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## Chapter 5

# Women Trafficking from Ethiopia: The Legal, Institutional and Policy Frameworks to Deal with It

This chapter provides an overview of the relevant HT prevention laws and institutions, both governmental (at the level of the Labor and Social Affairs Bureau at Arsi Zone, Oromiya Regional State and the Federal Government of Ethiopia) and non-governmental as well as formal and informal. The Ethiopian human trafficking prevention architecture is based on a multitude of international, regional (AU and IGAD) and national legal and policy frameworks. The following four sections elucidate the various levels and the coming together of these frameworks and measures foreseen to prevent human trafficking. They also apply to male victims of trafficking but, as noted above, the focus here is on women as a study population. In section 5.5 the situation on the level of at Arsi Zone, as emanating from such international, regional and national levels, will be discussed.

### 5.1 International Instruments Ratified by Ethiopia

The current FDRE Constitution explicitly states that ratified international treaties are integral parts of the constitution.<sup>84</sup> In addition, the fundamental rights enshrined in the Constitution are interpreted in a manner confirming to the principles of the Universal Declaration of Human Rights, international instruments adopted by Ethiopia.<sup>85</sup> Furthermore, states, including Ethiopia, that have ratified a particular UN instrument become responsible for observing the principles of the instrument. Therefore, states which have ratified UN instruments on anti-trafficking need to develop their own anti-human trafficking laws in line with their international commitments.

#### *International Instruments Ratified*

Ethiopia has ratified several international instruments that deal with human trafficking. Among these is the UN Convention against Transnational Organized Crime, and its

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<sup>84</sup> Article 9(4) of the FDRE Constitution of 1995.

<sup>85</sup> Article 13(2) of the FDRE constitution of 1995.

supplementary protocols.<sup>86</sup> One of the most important international instruments to combat trafficking, and a supplement to the UN Convention against Transnational Organized Crime (2000), is the *Palermo Protocol*. Specifically, article 5 of the Protocol requires states to criminalize trafficking and any activity associated with it. This protocol commits ratifying states to prevent and combat human trafficking, protect and assist its victims, and promote international cooperation to meet these objectives. It also obligates ratifying states to introduce new human trafficking legislation.

As Ethiopia has ratified the agreement, the country is obviously put under international obligation to adopt anti-human trafficking legislation or other legal measures to combat human trafficking. Ethiopia has also ratified The United Nations Protocol against the smuggling of migrants by land, sea and air.<sup>87</sup> In addition, Ethiopia has ratified other UN as well as ILO conventions dealing with employment and labor issues, which are in one way or the other useful in combating human trafficking. These include the UN Convention for the Suppression of the Traffic in Persons and the Exploitation of the Prostitution of others (1949); UN International Covenant on Civil and Political Rights (1966); UN International Covenant on Economic, Social and Cultural Rights, (1966); UN Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) (1979); ILO, the Private Employment Agencies Convention (1997); UN Convention on the Rights of the Child (CRC) (1989); ILO, the Discrimination (Employment and Occupation) Convention (1958), and others.

However, since the Palermo Protocol is the first comprehensive international instrument devised to combat human trafficking, it appears to be crucial to focus on. This UN Trafficking Protocol indicates six important activities to be undertaken that help to prevent human trafficking. These activities include raising the awareness of the public about human trafficking through mechanisms such as training and media outlets; addressing social and economic conditions which cause human trafficking; protecting victims of trafficking in persons, especially women and children, from victimization; strengthening border control; properly regulating travel or identity documents; and discouraging the demand that fosters

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<sup>86</sup> The two supplementary protocols of the UN Convention against Transnational Organized Crime are: the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, and The United Nations Protocol against the smuggling of migrants by land, sea and air. Ethiopia ratified these protocols back in 2012.

<sup>87</sup> FDRE Proclamations No. 737/2012 and 736/2012.

all forms of exploitation of persons, especially women and children, that leads to trafficking.<sup>88</sup>

In fact, activities like awareness raising trainings can play vital roles in preventing human trafficking as they may enable the public to understand human trafficking, including the methods employed by traffickers and the risks to victims.<sup>89</sup> The media is also expected to play a critical role in this regard. All relevant media outlets are to provide a balanced and clear explanation of the phenomena and a reliable portrayal of the victims. In such campaigns, women and children must be especially targeted as they are often the vulnerable sections of the society.

Under this UN Trafficking Protocol, protecting victims of human trafficking from re-victimization is also given a focus as an important strategy for preventing further trafficking. This is the case because the Protocol assumes that former victims are often more vulnerable later on, especially if they are repatriated to places where trafficking is common.<sup>90</sup> In this context, considering the impact of return and repatriation on the safety of the victims should be evaluated well **beforehand** in order for the return of all trafficking victims to be effective.<sup>91</sup>

Prevention of human trafficking demands addressing factors that underlie women trafficking. In other words, it is to say that effective prevention requires working on the basic causes of women trafficking. **In international policy discourse, these factors are usually said to include poverty, under development, unemployment, and lack of equal opportunity** (UN 2000.) As stated in OHCHR's *Recommended Principles and Guidelines on Human Rights and Human Trafficking* (2010), gender inequality and gender-based violence, lack of education and other factors which bring about human rights violations likewise exacerbate vulnerability to human trafficking (OHCHR 2010). According to the Office of the High Commissioner for Human Rights (*ibid.*) these factors generally make individuals susceptible to human trafficking by enhancing economic deprivation and social conditions that limit individual choice, thus making it easier for traffickers to operate (OHCHR 2010).

