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THE ETHIOPIAN REFUGEE LAW & PLACE OF
WOMEN IN IT

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INTRODUCTION

The history of refugees dates back as long as the history of mankind itself.¹

According to the Bible Adam and Eve were driven out of Eden and became thereby the first refugees. Mary and Joseph had to seek refuge in Egypt with the child Jesus Christ. Up through the ages human beings have fled from their homelands to escape the wrath of tyrants conquerors and other oppressors.²

History is full of samples of persons in a position of power who used to abuse their power to persecute their fellow men for diversity of reasons.

Members of ethnic, linguistic or religious groups were made the scape-goats for alleged or real hazards or injuries to the public good. Members of different social groups have in different times been targets of accusation and attacks by authorities (governments) and were subjected to measures of different kinds.³ As a result individuals on their own or by way of mass exodus used to flee their beloved countries.

An awareness of the responsibility of the international community to assist and protect this people at least in an organized form dates only from the time of the formation of the league of nations.⁴

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The prime demonstration of this international solidarity emerged just after the world war linked mainly to the revolution in Russian and the collapse of the Ottoman Empire.⁵

To identify among many aliens who a refugee is in treaties and arrangements concluded under the auspices of the league a group or category approach to the definition was adopted. This was that someone should be

- a) outside his country of origin and
- b) without the protection of the government of that state

The creation of the league of nation in pursuance of provisions in the Versailles treaty of peace (28 June 1919) was a signal for the development of international rule for the treatment of refugees.⁶ However, the covenant of the league did not contain any provision with a bearing on the situations of refugees. Later on the flight of some one thousand Russian refugees in 1921 compelled the league to take some action.⁷

On February 1921 the council of the league passed the first Resolution on refugee issues (i LONAN 19, 117) and since then the questions relating to refugees became a recurrent subject on the agendas of the council and of the assembly allthrough the life span of the league.⁸

A decisive step, however, was taken under the United Nations with the establishment in 1947 of the international refugee organization (IRO). Though its initial task was to facilitate resettlement and repatriation of post war refugees, IRO dealt with other aspects of refugee problems such as legal protection and determination of status, becoming the first international organization to do so.⁹

later on the IRO, in 1951 was replaced by the office of the High Commissioner for Refugees (UNHCR) right upon the adoption in December 1950 the office's statute by the general assembly.¹⁰ The office was established for three year period but consequently it was extended for successive period of five years.

Currently the UNHCR is the sole international organization of a universal nature dealing with problems of refugees. In pursuance of its Statute the UNHCR has its own persons of concern; that is, those who meet the criteria set under the Statute. Following the creation of this office in 1951 a refugee convention of universal nature was ratified (This convention also defines refugees in similar way) with this highlight on historical background, this paper purports to deal with the problem of definition of the term refugee, Ethiopian Law on Refugees , And place of women in it .

Finally in the last part an attempt is made to identify the crux of refugee Law problem namely the difficulty of claiming a right and the in availability of any provision with the bearing of preferential treatment to women, which culminates with the recommendatory part of the paper.

PART ONE

THE TERM REFUGEE

The ordinary meaning of the word "REFUGEE" is very broad it may signify a person who fled to escape from his pursuers, or any person who is in flight to escape any condition found to be intolerable.¹¹

People used to flee away for different reasons among which flight from poverty, persecution, natural disasters and civil strife are very common.

However, for the purpose of modern international law states tried to employ limited criteria for identifying certain category of people as refugees.

So far as international law is concerned the definition of the term "REFUGEE" of most current importance are those found in the statute of the office of the UNHCR (December 1950) , in the convention relating to the status of refugees (20 July 1951.)AND the 1969 refugee convention of the OAU.

In this part we will try to see how a refugee is defined under these legal instruments.

