

# The u turn from integration to forced repatriation law international essay

Law



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## **Introduction**

### **Objective**

The main research objective of this study is critically examined the Memorandum of Understanding (MOU) which is signed Between " the government of the federal democratic republic of Ethiopia and the government of the kingdom of Norway" in light with the 1951 Geneva Convention Relating to the Status of Refugees.

### **Methodology**

### **Literature review**

## **The Concept of Repatriation, Asylum and non- refoulement**

### **Repatriation**

The term to repatriate is originally derived from the Latin word repatriäre meaning to go home again and more at repair implies to restore or return to the country of origin, allegiance, or citizenship. Though its meaning has been changing overtime, since Patria means native land, originally to repatriare (French) meant to restore a person to his own (Gaim, 2005: 139). ‘

Repatriation’, as Christian Feest has pointed out, is a term that used to be applied to the return of persons to their country of residence or citizenship (Feest, 1995: 33-42). According to Gaim Kiberab, the outcome of the conceptualization of home or native land and its significance to human well-being and security is primarily based on the principal inspiration of return actions assumed to be the desire to belong to one’s own community and land. Moreover, repatriation to be meaningful, its corollary should be reflected in the restoration (compensation) of immigrants’ original homes as

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essential for recovery of their dignity, security, and well being (Gaim, 2005: 139). Furthermore, voluntary repatriation refers to 'return to home, not merely return to country of origin'. Since a country of origin is a simple, geopolitical concept, the home that people in exile or (Diaspora) are supposed to return to is more than a territorial place that is associated with a political entity. Thus, voluntary repatriation is more than just a return to country of origin; it is return to a home and community. The concept of home and community in the country of origin is most frequently related to the association of the immigrants with those who are similar and the association of this homogenous group with a specific place (Warner, 1994: 162). Gaim Kibreab (2005: 133) pointed out that the denotation given to 'home' by those people who forced to dislocate from their original land/place differs depending on the human need and decisions to claim belonging to such particular places. However, the extent to which this need and decision concerning repatriation of people in exile subsequent to the removal of the causes that forced displacement is one of the most persistent debates in the social sciences. He, further quoted the following idea towards defining home as stated by Coles (1985: 187): ...home is a feeling of contentment and belonging. It is the world of familiar faces, a house, a garden of one's own. It is a spiritual atmosphere to which one belongs, a civilization whose language, history, traditions have become so much a part of a one's personality that one feels ... Home is a condition of life, which brings with it a sense of security and protection, as far as one can be secure in this imperfect world. At home a man can go about his business without undue strain, because he moves within a social order which he understands

intuitively. Therefore, any of the voluntary or involuntary displacement of people from their original native homeland could have intrinsic or extrinsic forces that drive them to prefer exile at the expense of the home.

(SOLOMON)Repatriation is, however, a complex mechanism, interlinked with the thorny issues of security, human rights, peace and reconciliation, and care must be exercised in order for it to actually lead to a sustainable durable solution. Clear policy and guidelines can therefore be helpful in addressing this issue. Based on different migration literatures there are two types of repatriation: Voluntary and Forced repatriation.

### **Voluntary repatriation**

The free and voluntary return of immigrants to their country of origin in safety and dignity. Voluntary repatriation is the solution of choice for a vast majority of immigrants. In a returnee situation, this implies the restoration of national protection through the reintegration process, the ability to maintain sustainable livelihoods, access to basic services and fully reintegrate into communities and countries of origin (UNHCR, 2004: 1). The core components of voluntary repatriation are physical, legal and material safety and reconciliation.

### **Involuntary repatriation**

The forced return of a person to a country where he faces persecution is more specifically known as refoulement (Jean Allain, 2001). Even though it is not acceptable in international laws some countries actively engage in removing refugees and asylum seekers from their territory against their will without reviewing the danger the returnees will face in their home country.

