



SEEK WISDOM, ELEVATE YOUR INTELLECT AND SERVE HUMANITY!

Addis Ababa University
አዲስ አበባ ዩኒቨርሲቲ



Addis Ababa University

College of Law and Governance Studies

School of Law Graduate Program

Master of Law (LL, M) in Human Rights Law

Constitutionality of Burden and Standard of Proof under Prevention and Suppression of Trafficking in Persons and Smuggling of Persons Proclamation No 1178/2020

A Thesis Submitted in Partial Fulfillment for LL, M

By: Salamlak Atalay Mretie (GSR/ 8985/12)

Advisor: Dr. Wondwossen Demissie

June, 2023

Addis Ababa, Ethiopia

Table of content

Content

Declaration	i
Acknowledgment	iii
Abbreviations	iv
Abstract	v
CHAPTER ONE	1
1. Introduction	1
1.1 Back Ground of the Study	1
1.2 Statement of the Problem	3
1.3 Research Question	4
1.3.1 Central Question	4
1.3.2 Specific Research Questions	4
1.4 Research Objective	5
1.4.1 General Objective	5
1.4.2 Specific Objective	5
1.5 Scope	5
1.6 Significance	5
1.7 Research Method	6
1.8 Literature Review	6
1.9 Limitation of the Study	7
1. 10 Reference and Citation Style	7
1. 11 Thesis Structure	7
CHAPTER TWO	9

2. Definition and Legal Framework of Trafficking in Persons and Smuggling of Migrants under Human Rights Instruments.....	9
2.1 Introduction.....	9
2.2 Definition of Human Trafficking and Smuggling of Migrants.....	9
2.3 Crime of Trafficking in Persons and Its Elements.....	10
2.3.1 Act/s (What is Done) and Means (How It is Done).....	10
2.3.2 “Purpose” (Why It is Done) Element.....	11
2. 4. Definition of Smuggling of Migrants`.....	11
2.5 International and Regional Legal Instruments Applicable to Ethiopia for Addressing Human Trafficking and Smuggling of Migrants.....	12
2.6 Domestic Laws for Addressing Human Trafficking and Smuggling of Migrants.....	15
2.6.1 Federal Democratic Republic of Ethiopian Constitution.....	15
2.6.2 Criminal Code of the Federal Democratic Republic of Ethiopia.....	16
2.6.3 Prevention and Suppression of Trafficking in Persons and Smuggling of Persons Proclamation No 1178/2020.....	17
2.6.3.1 Criminalization of Trafficking in Persons and Smuggling of Persons under Proclamation No 1178/2020.....	18
CHAPTER THREE.....	21
3. Legal framework of the presumption of innocence and the burden and standard of proof in criminal proceedings under human rights instruments.....	21
3.1 Introduction.....	21
3.2 Presumption of Innocence under International, Regional and Domestic Instruments.....	21
3.3 Burden of Proof in Criminal Proceedings.....	23
3.4 Relationship Between the Burden of Proof and the Right of Presumption of Innocence... ..	24
3.5 Burden and Standard of Proof Under Ethiopian Laws.....	25
3.5.1 FDRE Constitution.....	25

3.5.2 Criminal Procedure Code of Ethiopia	26
3. 5. 3 Draft Evidence Rules	27
3.6 Exceptions for Shifting the Burden of Proof in Criminal Proceedings.....	27
3.6.1 FDRE Criminal Justice Policy	28
3.6.2 Corruption Crimes Proclamation No 881/2015	29
CHAPTER FOUR.....	34
4. Constitutionality of Burden and Standard of Proof under Proclamation No 1178/2020 and Its Practice under Criminal Division of Federal Courts in Addis Ababa; Case Analysis	34
4.1 Introduction	34
4.2 Burden of Proof in the Prosecution of Human Trafficking and Smuggling under Criminal Division of Federal Courts in Lideta Bench and Analyze Some Practical Cases	34
4.2.1 Federal Public Prosecutor (FPP) V Kidanie Zekarias	35
4. 2.2 Federal Public Prosecutor (FPP) V. Saba Mender Haile	36
4. 3 Evidential Matters, Rulings and Judgments of the Court.....	37
4.4 Constitutionality of Burden and Standard of Proof under Proclamation No 1178/2020	39
4.5 Conflict Between the Burden of Proof and Constitutional Due Process of Accused Person	40
CHAPTER FIVE	44
5. Conclusion and Recommendation.....	44
5.1 Conclusion.....	44
5.2 Recommendation.....	45
Bibliography.....	46

