**PROCLAMATION NO. 409/2004**

**REFUGEE PROCLAMATION**

WHEREAS, Ethiopia is providing asylum and protection to refugees and promoting their voluntary repatriation in safety and dignity whenever conditions permit,


WHEREAS, it is desirous to enact national legislation for the effective implementation of the aforesaid international legal instruments, establish a legislative and management framework for the reception of refugees, ensure their protection, and promote durable solutions whenever conditions permit;

NOW, THEREFORE, in accordance with Article 55(1) of the Constitution of the Federal Democratic Republic of Ethiopia, it is hereby proclaimed as follows:
PART ONE
GENERAL

1. Short Title

This Proclamation may be cited as “Refugee Proclamation No. 409/2004.”

2. Definition

In this Proclamation, unless the context otherwise requires:

1) “Authority” means the Security, Immigration and Refugee Affairs Authority established by Proclamation No. 6/1995 Article 6(1)


5) “Country of Nationality” means a country, which the refugee is a national.

6) “Country of former habitual residence” means the country where a person established himself permanently and which enjoyed its protection.

7) “Refugee” means any person or group of persons who full fills the criteria under the Provisions of Article 4 or Article 19 of this Proclamation.
8) "The Family Members" means:-
   a) any spouse of the refugee, and
   b) any unmarried child of the refugee under the age of eighteen years.

9) "Recognized Refugee" means a person who:-
   a) has been recognized as a refugee in terms of Article 4 of this Proclamation or
   b) is a member of group of persons declared to be refugees in terms of Article 19 of this Proclamation.

10) "Asylum-seeker" means any person who presents himself at the border or frontier claiming to be a refugee or any person is in Ethiopia and who has lodged an application with the competent authorities for recognition as a refugee and is awaiting a final decision on his application.

Part Two General Principles

3. Non-discrimination

This Proclamation shall be applied without discrimination as to race, religion, nationality, membership of a particular social group, or political opinion.

4. Refugee Criteria

Any person shall be considered as refugee where:

1) owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion he is outside his country of nationality and is unable or, owing to such fear, is unwilling, to avail himself of the protection of that country;

2) not having a nationality and being outside of his former habitual residence, he is unable, or owing to a well-founded fear of being persecuted for reasons of race, religion, membership of a particular social group or political opinion, he is unwilling to return to it; or
2) Any person aggrieved by the decision of the Authority can appeal within 30 days of receiving the decision to appeal hearing council, established in accordance with Article 15 of this Proclamation.

7. Cessation of Refugee Status

Any person shall cease to be considered as refugee if:

1) he has voluntarily re-avails himself of the protection of the country of his nationality;

2) he has voluntarily re-establishes himself in the country which he left or outside of which he remained owing to fear of persecution;

3) he has acquired the nationality of Ethiopia, or that of another country and enjoys the protection of Ethiopia or the country of his new nationality: or

4) Despite the circumstances in connection with which he was recognized as a refugee, have ceased to exist:

(a) continue to refuse to avail himself of the protection of the country of his nationality: or

(b) if he has lost his nationality or has no nationality, and is able to return to the country of his country of former habitual residence, but continue to refuse to do so.

5) The provisions of this Article shall not apply, however, to a refugee falling under Article 4 of this Proclamation who is able to invoke compelling reasons arising out of previous persecution or fear for his safety for the reasons set out in Article 4, for refusing to avail himself of the protection of the country of his nationality or country of his former habitual residence.
8. Fundamental Change of Circumstances

1) Where the fundamental changes referred to in Article 7 (4) of this article are considered to have taken place in a country of nationality or of former place of habitual residence of a person or persons recognized as refugees under this Proclamation, the Head of the Authority, working in collaboration and coordination with the United Nations High Commissioner for Refugees, or its substitute and subject to such other special procedures as may be established for this purpose, initiate an assessment and verification of the nature and durability of the changes having regard to the circumstances which justified the grant of refugee status in the first place.

2) Following such assessment and verification, the Authority shall, in collaboration with the United Nations High Commissioner for Refugees, make a decision as to whether the refugee status of the person or group of persons concerned shall be declared to have ceased.

3) The decision made pursuant to Sub-Article (2) of this Article shall also set out the consequences and implications for the refugee or refugees affected by the cessation of refugee status, including the right of individual refugees to have their individual claim for continuing refugee status examined.