**In addition, strong border control is said to be an essential tool to prevent human trafficking.** Here States Parties are required to take measures that make the conventional means of transport more difficult for traffickers to use (UNOD 2004). Indeed, when taking

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<sup>88</sup> UN 2000, Trafficking Protocol (the Palermo Protocol).

<sup>89</sup> United Nations Office on Drugs and Crime 2008.

<sup>90</sup> UNODC 2004. *Legislative Guides for the Implementation of the United Nations Convention against Transnational Organized Crime and The Protocols.*

<sup>91</sup> The Economic and Social Commission for Asia and the Pacific, 2003.

measures, it is important to keep the balance between border control and freedom of movement. Studies have indicated that a lack of legal rights to mobility compels marginal and vulnerable groups to lead underground lives, enhancing their vulnerability to trafficking (Touzenis 2010). That is why this Protocol explicitly warns that such border measures should not derogate States Parties' commitment in ensuring the right to free movement.<sup>92</sup>

Strictly monitoring the travel documents of people - passports and other travel or identification documents - will also discourage traffickers from easily transporting victims to other States and, hence, may help to prevent the trafficking. In this regard, this UN Trafficking Protocol demands States Parties to ensure that travel or identity documents issued by it are of such quality that they cannot easily be misused or cannot readily be falsified or unlawfully altered, replicated or issued; and also to ensure the integrity and security of travel or identity documents issued by or on behalf of the State Party so as to prevent their unlawful creation, issuance and use.

As this UN Trafficking Protocol notes, the endeavor to combat human trafficking will not bring meaningful outcomes unless the demand side is properly considered.<sup>93</sup> OHCHR underlines that demand may be generated by employers and consumers for the goods or services produced or provided by trafficked persons (OHCHR 2010). Demand may also come from exploiters and others involved in the trafficking process, such as recruiters, brokers and transporters, who rely on trafficking and victims of trafficking to generate income. Therefore, an effort to deal with demand side of the causes of women trafficking should analyze these sources.

In the UN Trafficking Protocol, it is clearly spelled out that measures aimed at raising the awareness of the public through research, mass media attention and other public information campaigns do not necessarily require legislative action for their implementation. States parties are required to establish comprehensive policies, programs and other measures to deal with prevention.<sup>94</sup>

Indeed, one of the challenges in translating the ratified conventions including the trafficking protocol into practice is the fact that they require states to treat trafficked people in a way that is not even affordable for nationals. Understood in this way, given the welfare states' nationals' protection as political priority, state intervention in favor of migrants is difficult to explain to the population and sometimes creates political dilemma.

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<sup>92</sup> Art. 11 of the UN Trafficking Protocol 2000.

<sup>93</sup> UN Trafficking Protocol 2000.

<sup>94</sup> UN Trafficking Protocol Art. 9(1), 2000.

There are also major problems of form, content and application that make the conventions and their proposed measures **less relevant** to the actual situation in Ethiopia. For one thing, the official translation of international instruments into the working languages of the country is seldom undertaken. Although the instruments in question formally become part of the laws of the country upon official publication of ratification, the absence of official translation and publication makes it difficult to apply them in practice, particularly in the courts. The other is that the provisions of international instruments are inherently general in nature and focus on government obligations rather than giving a clear definition of rights and the establishment of implementing structures and procedures at the national level. Most of these provisions require the promulgation of subsidiary legislation by the national lawmaking body in order to be applicable (IOM 2011) – even apart from issues of funding and institutional capacity.

Moreover, as ‘exporting’ workers is economically vital to the source countries, there appears to exist a concern from the sending countries that implementation of such conventions will limit their chances of getting economic benefits. Obviously, if sending states express the political will of protecting their citizens abroad through the conventions, receiving states would hold a stronger position to dictate the terms and conditions of employment. **To make matters even worse for the sending states, economic instability and high unemployment rates often leave governments without other options. This situation apparently reflects the reality in Ethiopia, which is in competition with other sending states and depends on the agreements signed by receiving countries in the Middle East.**

#### ***Regional Instruments Ratified by Ethiopia***

By ‘regional’ instruments are meant instruments that exist at the continental (African) and sub-continental level and which Ethiopia has ratified. **One of such basic instruments is the African Charter on Human and People’s Rights.** This Charter was adopted in 1981 and came into force in 1986. As it has been ratified by Ethiopia in 1998, the country is obliged to observe the provisions of the Charter. This Charter is the leading human rights document at the continent level with all the member states of the African Union (AU) having ratified it. As clearly provided in article five of this Charter, every individual shall have the right to the respect of the dignity inherent in human being, and to the recognition of his legal status.