Declaration

I, Salamlak Atalay, hereby certify that this thesis is my original work. To the best of my knowledge, this thesis has not been perversely presented by any other person except where due acknowledgment has been made. This thesis has not been submitted for any degree or examination at any other university or institution.

Declared by

Approved by

Salamlak Atalay

Dr. Wondwossen Demissie

Signature-----

Signature -----

Date -----

Date -----

College of Law and Governance Studies

School of Law

Graduates Program Board of Examiners

Thesis Approval Sheet

I, Salamlak Atalay thesis titled “**Constitutionality of Burden and Standard of Proof under Prevention of Trafficking in Persons and Smuggling of Persons Proclamation No 1178/2020**” is approved by the undersigned members to the examining board.

Board of examiners	Signature	Date
Advisor: Dr. Wondwossen Demissie	-----	-----
Examiner: Dr. Simeneh Kiros	-----	-----
Examiner: Dr. Demelash Shiferaw	-----	-----

Acknowledgment

First, I would like to thank the almighty God for helping me to accomplish this study.

Second, I would like to express my heart-felt appreciation and thanks to my advisor, Dr. Wondwossen Demissie, whose door has always been open to me, read my thesis carefully as well as for his valuable, constructive comments, guidance, quick response, enthusiasm and friendly relationship throughout the work that makes me feel free.

Third, my great thanks also goes to my family and friends who encourage and support me in my entire endeavor of study.

Finally, I am also thankful to the informants and interviewees who gave me important information to accomplish for my studies. Thank you all!!

Abbreviations

ACHPR	-----	African Charter on Human and Peoples Rights
ACRWC	-----	African Charter on Rights and Welfare of Children
AU	-----	Africa Union
CAT	-----	Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment
CRC	-----	Convention on the Rights of Child
FDRE	-----	Federal Democratic Republic of Ethiopia
ICCPR	-----	International Convention on Civil and Political Rights
ICESCR	-----	International Convention on Economic, Social and Cultural Rights
GAR	-----	General Assembly Resolutions
OP CRC	-----	Optional Protocol against Convention on the Rights of Child
UDHR	-----	Universal Declaration of Human Rights
UN	-----	United Nations
UNCTOC	-----	United Nations Convention against Transnational Organized Crime
UNDOC	-----	United Nation on Drug and Organized Crime

Abstract

Human trafficking and smuggling are growing challenges that affect the human rights of all. States including Ethiopia have adopted the UN Convention against Transnational Organized Crime and the Protocols thereto. Trafficking of person and smiling of migrants is also addressed under the international and regional legal instruments that have an effect on the prevention and suppression of such offences. Ethiopia has adopted a crime of trafficking legislation to prosecute and combat the offences. The FDRE Constitution, Criminal Code of Ethiopia and Prevention and Suppression of Trafficking in Persons and Smuggling of Person Proclamation No 1178/2020 are the prominent ones. The study examines the constitutionality of burden and standard of proof under the Proclamation No 1178/2020. To achieve, analyzing and examining the requirement of proof beyond reasonable doubt in criminal proceedings and the right of presumption of innocence under Art 20(3) of the FDRE Constitution is an important point. The study employed doctrinal research methods and critically analyzed the principle/ right of presumption of innocence under the FDRE Constitution and other international instruments. In addition, some interviews were conducted based on purpose-based selection to find out the practical challenges in the prosecution of the offences of trafficking and smuggling. After a critical examination of the modality of proving through circumstantial evidence provided under Proclamation No 1178/2020, it found that the burden of proof contradicts with the prosecutor's obligation to prove each element of the crime on requirement of proof beyond reasonable doubt. This indicates that presuming exploitation on the basis of circumstantial evidence under Art 6 of the Proclamation No 1178/2020 is incompatible with the principle of beyond reasonable doubt. It also undermines the constitutional right of the accused to be presumed innocent. To fill the gap, the study recommends that the circumstantial evidence employed under Art 6 of Proclamation No 1178/2020 does not sufficiently prove the accused has committed the crime of trafficking in the required degree of proof and shall be replaced by the prosecutor to prove every element of trafficking beyond reasonable doubt.