9. Non-refoulement

1) No person shall be refused entry into Ethiopia or expelled or returned from Ethiopia to any other country or be subject to any similar measure if as a result of such refusal, expulsion or turn or any other measure, such person is compelled to return to or remain in a country where:

a) he may be subject to persecution or torture on account of his race, religion, nationality, membership of a particular social group or political opinion:
b) his life, physical integrity or liberty would be threatened on account of external aggression, occupation, foreign domination of events seriously disturbing public order in part or whole of the country.

2) The benefit of this provision may not, however, be claimed by a refugee whom there are serious reasons for regarding as a danger to the national security, or who having been convicted by a final judgment of a particularly serious crime, constitute a danger to the community.

3) The Head of the Authority shall in line with the sprit of this Proclamation and existing Law determine whether serious grounds exist for regarding a refugee as a danger to national security.

10. Expulsion

1) A refugee who is lawfully resident in Ethiopia shall not be expelled except on the ground of national security and public order.

2) An order to expel, pursuant to Sub Article 1/ of this Article shall be made by the Head of the Authority. However, before making such an order, the Head shall allow the concerned refugee to present his case.

3) Any expulsion order shall be communicated in writing to the refugee together with the reasons for the order.

4) The execution of any expulsion order may, if the concerned refugee requests, be delayed for a reasonable period to enable such refugee, to seek admission to a country other than the country to which he is to be expelled.
11. Temporary Detention

A person whose expulsion has been ordered under Article 10 of this proclamation may be arrested or detained upon the order of the Head of the Authority pending his expulsion if such detention is necessary for purposes of effecting the expulsion order or to ensure that he does not endanger the security or public order of Ethiopia pending the expulsion.

12. Unity of the Family

1/ A member of the family of an asylum-seeker as provided for in this Proclamation shall be permitted to enter and remain in Ethiopia until his case is finally decided.

2/ Once the family of an asylum-seeker are in Ethiopia, they shall be entitled to all the rights and be subject to all the duties of an asylum-seeker.

3/ A member of the family of a recognized refugee, as provided for in this Proclamation, shall be permitted to enter and remain in Ethiopia.

4/ Once the family of a recognized refugee is in Ethiopia, they shall be entitled to all the rights and be subject to all the duties of a recognized refugee.

5/ Nothing in this Article shall prevent a member of the family of an asylum-seeker or recognized refugee from himself applying for recognition and being recognized as a refugee in terms of Article 4 of this Proclamation.

Part Three
Application for Recognition of Refugee Status and Procedures for Determination of Refugee Status

13. Application for recognition of Refugee Status

1/ Without prejudices to Article 19 of this Proclamation, any person who is at the frontier or any other entry point or within Ethiopia, whether he has entered the country lawfully or otherwise, and who wish to remain within the country as a refugee in terms of this Proclamation, shall, within fifteen days apply to the nearest-
The police station receiving the application shall, as soon as possible forward the application to the Authority.

The applicant shall fill relevant forms and vouch for the truth of the statement therein.

The Authority shall provide the applicant with identity card attesting to his status as asylum-seeker.

Notwithstanding the provisions of any other law to the contrary, no criminal proceedings shall be commenced or continued against a person who has applied or is about to apply pursuant to this Proclamation on the account of his illegal entry and presence in the country.

14. Decision by the Authority

1) The Authority shall decide on the application presented to it in accordance with Article 13 of this proclamation.

2) In deciding asylum application, the Authority shall:
   a) ensure that every applicant is given reasonable time to present his case;
   b) ensure the presence of qualified interpreter during all the stages of the hearing;
   c) cause the person concerned to be notified of its decision and the reason thereof in writing;
   d) decide on every application or case referred to it within reasonable period of time; and
   e) invite the United Nations High Commissioner for Refugees to participate as an observer.

3) Any asylum-seeker, who is aggrieved by the decision of the Authority, may within thirty days of being notified of such a decision, appeal in writing to the Appeal Hearing Council established under Article 15 of this Proclamation.
15. Establishment of an Appeal Hearing Council
The Appeal Hearing Council that reviews the decision of the Authority in relation to asylum is hereby established under this Proclamation.