Though trafficking in persons is not explicitly mentioned, the Charter, under Article 5, condemns all forms of exploitation and degradation particularly slavery, slave trade,

torture, cruel, inhuman or degrading punishment and treatment.<sup>95</sup> All forms of exploitation and degradation of humans, particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment were to be prohibited. Ethiopia also ratified the African Charter on the Rights and Welfare of the Child in September 2002.<sup>96</sup> As some other articles, including articles 27, 28 and 29, concern the prevention of the sexual exploitation, abduction and trafficking of children, they are the most relevant to this end.<sup>97</sup>

At the East Africa level, states are making efforts to combat women trafficking. The Eastern African bloc IGAD has developed a Regional Migration Policy Framework (IRMPF). This framework was developed as per the Migration Policy Framework for Africa, which was adopted in Banjul in 2006.<sup>98</sup> In the Policy Framework, six key thematic migration issues were identified, including human trafficking and recommendations for Member States outlined. The five-year IGAD Migration Action Plan beginning from 2015 was developed to operationalize the IGAD Regional Migration Policy Framework. Accordingly, strategic priorities, action areas and a list of activities to be carried out by IGAD Member States were established by the Migration Action Plan.

Another Greater Horn of African Initiative is the African Union-Horn of African Initiative (AU-HOAI), an African Union-led plan that brings together more than 15 African states (including Djibouti, Eritrea, Ethiopia, Kenya, Somalia, South Sudan, and Sudan from the IGAD region). Countries such as Egypt also play a prominent role in the process. The initiative aims to combat human trafficking and smuggling from the Horn of Africa (HoA) to different destinations, mainly to Europe, the Middle East and Southern Africa. The African Union-Horn of Africa initiative's Strategy Action Plan has been adopted specific provisions of prevention, protection and prosecution (EU-HOAI, 2014).

Moreover, another Eastern African initiative is the Regional Committee on Mixed Migration (RMM), also to counter human trafficking. This was an IOM initiative created by the governments of Djibouti, Ethiopia, Puntland, Somaliland and Yemen at the conclusion of a Regional Consultation on mixed migration held in Djibouti in 2010. Its overall objective is enhancing collaboration to address and manage mixed migration flows in the region.<sup>99</sup>

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<sup>95</sup> African Charter on Human and People's Right 1981.

<sup>96</sup> African Charter on the Rights and Welfare of the Child 1990.

<sup>97</sup> African Charter on Human and People's Rights 1981.

<sup>98</sup> IGAD Regional Migration Policy Framework, 2012.

<sup>99</sup> Regional Committee on Mixed Migration paper, 2010. 'Mixed migration' refers here to refers to complex population movements: people using the same routes and modes of transportation to travel, but moving for different reasons. These movements may include migrants, , refugees,

Similarly, the joint European Union and Horn of African (EU-Horn of Africa) initiative known as Migration Route Initiative (Khartoum Process) is also a recent development as an inter-regional platform between European countries and HoA states. Among other things, this Initiative has laid out member state commitments to ratify international conventions on smuggling of migrants and human trafficking. Of course, the overall objective this initiative is tackling human trafficking and smuggling of migrants from the Horn of Africa to Europe. In order to do so, some of its strategies are stated as working on the socio-economic causes of migration, protection of victims, strengthening law enforcement efforts, and fostering cooperation with international organizations.<sup>100</sup>

## 5.2 Ethiopia's National Legal and Policy Frameworks

The national level legal framework has to do with provisions that are made at the country level in order to counter women trafficking. **This includes all trafficking issues covered under the domestic laws of various jurisdictions.** Of course, a comprehensive national legal framework is usually required in order for human trafficking problem to be countered effectively. However, there are instances when states try to employ already existing criminal laws, labor laws, migration policies, refugee and asylum laws, as well as investigative and judicial procedures with more recent treaty obligations (UNHCR 2014). This was true for Ethiopia, as the country used the previously existing key provisions under the FDRE Constitution, the Criminal Code, and Employment Exchange Services Proclamations, and ratified international instruments. **More recently, Ethiopia has introduced the new Proclamation for the Prevention and Suppression of Trafficking in Persons and Smuggling of Migrants.**<sup>101</sup> However, contrary to the UN Trafficking Protocol, prevention methods are not clearly outlined under the Trafficking and Smuggling Proclamation of Ethiopia.

**Moreover, very recently Ethiopia enacted a new overseas employment proclamation to protect the rights, safety and dignity of Ethiopians who take up overseas employment. The Overseas Employment Proclamation was adopted to protect Ethiopians working abroad from human rights violations and discourage those vulnerable to human trafficking. Accordingly, no deployment of overseas workers is allowed in the absence of a bilateral agreement with the recipient country.** Moreover, the deployment of workers (i) under the age of 18, (ii)

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unaccompanied and separated children, or victims of trafficking. Cp. <http://www.mixedmigrationhub.org/member-agencies/what-mixed-migration-is/>.

<sup>100</sup> EU-HoA Migration Route Initiative 2014.

<sup>101</sup> Proclamation No. 909/2015 of the FDRE 2015.



without the 8th grade of education, and (iii) without a certificate of occupational competence is strictly prohibited.<sup>102</sup>

To strengthen border control as per the requirements of the UN Trafficking Protocol highlighted above, the Ethiopian government also included some border-related provisions in the Proclamation. The Proclamation criminalized and imposed severe penalties on fraudulent use of travel and identity documents.<sup>103</sup> Next, some of the national legislative provisions that in one way or another help in countering women trafficking are discussed. Indeed, it is important to recognize that the legislation evolved over time.