Key Words:

Burden of Proof, Standard of Proof, Beyond Reasonable Doubt, Presumption of Innocence

CHAPTER ONE

1. Introduction

1.1 Back Ground of the Study

Human trafficking and smuggling of persons have been serious causes of human rights abuses and huge numbers of men, women and children are victims of sexual, forced labor and other forms of exploitation worldwide.¹ Studies conducted by the US department of state show the existence of a high rate of trafficking in person in Ethiopia.² However, the issue was not given much attention by the government of Ethiopia. The 1957 Penal Code which was entered into force until 2004 had no provision on trafficking in persons because the problem has been prevalent.³ To respond to the problem, Ethiopia became a signatory to the UN Convention against Transnational Organized Crime (UNTOC) in December 2000 and ratified the convention in July 2007.⁴ In June 2012 the government acceded to the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the UNTOC in June 2012 provide “state party shall adopt legislative and other measures as may be necessary to establish as criminal offences the conduct set forth in Art 3 of this protocol, when committed intentionally.”⁵

At domestic level, the FDRE Constitution recognizes trafficking in person as one form of inhuman treatment and prohibits the act for any purpose.⁶ The Criminal Code of FDRE prohibits trafficking in persons under book V of the code, though its provisions are scattered and the Code failed to

¹Makisaka Megumi, “Human Trafficking a Brief Overview,” Social Development Note No.122, (Dec 2009), p.1

²Dana C. Beck & Kristen R. Choi, “Human Trafficking in Ethiopia: A Scoping Review to Identify Gaps in Service Delivery, Research, and Policy”, Trauma Violence & Abuse (March 2016), P.1

³Zelalem Shiferaw W/Michael, “Criminalization and Prevention of Human Trafficking in Ethiopia: Assessing the Legal Framework.” BRICS law journal, Vol. IV (2017)

⁴United Nations Convention against Transnational Organized Crime, available at: <https://treaties.un.org>

⁵Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially women and children, supplementing the United Nations Convention against Transnational Organized Crime (hereafter the UN Trafficking Protocol), adopted on 15 Nov, 2000, Art 5

⁶ Proclamation of the Constitution of the Federal Democratic Republic of Ethiopia, Proclamation No. 1/ 1995, Fed, Neg, Gez, year 1,21Augst, 1995, Art 18(1)

address the problem and provide full protection for all victims.⁷ Accordingly, to fill the gap in the existing Criminal Code and to comply with international standards, the legislature adopted a comprehensive law on the Prevention and Suppression of Trafficking in Persons and Smuggling of Migrants Proclamation No 909/2015.⁸ Nevertheless, the Proclamation is also found inadequate to prevent the problem and is inconsistent with other laws. Because of this fact, the legislature recently promulgated the Prevention and Suppression of Trafficking in Persons and Smuggling of Persons Proclamation No 1178/2020.⁹ The Proclamation criminalizes both persons who participate in the “act of trafficking” and “smuggling of persons.”¹⁰

The FDRE Constitution provides that “during proceedings, accused persons have the right to be presumed innocent until proven guilty according to the law...”¹¹ Furthermore, international, regional and domestic human rights instruments recognize that a suspected person has the right to be presumed innocent until proved guilty according to the law.¹² Based on the above instruments and the FDRE Constitution the principle of presumption of innocence will not be rebutted unless the accused is proved guilt in accordance with the law. The Human Rights Committee has provided the meaning of presumption of innocence under General comment no. 32 in which it clarified the required burden and standard of proof on state parties to the covenant by providing that:

“The presumption of innocence, which is fundamental to the protection of human rights, imposes on the prosecution the burden of proving the charge, guarantees that no guilt can be presumed until the charge has been proved beyond reasonable doubt, ensures that the

⁷ Criminal Code of Federal Democratic Republic of Ethiopia, Proclamation No. 414/2004, Fed, Neg, Gez, Year 9th of May 2004, Art 596 – Art 599 & Art 635.