1.2 Refugees Defined Under The UNHCR Statute.

The general assembly of the United Nations established the Office of the High Commissioner in order to find lasting solution for certain category of persons who are considered refugees under the statute of the high commissioner's office.¹²

The statute in its Chapter II section 6(A) states the extension of the High Commissioner's competence and there by defines refugees as

"A(i) any person who has been considered a refugee under the arrangements of 12 may 1926 and of 30 June 1928 or under the convention of 28 Oct 1933 and Feb 10 1938 the protocol of 14 Sept 1939 or the constitution of international refugee organization IRO

A(ii) any person who, as a result of the events occurring before January 1, 1951 and owing to well founded fear of being persecuted for reasons of race, religion, nationality or political opinion is outside of the country of his nationality and is unable or owing to such fear or for reasons other than personal convenience is unwilling to avail himself of the protection of that country, or who not having a nationality and being outside the country of habitual residence, is unable or owing to such fear or for reasons other than personal convenience is unwilling to return to it.¹³

The statute first brought under its (UNHCR's) competence those persons who were considered refugees by earlier instruments (treaties and other arrangements) and defines refugee as:

B. any person who is outside of the country of his nationality or if he has no nationality the country of his former habitual residence because of a well founded fear of persecution by reasons of race, religion, nationality or political opinion is unable or unwilling to avail himself of the protection of his government or to return to his country.¹⁴

This definition is of a paramount importance to determine who is entitled to the benefits provided for in the statute. However being restrictive by its nature it excludes large scale movements and employed individualistic criteria. Thus a refugee for the purpose of the UNHCR, in the strictest legal sense, is one who directly falls under the restricted definition of the statute. Which excludes large scale exodus which is the order of the day.

1.3 Refugees in the sense of the 1951 convention and the 1967 protocol relating to the status of refugees

The 1951 refugee convention relating to the status of refugees defines refugees as any person who:

- i. has been considered a refugee under arrangements of 12 May 1926 and 30 June 1928 or under the convention of 28 October 1933 and 10 February 1938 and protocol of the 14 September, 1939 or the constitution of international refugee organization (IRO), and
- ii. as a result of events occurring before January 1951 and owing to well founded fear of being persecuted for reasons of race, religion, nationality membership of a particular social group or political opinion, is unable or owing to such fear is unwilling to avail himself of the protection of that country, or who not having a nationality are 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.¹⁵

The states which acceded to or ratified the 1951 convention agreed that the term "refugee" should apply first to any person considered a refugee under earlier international arrangements and secondly to any person broadly speaking who qualifies as a refugee under the statute of the UNHCR.

Convention refugees could, therefore, be identified by their possession of four characteristic elements.

1. They are outside of their country of origins
2. They are unable or unwilling to avail themselves of the protection of that country or return there.
3. Such inability or unwillingness is due to a well founded fear of being persecuted and
4. The fear is based on reasons of race, religion, nationality, membership of a particular social group or political opinion.

1.3.1 The 1967 Protocol (effect)

The 1951 convention was contractually limited to per-1951 events in Europe but the 1967 protocol eliminated this limitation prospectively, nonetheless it did not review the substantive content of the definition it was just a formal universalization of the convention definition of refugee status.¹⁶

Even after the elimination of temporal and geographic limitation, any person whose flight is not prompted by persecution remained excluded from the regime established by the convention.

1.4 The OAU Definition of Refugees

The 1951 refugee convention together with 1967 protocol is the vital instrument defining the status of refugees. The definition this instrument offers has been adopted by the OAU convention of refugees. But the OAU convention expanded the definition to include any person who is compelled to leave his or her country.

...Owing to external aggression, occupation foreign domination or events seriously disturbing public order in either part or the whole of his country of origins or nationality.¹⁷

This expanded definition of the OAU, which is meant to meet the situations of African nations,¹⁸ would help to accommodate situations of mass-influx, however, it is not yet accepted by the U.N. though, proposals were made to this effect.¹⁹

PARTE TWO

ETHIOPIAN LAW ON REFUGEES

2.1 To start with, refugee influx to Ethiopia is not a recent phenomenon. Its history dates back to at least 615AD when prophet Mohammed's earliest disciples and of course with his daughter Makiya, have sought refuge in Ethiopia and their persecutors arriving from Arabia with gifts and demanded for their forcible repatriation, however, "King Armha of Axum having interrogated them, turning to the visiting delegation, replied in a famous remark "If you were to offer me a mountain of gold I wouldn't give up these people who have taken refuge with me"²⁰.

Since the beginning of the first world war quite a number of refugees from Europe and even Asia have come to live in Ethiopia. And the African struggle against colonialism was also another factor which drove numerous refugees to Ethiopia²¹.