## **Asylum and non- refoulement**

According to Kees Wouters (2009: 23) the prohibition on refoulement is the cornerstone of international refugee and asylum law. It is thus important to understand the concept of asylum. The term 'asylum' has no common meaning in international law. In general, it refers to the protection or freedom from seizure or harm provided by a State. More specifically the concept of asylum refers to protection of an individual from proscribed harm or human rights violations, the protection being provided by a State other than the individual's own State, i. e. his country of nationality or habitual residence. Asylum thus applies to aliens receiving international protection in the absence of national protection. The cornerstone of international asylum protection is the prohibition on refoulement by which - in general - States are obliged not to return a person to his country of origin, or any other country for that matter, where he is at risk of being subjected to serious harm or serious human rights violations. The prohibition on refoulement, as defined in a number of international legal instruments, has become the backbone of international asylum protection. In general, this prohibition provides the individual concerned with a protected status allowing him to receive protection from being forced to go, directly or indirectly, to a territory where he may be at risk or in danger of serious harm. International asylum protection is, however, not limited to the prohibition on refoulement. A person seeking asylum may be a refugee in accordance with the Refugee Convention and is then entitled to the rights set out in that Convention. Refugees: - The 1951 Geneva Convention Relating to the Status of Refugees define refugee, "... is a person residing outside his or her country of

nationality, who is unable or unwilling to return because of a ' well-founded fear of persecution on account of race, religion, nationality, membership in a political social group, or political opinion'. Those recognized as refugees have a clear international legal status and are afforded the protection of the United Nations High Commissioner for Refugees (UNHCR)." Asylum seekers - " Asylum seekers are people who have moved across international borders in search of protection under the 1951 Refugee Convention, but whose claim for refugee status has not yet been determined (UNHCR)"

## **Migration pattern of Ethiopian Migrant to Norway**

The immigration history of people from the horn of African countries like from Ethiopia, Somalia and Eritrea to Norway has a recent phenomena comparing to the long history of migration to the USA and other European countries. In the last two or three decades Ethiopian refugees, asylum seekers and other migrants have been coming to Norway in a significant number due to various reasons. According to International Peace Research Institute policy brief (2009) Ethiopians have mainly come in two waves: the first wave consisted generally of individuals fleeing the Mengistu regime, mainly between 1982 and 1992. (After Eritrea became an independent state in 1993, many of those registered as Eritreans.) Then, a second wave of both Ethiopians and Eritreans began after 1998, when war broke out between the two countries. Like Somalis, more than half of the Ethiopian migrants have lived in Norway more than ten years. The Eritrean community, on the other hand, includes many who have lived in Norway for a longer period of time: a total of 44% have lived in Norway for more than 15 years. In the last ten years, the Norwegian government accepted refugees from Eritrea based on <https://assignbuster.com/the-u-turn-from-integration-to-forced-repatriation-law-international-essay/>

humanitarian grounds as a refugee through resettlement schemes. Most of the migrants from Ethiopia came to Norway starting from 1980s. During this period the country was under a dictatorial military rule that resulted in a civil war between the rebel fighters and the military junta called Derg. During that period, the military junta carried out an inhuman act of killing which is known as red terror. During the red terror government security forces systematically and blatantly hunted down and killed suspected members of the rebel groups and individuals from every walk of life in the whole country. Especially, at that period of time tens of thousands of people, intellectuals and students have been tortured, imprisoned, murdered and forced to leave their country. These sorts of experiences continued after the fall of the regime in a more sophisticated and different ways. In the country former rebel fighters, the EPRDF (Ethiopian peoples' Revolutionary Democratic Front) holds the power and led the country under a single party system. These regimes characterized by endless repression, religious persecution and ethnic oppression. There is no independent democratic institution, election, political activity/space, media, and rule of law that resulted in gross human right violation. Individuals arrested and held without trial based on their political and religious affiliation.

### **Some historical incidents**

In January 26, 1202 the Norwegian government and its counterpart the Ethiopian government has reached an agreement and signed a memorandum of Understanding to facilitate and perform the what they called the " voluntary" return of rejected Ethiopian asylum seekers and political refugees who reside in Norway for more than two decades. However,

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the Norwegian government admitted and put clearly in the signed document, the agreement which is signed by the two countries would also be applied forcebily/ involuntarily/ deport hundreds of Ethiopian political refugees, children and asylum seekers who lack the necessary document to live in Norway and resist to leave voluntarily.