⁸ Prevention and Suppression Trafficking in Person and Smuggling of Migrants Proclamation No. 909/2015, Fed. Neg. Gez., Year 21, no. 67, preamble three and four.

⁹Prevention and Suppression of Trafficking in Persons and Smuggling of Persons Proclamation No 1178/2020, Fed, Neg, Gez, Year 26, no.31, preamble paragraph two.

¹⁰Proc. No. 1178/2020 (n9), Art 3 & 8

¹¹FDRE Constitution (n6), Art 20(3)

¹²UDHR (Art 11(1), ICCPR (Art 14(2), ACHPR (Art 7(1(b) & FDRE Constitution (Art 20(3)

*accused has the benefit of doubt, and requires that persons accused of a criminal act must be treated in accordance with this principle.”*¹³

Therefore, the beyond reasonable doubt can be regarded as part of constitutional rights of the accused to be presumed innocent. In criminal cases, it is commonly stated that “the prosecutor has to prove its case beyond reasonable doubt in order for the defendant to be convicted.”¹⁴ Yet we do not have any provision under the Ethiopian legal system that explicitly states this rule, including Proclamation No 1178/2020. Having of the above legislative measures taken by the Ethiopian government, the author tries to examine the legal gap of burden and standard of proof under the Prevention and Suppression of Trafficking in Persons and Smuggling of Persons Proclamation No 1178/2020 in light of the constitutional rights of the accused.

1.2 Statement of the Problem

In regard to standard of proof in criminal proceedings, there is no clear stipulation under the Ethiopian legal system. This emanates from the absence of codified evidence law in Ethiopia. However, it doesn't mean that there are no legislative or constitutional provisions relevant to the burden and standard of proof in criminal cases. The FDRE Constitution provides “during proceedings, accused persons have the right to be presumed innocent until proved guilty according to law...”¹⁵ The Criminal Procedure Code of Ethiopia provides “after the plea of the accused has been entered, the public prosecutor shall open his case explaining shortly the charges he proposes to prove and the nature of evidence he will lead...”¹⁶ From these provision one can infer that the initial burden of proof in criminal proceedings under Ethiopian legal system bears on the public prosecutor. The Prevention and Suppression of Trafficking in Persons and Smuggling of Persons Proclamation No 1178/2020 criminalizes both persons who are involved in the offence of trafficking and smuggling of persons respectively.¹⁷ The Proclamation set up three elements that

¹³UN Human Rights Committee (2007), General Comment no. 32, Art 14, right to equality before court and tribunals and to fair trial, 23 August, 2007, CCPR/C/GC/32, paragraph 30

¹⁴In the United States, the rule was established by the supreme court, *Woolmington v. DPP* (1935)

¹⁵FDRE Constitution (n11)

¹⁶Criminal Procedure Code of Ethiopia Proclamation No. 185/1961, Fed, Neg, Gez, 2nd day of November 1961, Art 136(1)

¹⁷Proc. No. 1178/2020 (n10)

used to establish the offence of trafficking. First, the act/s element includes the practice of recruitment... harboring or receipt of persons.¹⁸ Second, the means element used by trafficker includes use of force, coercion ... and giving or receiving of payments.¹⁹ Third, purpose (exploitation).²⁰ Accordingly, where it is proved that if the act/s performed by an offender and means mentioned under Art 3(2) of this proclamation; without using means mentioned commit such act against child; the purpose for exploitation can be presumed by taking into consideration the circumstantial evidence.²¹ However, showing exploitation on the basis of circumstantial evidence may not be sufficiently proving the suspect guilty beyond reasonable doubt. Thus, the Proclamation violates the fundamental constitutional principle of presumption of innocence as well as the defendant's other human rights. In light of the constitutional human rights standard, the main goal of this thesis is to demonstrate the legal gap in the legislation and to investigate the burden and standard of proof in the offence of trafficking Proclamation No 1178/2020.