The crisis in Somalia and the civil war in the Sudan are also the very recent factors which caused Ethiopia to become a sanctuary for hundreds of thousands of refugees.

2.2 The Law

Although Ethiopia is a signatory to almost all international legal instruments of most current importance concerning refugees a municipal legislation which may give effect to these instrument has not yet been enacted. Being a signatory or the act of ratification alone doesn't mean that such a treaty automatically acquires the status of municipal law or that its provisions ought to be enforced by judicial organs of the state. One way or the other in order to be applicable in the territory of a given state international instruments need to be incorporated or transformed in to the domestic law.

At the time of the ratification of 1951 refugee convention, the 1967 protocol and the 1969 OAU convention, Ethiopia's supreme Law was the 1955 constitution of the Empire of Ethiopia. According to this constitution, all international treaties (legal instruments) were regarded as supreme as the constitution itself.

The next constitution that Ethiopia had, was the constitution of The People's Democratic Republic of Ethiopia of the 1987. This constitution was however, silent about the status of international legal instruments. In spite of the change of governments and of the constitutions the international instruments remained operational pursuant to the principle of succession of treaties²².

After the overthrow of the PDRE Government it was the Transitional period charter of July 1991 which came in to the picture.

According to this charter the transitional government of Ethiopia "shall abide by all mutual international agreements that respect the sovereignty of Ethiopia and are not contrary to the interest of the people." Except this provision which shows The Transitional Government's commitment to honor former international obligations during the transition period one can hardly conclude that the charter defines the exact status of international instruments which refugee conventions are a part.

The newly adopted constitution of the Federal Democratic Republic of Ethiopia of December 1994, however, contains a clearly stated provision concerning the status of international instruments in Ethiopia.

Art. 9 sub 4 of THE FDRE constitution states:

" International agreements ratified by Ethiopia are an integral part of the laws of the country".

According to the constitution, therefore, the refugee conventions have become an integral part of the laws of the land. In which case what ever right is contained in the instruments could be invoked before the judicial bodies of the state by a refugee who may be aggrieved due to an act or omission of one or the other administrative body or person.

Nevertheless, in order for this to be streamlined it is necessary that procedural rules be established(which the new parliament is expected to proclaim to this effect.) which in a way will clarify matters and create awareness, to the refugees in the exercise of their rights and the public at large.

2.3 Determination of Eligibility for Refugee Status in Ethiopia

In principle, a person becomes a refugee at the time he satisfies the requirements of the definition set out under the relevant laws, i.e. a person doesn't become a refugee because of recognition but is recognized because of the fact that he is a refugee. It might be said in simple terms that formal determination of status is just declaratory rather than constitutive²³.

Under the existing legal instruments refugees could be convention Refugees (those who meet the definition of the 1951 convention 1, mandate refugees (those who meet the statute's definition of the UNHCR) or Humanitarian Law Refugees (those who could be considered as refugees under the extended mandate of the UNHCR or the OAU convention, though this category of persons could as well be termed as Convention Refugees because of the OAU convention, it is however, not yet customarily done so.)

If any state is therefore a party to the conventions highlighted above (in the first part) the determination of status is dependent upon that state in question (while mandate refugees are persons recognized as refugees by the office of the high commissioner by virtue of the status which virtually continue the same definition)

Ethiopia being a party to the 1951 Refugee Convention and the 1967 protocol and that of the 1969 OAU Convention, is by and large obligated to observe the rules set out. However, for none of these instruments provide procedural rules to be followed by any contracting state, Ethiopia has its own method of screening.

2.3.1 Convention eligibility

Whenever a petition is received by the office of the high commissioner's regional liaison office for Africa in Addis Ababa, it will be referred to the temporary eligibility committee composed of the Ministry of Internal Affairs Administration for Refugee/Returnee Affairs the office of Immigration and UNHCR (as an observer). This committee having examined each case in pursuance of the 1951 Refugee Convention, Cum, 1967 Protocol - Recommends eligible cases to the Director of the Administration for Refugee Affairs. Upon his approval Refugee status will be granted. While cases not qualifying are informed of the reasons in writing copied to the UNHCR and Immigration.