## **The Memorandum Of Understanding**

The memorandum of understanding signed by the two parties is the basic document to repatriate Ethiopian asylum seekers and refugees from Norway. According to the document which has been signed by the two government, the forced repatriation of the refugees will comply and recognize..." the right of all individuals to leave and return to their country of origin is basic human rights enshrined, inter alia, in Article 13 Sub-Article 2 of the 1948 Universal Declaration of Human Rights and Article 12 Sub-Article 2 and 4 of the 1996 International Covenant on Civil and Political Rights; the 1951 Geneva Convention and the 1967 Protocol on the status of refugees, international treaties concerning repatriation, transit and readmission of nationals seeking asylum in a foreign country" (MOU 2012: 1). Besides it states that the two parties will try to " achieve full observance of International Human Rights and Humanitarian standards in the process of implementing assisted return and reintegration of Ethiopian nationals residing without authorization in the Kingdom of Norway" (1)However, the MOU in its content does not have any single phrase which deals about the protection and security of the Ethiopian refugees (third party) which will be viable in line with international law for any kind of retaliation, harm and persecution. The safety and security of these refugees solely in the hands of the Ethiopian government will. If



something goes wrong or something bad happened to the returnees no one will question the government under the signed agreement. The MOU doesn't help as a legal and binding document to protect the right and guarantees of the safety and security as well as the well being of the returnee once they return back home. In addition to this the document lacks any legal statement or create any legal obligation on the part of the Ethiopian government for the safety and security of the political refugees who return forcibly to Ethiopia. According to the document the main objective the MOU is seems noble it states that it will lay down or facilitate" the basis for a closely coordinated, phased, dignified and humane process of assisted return of Ethiopian nationals in Norway with respect primarily to voluntary return and the importance of safe and dignified return and sustainable reintegration." Based on the statement from the MOU... the agreement shall be applied to Ethiopian nationals, staying temporarily in the kingdom of Norway and whose request for a refugee status or residence permit has been rejected and who have no compelling humanitarian needs justifying prolongation of their stay in Norway.

### **The 1951 Geneva convention/ Refugee convention Vs. MOU**

The 1951 refugee convention and its 1967 protocol help and aimed at protecting the most vulnerable people in the world. This convention clarifies the rights of refugees and the obligations of the member states. Here I would like to quote again what refugee means for conceptualizing what refugee means. According to the 1951 convention refugee defined as...as a person who is outside his or her country of nationality or habitual residence; has a well-founded fear of being persecuted because of his or her race, religion, <https://assignbuster.com/the-u-turn-from-integration-to-forced-repatriation-law-international-essay/>

nationality, membership of a particular social group or political opinion; and is unable or unwilling to avail him—or herself of the protection of that country, or to return there, for fear of persecution (Article 1A (2)). The Ethiopian refugees are claiming their rights based on the aforementioned article. They are arguing that most of the refugees left their country of origin due to various political persecutions by the incumbent governments. The current government, the EPRDF (Ethiopian peoples' Revolutionary Democratic Front), hold the power and led the countries under a single party system. According to different humanitarian organizations this regime is characterized by endless repression, religious persecution and ethnic oppression. There is no independent democratic institution, election, political activity/space, and rule of law that resulted in gross human right violation. Individuals arrested and held without trial based on their political and religious affiliation. Based on the witnesses from different humanitarian organizations they claim that they have a well-founded fear of persecution, detention and torture for reasons of race, religion and most importantly political affiliation if they return back home. Most of the refugees are actively participating in home politics against the current government that has been in power for two decades. These refugees are often mobilized and engaged in homeland politics. They participate in political demonstration concerning, they conduct political campaign, advocacy and lobbying against the ruling government and fund raising for different opposition political parties and political activities in their home countries. Most of the refugees worried if they return back home lack of democratic government and institutions, corruption, the absence of democratic fair and balance political