1.3 Research Question

1.3.1 Central Question

1.3.1.1 Is the circumstantial evidence provided under Art 6 of Proclamation No 1178/2020 compatible with the requirement of proof beyond reasonable doubt?

1.3.2 Specific Research Questions

1.3.1 Is there a legally established standard of proof in criminal proceedings under the Ethiopian legal system?

1.3.2 What does the burden and standard of proof mean in criminal proceedings under the Ethiopian domestic framework?

1.3.3 Are there exceptions to the principle of presumption of innocence?

¹⁸ Proc. No. 1178/2020 (n9), Art 3(3)

¹⁹ Proc. No. 1178/2020 (n9), Art 3(5)

²⁰ Proc. No. 1178/2020 (n 9), Art 6

²¹ Proc. No.1178/2020 (n20)

1.3.4 Does the offence of trafficking and smuggling fall under the exception of shifting the burden of proof to the accused person?

1.3.5 How do the exceptions affect the constitutional rights of the accused persons, like the right to presumption of innocence, remain of silence and so on?

1.4 Research Objective

1.4.1 General Objective

The overall objective of this research is to show how the burden and standard of proof in the offence of trafficking challenge the constitutional rights of the accused.

1.4.2 Specific Objective

1.4.2.1 To examine how the burden and standard of proof in the crime of trafficking and smuggling of persons affects due process rights of the accused persons.

1.4.2.2 To assess and analyze international and regional human instruments ratified by Ethiopia for addressing the crime of trafficking and smuggling of persons.

1.4.2.3 To assess Ethiopian domestic legal frameworks that have procedural safeguards for the crime of trafficking and smuggling of persons.

1.5 Scope

The scope of the research is limited to human trafficking offences. It focuses on how the burden of proof and standard of proof threaten the constitutional rights of the accused, including the right to presumption of innocence, the right to remain silent and prohibitions against self-incrimination in cases of human trafficking offences.

1.6 Significance

The study aims to look into the crime of trafficking in Ethiopian criminal law, legislation and the constitutionality of burden and standard of proof employed under the Proclamation No 1178/2020 to prohibit human trafficking and smuggling. As a result, it helps to set the groundwork for further research in the field. It also aims at drawing policymakers' attention to the need for a well-established legal framework that complies with the constitutional standard of due process rights in Ethiopian human trafficking legislation.

1.7 Research Method

The research methodology under this study is more of a qualitative research method. To this effect, the FDRE Constitution, Criminal Code of FDRE and the Prevention and Suppression of Trafficking in Persons and Smuggling of Persons Proclamation No 1178/2020 is consulted. Besides, to complete the study, both primary and secondary sources are used. Primary data includes data gathered through interviews related to the investigation of trafficking cases. The interview was conducted on purpose-based selection to get information regarding the legal practice relating to the prosecution of offences of trafficking. Secondary sources collected from books, journals, Arts, thesis and other relevant publications are used consistently for the problem under the study. It also assesses international, regional and domestic human rights instruments pertinent to the offence of trafficking and smuggling and also the constitutional rights of the accused are referenced as it is essential to do so.

1.8 Literature Review

For the prohibition of the offence of trafficking, Ethiopia has ratified international and regional instruments that have an effect on how to define, prevent and prosecute the offence of trafficking. Ethiopia has signed the UN Convention against Transnational Organized Crime and the Protocol of thereto. Ethiopia has ratified the African Charter on Human and Peoples Rights (ACHPR). Art 5 of the ACHPR provides that “every individual shall have the right to respect for dignity inherent in a human being and the recognition of his legal status, protection from any form of exploitation, degradation of man, particularly slavery... degrading treatment shall be prohibited.”²² Besides, trafficking of persons is also prohibited under Ethiopian domestic laws. The FDRE Constitution under Art 18(2) as a basis and the Prevention and Suppression of Trafficking in Persons and Smuggling of Persons Proclamation No 1178/2020 has provided relevant provisions to prohibit the offence of trafficking and smuggling.