2.3.2 Prima facie eligibility

In cases of group movements (mass influx) determination of eligibility on an individual basis is in fact impracticable. In such situations it is customary to consider class of people for eligibility at the same time. Accordingly, therefore, because of the fact that the reasons for the flight of refugees from South Sudan and Somalia are similar (which is covered under the OAU convention) refugees coming from these places are granted status automatically. The only thing should be ascertained is that they are from such places.

In Ethiopia there are screening sites along the borders between Ethiopia-Somalia and Ethiopia-Sudan. ARRA personals screen and register new arrivals and arrange their departure to the refugee settlement areas.

2.4 THE CONVENTION REFUGEES

The convention Refugee highlighted above being from different countries with different cultural, linguistic, religious backgrounds couldn't be successfully settled together in a form of camps. Owing to this reason it is preferred that they be kept in Addis Ababa being financially assisted. (This urban refugee population is of course composed of not only the convention refugees but also very few special cases from the refugee settlements such as protection cases and orphans without companions.)

The experience up to now indicates that there is little or no adjustment problems - most of the refugees marry Ethiopians and lead their life like Ethiopians. The basic legal issue which should be raised and analyzed at this stage is the consequences of marriages between Refugees and Ethiopians which is a very frequent phenomena among the Urban Refugees. Accordingly therefore, the Ethiopian Nationality Law is analyzed as follows vis-a-vis such marriages. The Ethiopian nationality law of 1930 (which is still operational but going to be amended very soon) states

Art.2 A lawful marriage of an Ethiopian subject with a foreign woman confers the Ethiopian nationality upon her.

Art.4 A lawful marriage contracted abroad of an Ethiopian woman with a foreigner deprives her of the Ethiopian nationality if her marriage with the foreigner gives her the nationality of her husband, otherwise she keeps her Ethiopian nationality.

Therefore if a refugee woman marries an Ethiopian man for the purpose of the Ethiopian law she becomes an Ethiopian no longer a refugee, that means her problem of being a refugee has been solved durably by being locally settled (nationalized).

Nevertheless, the law is not categorical on the situation of marriage in Ethiopia of a foreign man to an Ethiopian woman which is a very frequent phenomena among the urban refugees. Because of this refugees marrying Ethiopian women may be refugees awaiting durable solution. under such situations when for instance a refugee who has an Ethiopian wife gets a resettlement opportunity what travelling document should the wife carry was a problem we have been facing.

The other point ought to be mentioned here is the status of children born out of such marriages.

The nationality law cited above states: art.6 every child born in a lawful mixed marriage, as provided for in the preceding articles, follows the nationality of its father.

A child born of an Ethiopian father and a foreign mother united by the bonds of a lawful marriage should, however, prove before the Ethiopian authorities that he doesn't belong to the original nationality of his mother, if requested to do so.

Art.7 A child born in lawful marriage of an Ethiopian mother with a foreigner is always able to recover the benefit to Ethiopian nationality provided he lives in Ethiopia and proves he is completely divested of the paternal nationality.

According to the above articles, therefore, if a child is born in a lawful marriage, of a refugee man and an Ethiopian woman - it is a refugee (sur-plus) unless otherwise he/she lives in Ethiopia and proves that he/she is completely divested of the paternal nationality, which is in fact a very difficult burden. On the other hand if a child is born in a lawful

marriage of a refugee woman and an Ethiopian man, it follows the nationality of its father i.e. he/she is considered an Ethiopian in principle, should however, prove before the Ethiopian authorities that he/she doesn't belong to the original nationality of his/her mother, if requested to do so.

Hence we may deduce that a child born in Ethiopia in a lawful marriage between an Ethiopian and a refugee could be an Ethiopian or a refugee (sur-plus) according to the circumstances.

2.5 The Prima Facie Refugees

At present Ethiopia hosts approximately 353,310 prima facie refugees among which 271,810 are from Somalia and the 55,500 from southern Sudan. The others are from Kenya and Djibouti.

There are about 12 refugee camps in the country, 8 of these are located in the Eastern part of the country (Harriage area) which is mainly for refugees from Somalia and 3 of the 12 camps are in the western part (Gambella area) and the others are in the south which are for southern Sudanese refugees and Kenyan refugees respectively.