### 5.2.1 The 1995 FDRE Constitution (1995)

As the current Constitution stipulates various human and democratic rights, the protection of the rights of individuals and groups is associated with protecting people from being trafficked. The Federal Democratic Republic of Ethiopia (FDRE) Constitution guarantees fundamental human and democratic rights. Some of the provisions that are directly associated to trade in human beings include those under article 18, including the right to protection against cruel, inhuman or degrading treatment or punishment; prohibition of being held in slavery or servitude and human trafficking for whatever purpose; and a prohibition of performing forced or compulsory labour.<sup>104</sup> There are also other provisions relevant to the issue of human trafficking, including article 25, which deals with the equality of all individuals regardless of gender, religion, ethnicity and other identity markers, and article 32, which stipulates to guarantee the freedom of every Ethiopian to move and reside within the country and to leave the country.

Most importantly, the constitution is very clear that trafficking in persons for whatever purpose is prohibited. It is put in black and white. Besides, it declares a prohibition against inhuman treatment and makes clear that everyone has the right to protection against such cruel, inhuman or degrading treatment or punishment.

### 5.2.2 The 2004 Criminal Code

Although not providing a clear definition for human trafficking as a crime, the Criminal Code of Ethiopia sets down acts and omissions that are punishable by law as well as the form

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<sup>102</sup> Proclamation No. 923/2016 of FDRE (2016).

<sup>103</sup> Article 7 of the Trafficking and Smuggling Proclamation 2015.

<sup>104</sup> FDRE 1995 Constitution.

and extent of punishment accorded a definitive as well as preventive role in addressing social problems, aimed to provide a sense of justice to the victim and the society. In many of its articles the Criminal Code addressed issues of trafficking of women and children.<sup>105</sup> As some of the acts supposedly entailing criminal liability may not be properly covered by the Proclamation, the Criminal Code contemplates the crimes of forgery, fraudulent misrepresentation and other similar crimes as punishable. For instance, the case of an agency engaging in services, workplace, or country not mentioned in the license is disciplined under article 598 of the Criminal Code

From among the most important articles in this Criminal Code, article 597, under the title of Trafficking in Women and Children, provides that whoever by violence, threat, deceit, fraud, kidnapping or by the giving of money or other advantage to the person having control over a woman or a child, recruits, receives, hides, transports, exports or imports a woman or a minor for the purpose of forced labour, is punishable with rigorous imprisonment 5 to 20 years, and fine not exceeding 50,000 *Birr*.

In addition the aforementioned article also provides that whoever knowingly carries off, or transports, whether by land, by sea or by air, the victim mentioned above, with the purpose stated therein, or conducts, or aids such traffic, is liable to the penalty as prescribed above.

The Criminal Code in its various articles also prohibits forced labor, enslavement, aggravation to the crime, prostitution, endangering the life of another, and the organization of traffic in women and minors. Furthermore, it criminalizes attempts to commit the of organizing others to commit trafficking.

However, one of the drawbacks of the Criminal Code is that none of its articles provide a clear definition of human trafficking and its difference from smuggling of migrants. And the Criminal Code is often blamed as being deficient, because contrary to the Palermo Protocol, the Code did not cover exploitation of the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude or the removal of organs (cf. Mehari 2017).

### 5.2.3 The Proclamation on Employment Exchange Services

This proclamation was formulated by repealing the 1998 Private Employment Agency Proclamation (Proclamation 104/1998) and some provisions of the 2003 Labour

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<sup>105</sup> Proclamation No. 414/2004.

Proclamation (Proclamation No.377/2003). The Employment Exchange Services Proclamation (Proclamation no. 632/2009) came out with the overall objective of protecting the rights, safety and dignity of citizens to be sent and employed abroad.

Among other things, the proclamation defines the rights of work seekers, imposes different obligations on private employment agencies, and stipulates the responsibility of the government preventing human trafficking and protecting victims. Accordingly, those seeking work beginning right from recruitment have the right to get orientation, acquire the necessary skill, to an employment contract and a recruitment contract in Amharic before departure. It clearly puts that there must be a signed contract between the worker and the employer or its agent, and not to pay the fees for recruitment.

With regard to obligations of the employment agencies, the proclamation dictates that the agencies can employ only a worker who is above the age of 18; must ensure that the prospective migrant workers have acquired necessary skill for the intended employment; must deposit a money guarantee for the purpose of protecting the rights of workers in accordance with the number of workers a particular Private Employment Agency deployed abroad.<sup>106</sup> As stated in the proclamation, non-compliance to its provisions including involvement in unlawful activities like trafficking either by obtaining a working license for employment exchange service or brokering without a license would be punishable not less than 5 years and fines of 25000 *birr*.<sup>107</sup>

As part of the government's responsibility, proclamation also states that the government is responsible to facilitate the resettlement of citizens who come back after being deployed abroad. Moreover, the proclamation indicates that the government should through the National Committee conduct studies with a view to regarding possible bilateral agreements with receiving countries.

However, one of the problems with the proclamation is its lack of effective implementation (Anteneh, 2011; de Regt and Tafesse, 2015; Fernandez, 2013; Horwood, 2015). Moreover, some have observed that it fails to recognize the rights of migrant workers to freedom of association and the right to bargain collectively, which is vital to ensure their rights, collectively bargain their decent working conditions by setting their wage scales, working hours, training, health and safety, overtime and grievance mechanisms (Mehari 2017).