16. Member of the Appeal Hearing Council

1) The Appeal Hearing Council shall have the following members:
   a) The representative of the Authority .................. Chairman
   b) The representative of the Ministry of Foreign Affairs...... Member
   c) The representative of the Ministry of Justice ..............
   d) Two representatives of the Federal Affairs.

2) The United Nations High Commissioner for Refugees shall be invited to participate as an observer.

3) The Authority shall appoint a secretary for the Council.

17. Functions of the Appeal Hearing Council

1) The Council shall decide on appeals submitted to it in accordance with Sub-Article (2) of Article 6 or Sub-Article (3) of Article 14 of this Proclamation.

2) In the exercise of its functions, the Council shall:
   a) ensure that every applicant is given reasonable time to present his case;
   b) ensure the presence of qualified interpreter during all the stages of the hearing;
   c) decide on every application or case referred to it within reasonable period of time;
   d) cause the person concerned to be notified of its decision and the reasons thereof in writing; and

3) The Council shall issue its own rules of procedure.

18. Records and Minutes

The records and minutes of meetings in relation to application for refugee status shall be kept in a confidential and secure manner so that the safety and security of an asylum-seeker may not be in danger.
19. Declaration of class of Persons as Refugees

If the Head of the Authority considers that any class of persons met the criteria under Article 4(3) of this Proclamation, he may declare such class of persons to be refugees.

Part Four
Rights and Obligations of Asylum-seekers and Recognized Refugees

20. Rights and Obligations of an Asylum-seeker

1) Any person who has applied pursuant to Article 13 and Article 19 of this Proclamation for recognition of his status as a refugee shall be allowed to remain in Ethiopia:-
   a) until the Authority decides on his application; or
   b) if his application is unsuccessful, until he exhausts his right of appeal.

2) Any person stated under Sub-Article (1) of this Article shall, except to the extent that the provisions of any other law may be inconsistent with the purposes of this Proclamation, be subject to laws in force within Ethiopia.

21. Rights and Obligations of Recognized Refugees

1) Every recognized refugee shall:-
   a) be permitted to remain within Ethiopia in accordance with the provision of this Proclamation;
   b) be issued with identity card attesting to his refugee status;
   c) be issued with a travel document for the purpose of traveling outside Ethiopia in accordance with international agreement;
d) be entitled to other rights and be subject to the duties contained in the Refugee Convention and the OAU Refugee Convention;

e) except to the extent that the provisions of any other law may be inconsistent with the purposes of this Proclamation, be subject to the laws in force within Ethiopia; and

2/ Notwithstanding the provisions of Sub-Article (1) (d) of this Article, the Head of the Authority may designate places and areas in Ethiopia within which recognized refugees, persons who have applied for recognition as refugees, and family members thereof shall live, provided that the areas designated shall be located at a reasonable distance from the border of their country of origin or of former habitual residence.

3/ Notwithstanding the provisions of Sub-Article (1) (d) of this Article, Every recognized, refugee, and family members thereof shall, in respect to wage earning employment and education, be entitled to the same rights and be subjected to the same restrictions as are conferred or imposed generally by the relevant laws on persons who are not citizens of Ethiopia.

22. Special Protection to Vulnerable Groups

The Authority shall take measures to ensure the protection of women refugees, refugee children, elderly refugees, and handicap who needs special protection.

23. Voluntary repatriation

1) Every recognized refugee has the right, of his own volition, to seek to repatriate from Ethiopia to his country of nationality or former habitual residence in safety and dignity.
A voluntary decision by a refugee to repatriate in terms of Sub-Article (1) of this Article shall be deemed to be a decision of all members of his family accompanying him, save where it appears that such family member of family members is or are likely, upon return to the country of nationality or former habitual residence, to be persecuted or be placed in danger for the reasons set out in Article 4.

Part Five
Miscellaneous Provisions

24. Inapplicable Laws
Any Proclamation, regulation, order or directive which is inconsistent with this Proclamation shall not apply to matters provided for in this Proclamation.

25. Penalty
Whosoever violates or obstructs the implementation of this Proclamation shall be punishable in accordance with the Penal Code of Ethiopia.

26. Power to issue regulations
The Council of Ministers may issue regulations for the proper implementation of this Proclamation.

27. Effective date
This Proclamation shall come into force on the date of its Publication in the Federal Negarit Gazette.


Girma Woldegiorgis
President of the Federal Democratic Republic of Ethiopia