Upon arrival refugees report to the nearest screening site where they will be screened, registered, be given some food and medical assistance awaiting their departure to the refugee camps.

More often than not new arrivals specially women are in a very bad health and desperate emotional situations, it is possible that before reaching there they might have been physically attacked, looted, their relatives or husbands killed and their children forcibly taken to military services.

After few days of stay at the sites the newly arriving refugees will be taken to the refugee camps, where they are expected to adjust and start to lead a refugee life.

In the Ethiopian refugee camps Administration is undertaken by the Administration for Refugee Affairs in cooperation with Refugee Committees. These committees are representatives of the refugees residing in a specific camp, mostly elected in a democratic manner.

As soon as the refugees arrive in the camps they will be provided with ration cards, which entitle them to monthly food rations, and places for the construction of their tukules. No construction material is given, themselves are expects to look for wooden materials and undertake the construction. In most cases constructions are undertaken smoothly. In some instances however, one may see single women - with minor children and without any relative accompanying or waiting them in the refugee camps facing great problems of construction though it is very customary that refugees help one an other.

The refugee committee is in charge of distribution of food and non-food items. The food is given in a form of cereals and oils a refugee getting such items should look for fire wood and cook. Looking for fire wood is also another challenge for unaccompanied refugee women for they may some times face abuses while away on search. These being very few of the hurdles that refugee women may face we will try to see what special treatment for women is envisaged, under Ethiopian law.

2.6 Preferential treatment to women

No Constitution or law in Ethiopia other than the newly adopted constitution of the FDRE has ever contained any provision that provides for a preferential treatment to women. The new constitution states the following under Art. 35(3): " In recognition of the history of inequality and discrimination suffered by women in Ethiopia, women are entitled to remedial and affirmative measures.."

The Constitution being the supreme law of the land it is applicable in every part of the country up on every individual in its entirety. Hence, refugee women being women in Ethiopia and being of course persons disadvantaged and with

lots of problems, sufferings and challenges, this provision of the constitution we believe ought to be interpreted in such a way that it may include this category of persons. In line with this the future refugee proclamation may contain a provision to this effect.

In the international arena on the other hand Ethiopia has ratified the convention on the elimination of all forms of discrimination against women. And we also believe that the application of this convention should extend to all women under the Ethiopian jurisdiction that includes refugee women.

Finally, however, it is clear that all problems can not be solved pragmatically only by legislative measures one would therefor say that practical measures should be put on so that the sufferings of these desperate category of persons be some how alleviated.

As to the practice until now be it due to the absence of legislative initiatives or otherwise no promising attention was adequately paid to this category of needy persons and we believe this trend will and should change.

CONCLUSIONS AND RECOMMENDATIONS

1. A refugee convention like any international convention is an agreement concluded among subjects of international law, so it is clear that on the international plane it is the contracting states and probably international organizations having locus standi on the matter not individuals which are subjects of rights.

Moreover, no convention ever contained any provision which suggests a mechanism as to how an individual refugee may pursue his rights under the conventions²⁴.

So the only alternative available for an individual refugee is to submit his case to the authorities of a receiving stat, so that it tackles the case pursuant to its own municipal laws²⁵.

If a contracting state fails to comply with the obligations it has undertaken under the convention there seems to be little or no sanctioning mechanism. It is true, however, that international law as a whole suffers from problem of sanction, as its applicability by and large depends on the will and whim of states by virtue of their sovereignty.

But the international refugee law as a part of the body of international law not only suffers from this ailment of international law but also is confronted with unique problem of its own.

The refugee convention as distinguished from other conventions that regulate the behavior of states towards other contracting states which is usually sanctioned by the principle of reciprocity, govern the relationship between states with their huge machineries and individuals who are driven out of their home countries i.e. a relationship between sovereigns and helpless persons who are rejected and even harassed by their governments.

Thus if a refugee gets no satisfaction by the municipal remedies of a receiving state, or if he is abused by the country of asylum he has no where to turn to, no remedy no sanction because he is after all a person whom his government persecuted or peruses to persecute, hence it naturally follows that his government will not come to his rescue²⁶.