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<sup>106</sup> FDRE 2009, Proclamation No. 632/2009.

<sup>107</sup> For instance, refer to article 40 of Proclamation No. 632/2009.

#### 5.2.4 The Proclamation on the Prevention and Suppression of Trafficking in Persons and Smuggling of Migrants (Proclamation No. 909/2015)

It is stated in this proclamation that its general objective is to prevent human trafficking, to realize appropriate protection, support and rehabilitation of victims with special protection, care and assistance to the most vulnerable and to adequately prosecute traffickers. As stipulated in this proclamation, human trafficking, especially trafficking and smuggling women and children, is a very serious crime and leads to a vital punitive measure up to death penalty.

On the one hand, if trafficking happens by using threat or force or other means of coercion, abduction, fraud, deception, promise, abuse of power or by using vulnerability of a person, or if one recruits, transports, transfer, harbors or receives any person by giving or receiving of payments or benefits to achieve the consent of a person having control over another person, it shall be punishable with rigorous imprisonment from 15 years to 25 years and with fine from 150,000 to 300,000 birr (\$5,515 to \$11,030 at the 2016 rate).

On the other hand, the punishment is more severe for aggravated crimes. This happens if the crime of human trafficking is committed against a child, women or anyone with mental or physical impairment; resulted in physical or psychological harm on the victim; is committed by using drugs, medicine or weapons as a means; is committed by public official or civil servant in abusing of power; or is committed by a person who is parents, brother, sister, a guardian or a person having power on the victim. In such cases the punishment shall be rigorous imprisonment not less than 25 years or life imprisonment and with fine from 200,000 to 500,000 Birr (\$7380 to \$18,389, 2016 rate). The maximum penalty provided in the Proclamation is the death penalty. According to the Proclamation, the death penalty could be handed down to the criminal in cases where the victim suffers severe injury or death.<sup>108</sup>

The Proclamation has also provided more clarification on human trafficking as a term and identified it from related terms. For instance, it has clearly drawn the distinction between human trafficking and migrant smuggling.<sup>109</sup> Apart from direct involvement, it is stated in the Proclamation that assisting and facilitating human trafficking, including permitting a

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<sup>108</sup> Article 6 of the Proclamation.

<sup>109</sup> Articles 2(1), 3, 4 and 2(8), as well as 5 of the Proclamation.

house for it, arranging transportation knowingly, importing or exporting any publication, financing or organizing recruitment agency, falsifying identity or travel documents, or holding people in debt bondage can result in 15 to 25 years imprisonment and a fine from 150,000 to 300,000 *birr*.<sup>110</sup>

With regard to victim protection, the victims of human trafficking have the right to rescue, release and return by their respected government. Victims shall be provided with information on the nature of protection, assistance and support as well as information on any legal proceedings related to them and accorded the available health and social services, medical care, counseling and psychological assistance, with care, on a confidential basis and with full respect of privacy.

The Proclamation also states that victims shall in no case be kept in police stations, and detention centers or prisons. And unless victims are required for testimony in the judicial process, they shall not stay in temporary shelter for a period exceeding three months.<sup>111</sup> It also guarantees protection of witnesses and victim's immunity from criminal liability.<sup>112</sup>

A fund for compensating the victims was also provided in the Proclamation. According to the Proclamation, its budget is allocated by Government, which proceeds from the sale of properties confiscated or fines imposed as per this proclamation, voluntary contributions from individual organizations, the private sector, and charities and societies, grants from different international organizations and donors, and other financial sources approved by the Ministry of Finance and Economic Cooperation. The fund was established to help prevent, control and rehabilitate victims of human trafficking and migrant smuggling.

#### 5.2.5 The Proclamation for Overseas Employment (Proclamation No. 923/2016)

This Proclamation is the most recent legal provision dealing with human trafficking in Ethiopia. It introduced some additional requirements for the nationals who want to work in foreign countries. By introducing stricter mechanisms through which migrants have to pass, it is believed that this proclamation could help to better prevent human trafficking. It was a landmark decision that the Ethiopian government made to prevent human trafficking through regulating overseas employment relations (cf. Woldemichael 2017). Ethiopia's Overseas Employment Proclamation (Proclamation no. 923/2016) was thus adopted to protect

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<sup>110</sup> Article 4 of the Proclamation.

<sup>111</sup> See Article 26 of the 909/2015 Proclamation.

<sup>112</sup> See Articles 29 and 30 of the proclamation.

Ethiopians working abroad from human rights violations and to discourage vulnerable people from human trafficking.

One of the newly introduced requirements is a bilateral agreement between the government of Ethiopia and the receiving country. This Proclamation emphasized that bilateral agreements with receiving countries would strengthen lawful employment opportunities for interested citizens who want to work abroad. Accordingly, deployment of workers for overseas employment is possible only if there is an agreed upon modality with the receiving countries.<sup>113</sup>

In addition, the Proclamation has put education level limit on the would-be recruits for working abroad. It explicitly states that a worker will be employed if he/she has completed grade eight and possess an occupational certificate for the work to be employed and the competence is issued by the appropriate assessment center.<sup>114</sup> And, a worker is exempted from payments including entry visa to the country of destination, round-trip transport cost, and work permit, residence permit, and insurance coverage, costs associated with visa and document authentication.