²²African Charter on Human and People’s Rights (hereafter the African Charter) adopted on 27 June 1981, entered into force 21 October 1986, Art 5

There were some studies undertaken by researchers on trafficking of persons and smuggling of migrants. However, most of the studies are focused on theoretical aspects. The study conducted by H/Michael Negus Hagos titled

*“cause and consequence of trafficking a case study in Metema town.”*²³ and also the study conducted by Zelalem Shiferaw W/Michael *“criminalization and prosecution of human trafficking in Ethiopia: assessing the legal framework in light of international standards”* are specific studies on the matter.²⁴

But, the researcher did not fully address the required burden and standard of proof on the offence of trafficking. Simply, they focused on the theoretical aspects to show the impact of trafficking in Ethiopia. So, this study tries to examine and fill the legal gap by analyzing how the burden and standard of proof affect the constitutional rights of the accused in the prosecution of the offence of trafficking.

1.9 Limitation of the Study

The researcher’s work was hampered by the lack of accessibility to trafficking cases that were decided in accordance to the Prevention and Suppression of Trafficking in Persons and Smuggling of Migrants Proclamation No 1178/2020. The outbreak of the Covid 19 pandemic caused the beginning to make interviews and affected the researcher personally. The conflict in Ethiopia has affected the researcher as the researcher from areas where the war is held affected him and his family, causing personal challenges.

1. 10 Reference and Citation Style

The Oxford Standard for Citation of Legal Authorities (OSCOLA) is used and for domestic law the rule of citation in journals of Ethiopian law is applied.

1. 11 Thesis Structure

The study has five chapters. The first chapter is the introduction part, which includes background of the study, statement of the problem, research questions, objectives, scope, significance, research

²³ H/Michael Nigusu Hagos, “Cause and Consequence of Human Trafficking a Case Study in Metema.” Thesis Submitted to AAU School of Social Science, Department of Anthropology, 2014

²⁴W/ Michael Shiferaw Zelalem(n3)

method, literature review, limitation of the study, preferred reference and citation style and thesis organization. The definition and legal framework of human trafficking and smuggling of persons under international, regional and domestic instruments are covered in chapter two. The third chapter delves into the normative framework of presumption of innocence and the burden and standard of proof in criminal proceedings under international, regional and domestic legal instruments, the burden of proof in criminal proceedings, the relationship between the burden of proof and the right of presumption of innocence, the burden and standard of proof under Ethiopian domestic laws including the offense of trafficking and exceptions shifting the burden of proof to the accused. The fourth chapter discusses the constitutionality of the burden and standard of Proof under Proclamation No 1178/2020 and its implementation under criminal division of federal courts in Addis Ababa; practical analysis, the constitutionality of burden and standard of proof under laws of trafficking particular focus on Proclamation No 1178/2020, the conflict between the burden of proof and the constitutional due process standard of the accused person under Proclamation No 1178/2020 and how the circumstantial evidence adopted under the crime of trafficking legislation affected the constitutional rights of the accused persons, mainly the right to be presumed innocent, the right to remain silent and so on. Conclusion and recommendation are found in the final chapter.

CHAPTER TWO

2. Definition and Legal Framework of Trafficking in Persons and Smuggling of Migrants under Human Rights Instruments

2.1 Introduction

In this chapter, the study deals with the definition and legal framework of trafficking in persons and smuggling of persons under international, regional, and domestic human rights instruments. To this effect, the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (hereinafter UN Trafficking Protocol) and the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime (hereinafter UN Smuggling Protocol) would be discussed. For further, at international and regional level, various human rights instruments that have a legal effect on preventing and prosecuting the offence of trafficking and smuggling are also part of the discussion. Finally, the Ethiopian domestic instruments that are pertinent for the prohibition of the offence of human trafficking and smuggling are discussed.