environment /space doesn't help them to guarantee their safety and security against the government. That is why the NOAS (2012) report claims that " The Ethiopian authorities crack down on people with any affiliation to opposition parties and punitive action is taken towards those who have any association to these banned parties. ...people that are active in these parties risk incarceration and torture upon arrival in Ethiopia. There is great uncertainty as to how the Ethiopian government will treat these individuals upon deportation...There is a high probability that the system critics who are deported will be faced with retaliations after a given time, and that the accusation will then be well camouflaged. The system critics who face deportation to Ethiopia would be vulnerable to fabricated accusations and false affidavits." However, in reality the MOU contains no language that addresses these well founded fears raised by the refugees and other humanitarian organizations based on the 1951 convention concerning to the government behavior. The MOU which has been signed by the two parties doesn't consider the fragile political situation, the dictatorial regime, the non-democratic situation in the political sphere and the cost the returnees going to pay if they return back home. In a similar manner the MOU doesn't conform to the Article 33 of the 1957 refugee convention as amended by the 1967 protocol relating to the status of refugees. The convention under article 33 prohibits any state from expelling refugees involuntarily from their territory. Under Article 33 (1) of the Convention, " No Contracting State shall expel or return ('refouler') a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social or

political opinion." The fact that reparation must be voluntary that the subjective fear should have ceased. In this sense the decision made by the Norwegian government is wrong and it breaches international convention. Besides, in the signed MOU the fate and protection of the Ethiopian refugees solely left to the Ethiopian government. The government who has a bad reputation /record/ of human rights abuse and who tried so many times to silence political oppositions will not be a viable alliance to rely on for the protection, safety and security of the returnees who involved in different political activities here in Norway. International organizations like Human rights watch(HRW), Amnesty International, and NOAS are among the various organizations who criticize the Ethiopian government human rights abuse, torture, detention without trial, and harassment of its citizens due to their political ethnic and religious affiliation. (Foot note)The prohibition on forcible return of refugees is also a widely accepted principle of customary international law, the violation of which requires immediate notification of an intervention by the UNHCR. It does not appear UNHCR assistance was sought in this case. The fact is that UNHCR didn't involve in the repatriation plan. According to UNHCR executive committee conclusion 18 (XXXI) the organization has the mandate to assess the guarantee to be provided by the country of origin, advising refugees of such guarantees and information regarding conditions prevailing in their country of origin as well as monitoring the situation of returnees in their country of origin (UNHCR 1996). The 1951 Convention requires states to include in their asylum procedures, among other things, an up-to-date knowledge of all the relevant objective circumstances in the country of origin. Such knowledge should play a critical

role in the determination of whether to grant asylum. The burden of proof is on the asylum applicant, but the standard of proof in asylum cases is not "well-founded fear of persecution" beyond a reasonable doubt, but rather proof that it is "reasonably possible".

## **Refugees as a diplomatic gift?**

In September 2007, The Ethiopian government cuts of its diplomatic relation with the Norwegian government. In the meantime the government expelled six Norwegian diplomats from the country. Government officials allegedly accused the small Nordic state interfering in its ongoing boarder talks with Eritrea and trying to destabilize the country by hosting and funding anti-Ethiopian elements. Beyond that the government accused the Norwegian government undermining the Ethiopian security interest in the horn of Africa region. Behind these rhetoric the Ethiopian government was not pleased with the Norwegian strong criticism of its human rights abuse and political situations in the country. In the other side the Norwegian government retaliated by cutting aid to the country. A year later the two countries have agreed to restore their full diplomatic ties. Ethiopia is the host African Union, different international offices and embassies, and a strong nation comparing to horn of African countries. The country is also an important ally to most western countries in combating extremism and climate change, become a country much more important in the western political agenda. Due to these facts the Norwegian government didn't want to miss their political influence and representation in Africa. This and other factors have forced the Norwegian Government to restore its diplomatic relation. Missing space in Ethiopia will not be a good decision for Norway to gamble with.

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