Moreover, the proclamation has incorporated major rights of the worker. These entitlements include regular working time, favorable wages for regular working hours and overtime pay, annual leave, weekly rest and other similar vacations; free transportation to and from the worksite or offsetting benefit; free medication, food and accommodation or offsetting benefits; insurance coverage for life or disability; and valid grounds for termination of contract of employment. To this end, the proclamation stipulates that labour attaché is to be assigned to ensure the rights, safety, and dignity of overseas workers.<sup>115</sup>

This proclamation has also laid out some responsibilities for the Private Employment Agencies which are engaged in overseas employment. One of these responsibilities is being able to deposit 100,000 USD or its equivalent in Birr in a blocked bank account for purposes of guaranteeing the protection of the rights of oversea workers. It also states that this business is restricted to Ethiopian citizens who have a capital of one million ETB (*birr*).

Overall, the proclamation can be appreciated in introducing some the important responsibilities of the workers, Private Employment Agencies, as well as the concerned government structures in ensuring the safety and security of Ethiopians working abroad. However, some gaps still be identified. One of the shortcomings of this proclamation is its

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<sup>113</sup> Article 12 of the Proclamation.

<sup>114</sup> Article 7 of the Proclamation.

<sup>115</sup> See Article 14 of the Proclamation.

failure to require the receiving countries to ensure practical measures to guarantee the rights of oversea workers. Similarly, the criteria set by the Proclamation for the would-be workers to be qualified for working abroad may make the lawful migration even more difficult than before. In this context, against its very objective, the Proclamation may lead to increase in human trafficking.

As a precursor to explaining human trafficking process in Arsi Zone, this section describes the legal and administrative framework within which the trafficking process described in the following section is enacted.

#### 5.4 National Institutions Mandated with Human Trafficking Prevention

The institutional framework within which the prevention of human trafficking is implemented are the responsibility of a multilayered institutions are in existence throughout Ethiopia and empowered to ensure the following respective duties at all levels of the federation. These institutions are present in Arsi Zone as the third layer in the structure of the Federal Democratic Government of Ethiopia, the two other levels are the Federal and Oromiya Regional State.

***National Committee and the National Task Force***: In the last couple of years, the increasing number of reports of abuses of Ethiopian Women in the Middle East countries coupled with weak responses from the government to those abuses has led to different institutional commitments. Instead of giving such responsibility to only one institution the government has preferred to form some set of relevant institutions in cooperation. One of the results of such efforts is the establishment of National Committee which monitors the implementation of the legal commitments.

This National Committee which was envisaged in Proclamation no. 909/2015 is chaired by the Deputy Prime Minister to coordinate anti-trafficking efforts. The institutions which are incorporated in this Committee include Ministry of Labor and Social Affairs, the former Ministry of Justice (now the Office of the Attorney General), Ministry of Foreign Affairs, the former Ministry of Federal Affairs, the former Ministry of Women, Children and Youth Affairs, Ministry of Education, Regional States, other governmental organizations, religious institutions, charities and societies, various structures and other respective organizations<sup>116</sup> And, the main objective of the Committee is to ensure proper

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<sup>116</sup> According to article 39 of Proclamation 909/2015.

implementation of the Overseas Employment Services, conclude bilateral agreements with receiving countries and to establish favorable situations, cooperate with appropriate organs and ensure legal action against violations, facilitate the exchange of overseas employment information with concerned organs and to provide well-equipped data center.<sup>117</sup>

Another institutional arrangement is the ‘Anti-human trafficking Task Force’. This was to be led by the Office of the Attorney General and was established according to Proclamation No. 909/2015. The objective of the Task Force is supporting and encouraging a collaborative effort among local law enforcement and victim services as well as to reinforce partnership with state and federal bodies. This is more of a professional arrangement with member institutions being the same as those of the National Committee. In other words, the Task Force is involved in discovering human trafficking crimes, increasing coordinated investigation and prosecutorial efforts against the perpetrator, and providing protection for the victims.<sup>118</sup>

Among other things, the Task Force was tasked with designing policies, strategies, action plans and measures that enables the protection and assistance of victims; designing the national plan of action for the prevention and control of the crime; taking appropriate actions for the rehabilitation, assistance and reintegration of victims with the society.

In August 2015, the National Committee adopted a five-year Strategic Plan which incorporated prevention strategies to raise the awareness of the public and address social and economic factors that cause human trafficking, designed to be implemented from 2015-2019.<sup>119</sup>

Nevertheless, even if the Task Force made a number of efforts including establishing branch offices in all the nine National Regional States of Ethiopia; conducting training workshops for high court judges, national labor bureau personnel and police commissioners; and making monitoring trips to regions of the country in order to realize its set objectives, it was not functioning as expected mainly due to weak coordination and financial limitations.<sup>120</sup>

*The Justice System:* The Federal Justice sector has a major role to play, especially in the area of criminal investigation. In this regard, the Federal Office of the Attorney General and the

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<sup>117</sup> See Proclamation No. 923/2016,

<sup>118</sup> See article 40 of the proclamation No.909/2015.

<sup>119</sup> See National Council of the Federal Democratic Republic of Ethiopia on the Prevention of Human Trafficking. Strategic Plan, 2015-2019.

<sup>120</sup> See the Trafficking In Persons (TIP) Report of the US Department of State, 2016.