[One may, however, be tempted to argue that the UNHCR is there to protect and speak on behalf of the abused claimants. But it must be noted that states have unequivocally reserved their right of refusal (Article 35 cum 36 of the 1951 convention.)]

Therefore, we can conclude that in the strictest legal sense the applicability of the refuge convention is always in the mercy of the receiving state. So if there is nothing to bind states, the conventions are only there to tell the embarrassed and the persecuted how to plead his case before the authorities of a receiving state.

However serious, this problem may be it does not in any way render the whole refugee law to be unimportant because it indeed serves the purpose in the normal course of things i.e. it is only in cases of default that such problems could be envisaged, which is of course relatively a rare phenomenon.

2. Neither the conventions nor the Statute of the UNHCR do contain any provision which envisages any preferential treatment to refugee women, however, there were instances where by the international community by way of declaration or resolution called up on state parties to the convention to try to alleviate the suffering of refugee women, which might have contributed a little but without significant improvements.

Recommendations

1. In order to be enforceable International Refugee Law needs to be incorporated or transformed in to domestic laws of any contracting state it is therefore, necessary where they have not yet done so states consider the matter seriously.
2. And it is necessary that preferential treatment to women be introduced in to the domestic laws of each county.
3. And of course states ought to consider where they have not yet done so, as the general assembly of the UN's resolution [on the report of the third committee (a/48/629)] declaration on the elimination of violence against women, solemnly proclaims, ratifying or acceding to the convention on the elimination of all forms of discrimination against women or with drawing reservations to the convention which in away may benefit refugee women.
4. Domestic penal and tort laws be observed with due diligence in the refugee settlements so that the wrong doer may stand trial and the victim specially women who are liable to physical or moral attacks may duly be redressed.

5. *Finally Refugee women should adequately be informed of their rights and mechanisms by which they may seek redress to the physical or moral injuries they may sustain in exile.*

THANK YOU VERY MUCH

NOTES

1. Grahi- Madson, The status of refugees in international law, (A.W SITTHUFF. leyden, 1966)P.9
2. Ibid
3. GoodWin Gill, The refugee in international law (Clarendon Press, Oxford, 1983)P.14. Training Modules, (RLD 1). An Introduction to the international protection of refugee (UNHCR 1992)P.1
5. Ibid
6. Id.p.8
7. Ibid
8. Ibid
9. Ibid
10. Id.p.7
11. Goodwine Gill, cited above at note 3,p.1
12. General assembly resolution 428(U) of 14 Dec, 1950 annex. Statute of the U.N.H.C.R. Cap I(1)\
13. Statute of the U.N.H.C.R, chapter II section 6(k)
14. Id. section 6(B)
15. The convention relating to the status of refugee (1951) art 1
16. See arts. 1 and 2 of the 1967 protocol relating to the status of refugees.

17. Organization of African Unity, Convention on Refugee problems in Africa (ADDIS ABABA) 1969) art 1.(2)
18. See the preamble of the convention at note 17
19. UNHCR Training module an introduction to the international protection of refugees (Geneva 1992)
20. Richard Panchirest, A reflection on the Ethiopian History The Respect for Human Dignity, paper presented on a conference under the title Dignity for all, Addis ababa 1995.
21. Ibrahim Idris , paper on Protection of refugees The Ethiopian law on the protection of and treatment accorded to Refugees, Addis ababa University School of Law 1987.
22. Vienna convention on the Law of treaties of 1969.
23. Grahel-medson ,cited above at note 1 pp.
24. But the permanent court of international justice in its advisory opinion on the jurisdiction of courts of DAZIG PCIJ B 15/1928 states that "it can not be disputed that the very objective of an international agreement according to the intention of the contracting parties may be the adoption by the parties of some definite rules creating individual rights and obligation enforceable by national courts.
25. Vathal - an injury to a citizen is an injury to the state Bronlie - the relation simply provides a necessary basis for the principles of reciprocity and protection. But in this case it is this element which is missing Bronlie, the principles of public international law (4th edition Oxford 1990).

26. "In order that a contracting state shall not come to be in default towards the other contracting state the provisions of the invention in question must be transformed into municipal laws and what is considered "benefits" on the international plane may very well be construed as legal rights in municipal level. Ghrahail Madeson the status of refuges in international law.