2.2 Definition of Human Trafficking and Smuggling of Migrants

The term trafficking in persons²⁵ is clearly defined for the first time with the adoption of the Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime. Art 3(a) of the UN Trafficking Protocol, trafficking in person reads;

“the recruitment, transportation, transfer, harboring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the

²⁵ The term Human Trafficking, trafficking in Persons & Trafficking of Human Beings Are Used Interchangeably

prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or practice similar to slavery, servitude or the removal of organs.’’²⁶

The above definition consists of three elements that are used to establish the offence of trafficking. 1. act/s done by the trafficker, 2. means used to obtain the consent of the victim and 3. purpose for exploitation. In a similar explanation, the Prevention and Suppression of Trafficking in Persons and Smuggling of Persons Proclamation No 1178/2020 set up the preceding elements for the act of trafficking in light of the UN Trafficking Protocol that provides the act and the means element to be considered “trafficking in persons.”²⁷ In addition, the UN Trafficking Protocol and the Proclamation No 1178/2020 stipulate a separate definition for child trafficking which requires elements (1) and (3) above, but does not require the use or threat of force or coercion in achieving them.²⁸

2.3 Crime of Trafficking in Persons and Its Elements

2.3.1 Act/s (What is Done) and Means (How It is Done)

The act/material element of trafficking in persons is one of the ingredients that are used to establish criminal responsibility of traffickers.²⁹ These elements include the recruitment, transportation, transfer, harboring or receipt of a trafficked person.³⁰ The means used by the trafficker encompass use of force, coercion, abduction, abuse of power or position of vulnerability and giving or receiving the payment or benefit to achieve the consent of persons having control over another person.³¹

²⁶ UN Trafficking Protocol (n5), Art 3(a)

²⁷ Proc. No. 1178/2020 (n9) Art 3(3) & 5

²⁸ UN Trafficking Protocol (n5), Art 3(d) & Proc. No. 1178/2020 (n 9), Art 3(3)

²⁹ Criminal Code of FDRE (n7), Art 23(2)

³⁰ UN Trafficking Protocol (n5), Art 3(a) & Proc. No. 1178/2020 (n 9), Art 3(3)

³¹ UN Trafficking Protocol (n5), Art 3(a), & Proc. No. 1178/2020 (n9), Art 3(5)

2.3.2 “Purpose” (Why It is Done) Element

The purpose of trafficking in person is for exploitation. The UN Trafficking Protocol provides that “Exploitation shall include, at a minimum, the exploitation of prostitution of others or other form of sexual exploitation, forced labor or services, slavery or practice similar to slavery, servitude or the removal of organs.”³² Additionally, the protocol states that the “interpretations of these constituent requirements are regulated based on the existing definitions in consistent with other international instruments.”³³ The consent of victim of trafficked persons becomes irrelevant if any of the means are used. However, in the case of child trafficking, consent becomes irrelevant regardless of the means.³⁴ All the above three elements must be presented to establish the offence of trafficking in persons.³⁵

2. 4. Definition of Smuggling of Migrants`

The international accepted definition of smuggling of migrants is provided under the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime (hereafter the UN Smuggling Protocol) that states the smuggling of migrants shall mean “the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of illegal entry of a person into a state party of which a person is not a national or permanent resident.”³⁶ The definition of smuggling of migrants introduces of three elements. These are; firstly, procuring the “illegal entry” of another person.³⁷

³² UN Trafficking Protocol, (n5), Art 3(a) last paragraph

³³ Ibid, Art 14(2)

³⁴ Ibid, Art 3(b and c)

³⁵Anne Gallagher, “ human rights and the new UN Trafficking Protocols and migrant smuggling., // [www.ajol.info / index, php>oil](http://www.ajol.info/index.php/oil)

³⁶UN Smuggling Protocol, 2000, entered into force, 28 January 2004, Art 3(a)

³⁷Ibid(n36), Art 3(b) illegal entry shall mean crossing borders without complying with the necessary requirements for illegal entry into the receiving state

Secondly, “entry into another state by another person”³⁸ and thirdly, “procuring must be for the purpose of financial or material gain.”³⁹

Based on the aforementioned discussion of the UN Trafficking Protocol and UN Smuggling Protocol, there are some points of distinctions between trafficking in persons and smuggling of migrants. Firstly, the act: trafficking of persons may be conducted within a country as internal human trafficking. However, smuggling of migrants by its nature is transnational, and involves illegal crossing of an international border.⁴⁰ Secondly, the means of human trafficking require, except for children, the threat; use of force and coercion... Whereas, smuggling may not involve any of these means. In fact, many persons are smuggled willingly.⁴¹ Lastly, the purpose: the purpose of human trafficking is ongoing exploitation of victims. On the other hand, the ultimate goal of smugglers regarding migrants is to gain financial or material benefit.⁴²