Federal Police are involved in investigating criminal cases associated with human trafficking. To this end, in 2009, a Human Trafficking and Narcotic section was established under the Organized Crime Investigation Unit of the Federal Police Commission. Subsequently, in 2010 Human Trafficking Division Unit was established by prosecutors and police officers at the federal level. The establishment of a special investigative unit can be appreciated as a step ahead to fight human trafficking. Moreover, anti-trafficking training was incorporated into the Federal Supreme Court's Justice Professionals Training Center routine training programs.<sup>121</sup>

In addition to its role as the chief advisor to the federal government on matters of law, the Federal Office of the Attorney General is also chair of the National Task Force discussed earlier. In collaboration with governmental and nongovernmental organizations, the Office designs action plan, develop brochures, modules, dramatic scenes, and other educational methodologies, and broadcast to public at large through mass Medias and other communication means to aware the public.

In a general sense, progress has been made over the past years on the area of law enforcement relating to human trafficking, as a result, a number of trafficking crimes were investigated and prosecuted in Ethiopia. Under the 2015 anti-trafficking proclamation the federal and regional justice officials convicted 69, 640 and 182 traffickers for calendar years 2015, 2016 and 2017 respectively. However, the number of convictions in relation to the range of human trafficking in Ethiopia is low.<sup>122</sup>

*Ministry of Foreign Affairs (MoFA):* As the issue of human trafficking involves problems to be addressed both in Ethiopia and the countries of destination, the Ministry of Foreign Affairs has also a key role to play in combating external trafficking of Ethiopian women. The Ministry is responsible to protect the rights, safety and security of Ethiopian nationals abroad. It has the overall responsibility to ensure that the interests and the rights of Ethiopians residing abroad are protected, encourage and support associations formed by Ethiopian communities and friends of Ethiopia.<sup>123</sup> The Ministry, in collaboration with other stakeholders, shall initiate the process to rescue, release and return victim Ethiopians. In case a victim Ethiopian is compelled to stay in foreign country for any case the Ethiopian Diplomatic Mission shall take measures to provide legal counseling or assistance and follow

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<sup>122</sup> Trafficking in Persons (TIP) Report of the US Department of States, 2019.

<sup>123</sup> Proclamation No. 691/2010, FDRE.

up holding up the victim and status of the case and periodically report to the Ministry of Foreign Affairs.<sup>124</sup> However, the capacity of these diplomatic missions in terms of human and other resources has remained very limited in light of the magnitude of the problem. As a result, the Ministry was heavily criticized for its failure to protect its citizens in abroad (Mehari 2017).

Based on the proclamation No. 923/2016, through the Ministry of Foreign Affairs, Ethiopia has completed bilateral labor agreements with Saudi Arabia, Jordan and Qatar, which means that workers can legally be sent to these countries. And, up until the writing of this paper, negotiations are going on for similar agreements with other Middle East countries.

*Ministry of Labour and Social Affairs (MoLSA):* The Ministry of Labor and Social Affairs is basically a monitoring and regulatory institution of private employment agencies (PEAs) and contract standards, and also provides assistance to emigrants. Unless approved by the Ministry, employment contracts concluded between Ethiopian domestic workers and their employers will not have legal effect.<sup>125</sup> And, in order to facilitate contracts, the Ministry has produced a model employment contract in English, Amharic and Arabic languages for Ethiopians who migrate through private employment agencies. A model employment contract incorporates, inter alia, issues like regular working time, favorable wages for regular working hours, and overtime pay. In the recent Proclamation,<sup>127</sup> the Ministry is also empowered to assign labor attaché to ensure the rights, safety, and dignity of workers employed abroad.

The operations of PEAs are also subjected to the monitoring of the Ministry of Labor and Social Affairs. By inspecting their activities, the Ministry can suspend or revoke their licensees if they are involved in illegal activities. Therefore, Private Employment Agencies are required to report to the Ministry to help the latter follow up their activities closely.

Besides, the Ministry of Labor and Social Affairs is the key institution engaged in preventive activities of trafficking. One major work in this regard is organizing public awareness raising campaigns through media and trainings.

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<sup>124</sup> Article 27 of Proclamation No. 909/2015.

<sup>125</sup> Interview with an officer, held in Addis Ababa at MoLSA, 17 April 2019.

<sup>126</sup> Article 5 of the Ethiopian Overseas Employment Proclamation (Proclamation No. 923/2016.)

<sup>127</sup> Proclamation No. 923/2016.

Nonetheless, the Ministry is not sufficiently working to realize its mandate. It has largely been incapable to ensure the rights, safety and dignity of Ethiopian overseas workers. For one thing, the Ministry is not strong enough financially, and in human resources. And, as trafficking is a complex problem, it has challenged the mechanisms and laws that are to be applied in many cases. For instance, a number of legally registered and licensed Private Employment Agencies were found to have been involved in trafficking, and some might even be liable to prosecution, but this has rarely occurred.<sup>128</sup>

### 5.5 Arsi Zone-based Human Trafficking Prevention Institutions

At the Arsi Zone level, the large number of national-level institutions that can be marshalled to address human trafficking is partly reflected. We can enumerate the following central institutions which deal with human trafficking as part of the broader mandates regarding contract labor and migration in general. Consistent with the subject matter of this study, I explain below the role of the major governmental and non-governmental institutions involved in the prevention of human trafficking in Arsi Zone.

