees. Several recent initiatives have been undertaken by international organizations and nongovernmental organizations to reduce their dependency on aid. For example, the project in the Jijiga area, where there are three camps hosting nearly 40,000 Somali refugees (Moret, Baglioni and Efiomayi-Mäder, 2006) the refugees and members of the host communities around the camps continue to produce agricultural outputs both for domestic consumption and for the local market (UNHCR, 2015). This project increased their household income including through the ownership of animals and other agricultural activities (ibid). In the same area, the World Bank reported labor exchanges and market access between the refugee and host community for riverine-irrigated agriculture (World Bank Group and UNHCR, 2015). In general speaking, this recent improvement does not focus to benefit refugees with discriminating a particular group of refugees rather as much as the project donors is concerned, it is open at everywhere round refugee camp.

The right to education: Notwithstanding reservations to the 1951 Convention on the right to education, UNHCR welcomes the Government of Ethiopia for its commitment to refugee education and its generous program for access to university level studies. With regard to the education sector, the government supports access for refugee children and youth to primary, secondary, and tertiary national education programs; children who arrive

without documentation of school attendance are offered the opportunity to sit for a placement test, and all children in the camps are also able to sit for the national exams (Moret, Baglioni and Efiomayi-Mäder, 2006). The Government generously provides refugees access to universities on financial terms on par with Ethiopian nationals. The Government pays 75% of university costs, with UNHCR pays the remaining 25%. The program began with Eritrean refugees and expanded last year to include other refugee nationalities (UNHCR, 2013). In 2010/11, 1,284 students took a first degree and 45 others MAs and 1 a Ph.D and they are now engaged in different areas of work connected with the refugee camps, benefiting fellow refugees and themselves (MoFA, 2014).

CONCLUSION

On 10 Nov 1969, Ethiopia ratified the 1951 Convention on the Status of Refugees (but with maintaining reservation), which subjected to the only amendment of the 1967 Protocol, and the 1969 OAU⁹ Convention. The country is hosting a largest number of refugees and governing them through strict encampment policy, while since 2010 out-of-camp policy allowed to the mere Eritrean refugees. This paper examined the consistency of theories and practices of protecting refugees in Ethiopia based on the adopted international and regional conventions, the country's constitution and refugee policy. Eventually, the finding revealed that in one hand, Ethiopia is protecting some refugees' rights without having legal obligations. For instance; the country ratified the convention¹⁰ without respecting the right to work and the right to education in reservation. Nonetheless, in collaboration with stakeholders the government efforts in granting such should be appreciated. The reason to this is that although the country reserves these two rights; the recent tendency is the way of granting such rights to refugees

On the other hand, the country fails to execute its legal duty in treating refugees based on the legal commitment. This means that Ethiopia legally accepts the convention without reservation of freedom of movement and non-discriminatory treatment of refugees. The FDRE constitution grants freedom of movement for refugees, while using refugees' proclamation no.409/2004, the country also prohibits freedom of movement from refugees in Ethiopia. Practically, the country adopts out-of-camp refugees policy to the mere Eritrean refugees, either directly or indirectly to grant freedom of movement to Eritrean refugees. It is an obvious discrimination of

⁹OAU *Stand as Organization of Africa Union.*

¹⁰UNHCR. (1951). *Convention Relating to the Status of Refugees and 1967 Protocol, Geneva*

refugees based on their nationality, which has inconsistency with principles though this discriminatory treatment of Eritreans will have positive implications for Ethio-Eritrean relations.

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