The Arsi Zone Bureau for Human Trafficking Prevention is a unit within the Regional Bureau of Labor and Social Affairs. It is responsible for the prevention and protection of those trafficked or in the danger of being trafficked as well as to improve the skills and safeguard the migrant workers interests. In pursuance of this goal the Arsi Bureau has developed working procedures to identify and support the victims of human trafficking. It also cooperates with concerned government and nongovernment organizations and other supportive mass organization in issues related to human trafficking as well as migration. One of its functions is to make sure that those interested in migrating comply with the age and education requirements for migrant workers, introduced pre-departure skills trainings into official migration processes. **A pre-departure training manual is prepared in the Afan Oromo language.** The provision of pre-departure training-of-trainers is provided for the Bureau of Labor and Social Affairs' officers at the regional, zonal and woreda levels.

According to interviews held at the Human Trafficking Prevention Unit of Arsi zone, in 2019 training is held in 26 Woreda to increase awareness of human trafficking.

A training programme developed by the International Organization of Migration (IOM) and Ethiopia Technical and Vocational Training Institute branch in Arsi Zone, offers skills development training to domestic women workers to improve their employability in

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<sup>128</sup> See Anteneh, 2011; Bahar, 2014; ILO, 2014; RMMS, 2015.

the Middle East. The training module consist of the following subjects: 1) food and beverage services; 2) prepare hot and cold meals/food; 3) clean living, dining and bedrooms and toilets; 4) wash and iron clothes, linen and fabric; 5) Arabic language training for workplace communication; 6) develop business plans and practices; 7) standardize and sustain services, self-learning and subject content of the training.<sup>129</sup>

The Arsi Zone-based police as part of the justice system investigate and collect evidence on human trafficking crimes and the police may arrest the suspects in accordance with the provisions of the Criminal Procedure Code. Arrests of suspects are carried out if there is reasonable suspicion that the crimes of trafficking in persons and smuggling of migrants have been or most likely to be committed. The police also have authority to a) infiltrate the suspected criminals, criminal groups or organizations; b) conduct surveillance against the suspects; c) intercept private communication of the suspects by court order; d) create simulated legal relationship; or e) respecting human rights, use appropriate special investigative technique.

The justice system in Arsi Zone is operated through the court system which is responsible for prosecution of and adjudication in human trafficking crimes and smuggling of migrants. As to protection, the police upon credible information by any governmental or non-governmental organizations have the authority to a) take an appropriate measure by searching any house, vehicle, ship or air planes; b) conduct proper search in any areas or borders of the country to rescue victims, who are being trafficked or crossing border, and transporting them to care centers; and c) order any governmental and nongovernmental medical facility so as to avail proper medical treatment to victims who suffer serious injury.

In Arsi Zone, there are Community-based Committees (CBOs) which work closely with the zonal bureau of Labor and Social Affairs in monitoring trafficking, reporting, selection of trainees, including Whistle Blowers who report recruiters of victims of trafficking or those suspected of recruiting vulnerable individuals.

The Arsi Zone-based transnational non-governmental organizations working on international migration in general and on human trafficking prevention conduct considerable work on the prevention and protection of human trafficking victims. For example, one is the Consortium of Christian Relief and Development Associations (CCRDA), the largest NGO network within Ethiopia with over 400-member organizations. There is also the London-

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<sup>129</sup> The training course consists of 5 cycles, each cycle trains 60 women i.e. it trains 360 women a year. The participants in the training must have completed at least the 8<sup>th</sup> grade of school education before enrollment and must be 18 years of old or above to avoid child labour or trafficking.

based Freedom Fund and the Global Alliance Against Trafficking in Women (GAATW), which are also active in fields such as training and awareness raising among potential migrants to the Middle East.

In accordance with the Ministry of Labor and Social Affairs objectives, monthly reports are supposed to be collected at all administrative levels of government to be used for producing an annual report on the state of human trafficking at the federal government and regional states' level.

## 5.6. Conclusion

This chapter has shown that there is no lack of plans and policies in Ethiopia to legally contain and combat the excesses of human trafficking. There are ratified international treaties, UN protocols, regional African agreements (on the level of the AU and IGAD), national laws, constitutional injunctions, and administrative instruments to deal with and suppress the practice. Despite this plethora of national and zonal institutions and organizations and normative commitments against it, the practice of combating, let alone preventing, irregular out-migration and human trafficking lacks force and effectiveness. It may show that due to various reasons - such as lack of means and facilities, insufficient prioritization and manpower as well as tacit societal and support for women migrating irregularly, the regulatory frameworks do not do their job. Human trafficking is still widespread and is not seriously deterred by law enforcement or protection efforts. The social and economic conditions in the Arsi area, among others in Ethiopia (see Chapter 2), seem also of such magnitude that the trafficking phenomenon is durable and resilient, fed by the economic needs and the ambitions of – often ill informed – potential victims, thus perpetuating a national problem of victimization of vulnerable people in the absence of real alternatives. The Ethiopian government, like many other governments in developing countries in Asia and Africa, has not been able to develop sufficient opportunities to provide for employment and inclusion for an ever-growing population, resulting in a constant flow of people moving out to try their luck elsewhere, undeterred by the (weak) regime of anti-trafficking law enforcement.