2.5 International and Regional Legal Instruments Applicable to Ethiopia for Addressing Human Trafficking and Smuggling of Migrants

At the international level, there are various international human rights instruments that have normative content related to human trafficking. Ethiopia has ratified the most comprehensive international human rights documents that have a legal effect on the course of how to define, prevent and prosecute the offences of trafficking. Ethiopia has ratified the UN Convention against Transnational Organized Crime on 23 July 2007.⁴³ Ethiopia has ratified the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the UN Conventions against Transnational Organized Crime on 22 June 2012.⁴⁴ The UN Trafficking Protocol obliged “state shall adopt legislative and other measures to establish as criminal offences

³⁸ Ibid, Art 3(a)

³⁹ Ibid

⁴⁰ UN Trafficking Protocol (n5), Art 3(a), & UN Smuggling Protocol (n36), Art 3(a)

⁴¹ UN Trafficking Protocol (n5), Art 3(c) & UN Smuggling Protocol (n36), Art 3(a)

⁴² UN Trafficking Protocol (n5), Art 3(a) & UN Smuggling Protocol (n36), Art 3(a)

⁴³ UN Convention against Transnational Organized Crime (UNTOC), (n4)

⁴⁴ UN Trafficking Protocol (n5)

the conduct set forth in Art 3 of this protocol, when committed intentionally.”⁴⁵ Ethiopia as member of the UN Convention against Transnational Organized Crime is responsible by this provision. The UN Trafficking Protocol urges that “states are required to adopt comprehensive polices, programs and measures to prevent and combat trafficking in persons and to protect victims of trafficking in persons, especially women and children, from victimization.”⁴⁶ Ethiopia has ratified the UN Protocol against Smuggling of Migrants by Land, Sea and Air in 22 June 2012.⁴⁷ Accordingly, the UN Smuggling Protocol provides “states are obliged to adopt legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally and in order to obtain, directly or indirectly, a financial or other material benefit.”⁴⁸ and also “state parties shall cooperate to the fullest extent possible to prevent and suppress the smuggling of migrants by sea, in accordance with the international law of the sea.”⁴⁹

Ethiopia is a party to the major international human rights instruments that prohibit trafficking in persons. Art 4 of Universal Declaration of Human Rights (UDHR) has provided that “No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.”⁵⁰ In 1993, Ethiopia joined both the ICCPR and the ICESCR. Art 8 of the International Convention on Civil and Political Rights provides “No one shall be held in slavery, servitude or be required to perform forced or compulsory labor and all these forms are prohibited.”⁵¹ The International Convention on Economic, Social and Cultural Rights calls for the adoption of special measures to protect children from economic and social exploitation.⁵² Art 6 of the Convention on the Elimination of Discrimination against Women (CEDAW) has provided the requirement of state parties to take all appropriate measures including legislation to suppress all forms of trafficking in

⁴⁵ Ibid, Art 5(1)

⁴⁶ Ibid, Art 3(a) & Art 3(b)

⁴⁷ UN Smuggling Protocol (n36)

⁴⁸ Ibid, Art 6

⁴⁹ Ibid, Art 7

⁵⁰ UDHR adopted by GAR 217 A(III) on 10 December 1948, Art 4

⁵¹ ICCPR adopted by GAR 2200A 16 December 1966, entered into force 23 March, 1976, Art 8(1,2 &3)

⁵² ICESCR adopted by GAR 2200A 16 December, 1966, entered into force 3 January, 1976, Art 10(3)

women and exploitation of prostitution of women.⁵³ Ethiopia is a party to the 1984 Convention against Torture, Cruel, Inhuman, Degrading Treatment or Punishment (CAT) which provides “no one shall be subjected to torture, or other cruel, inhuman and degrading treatment or punishment.”⁵⁴ Ethiopia is signed the Convention on the Rights of the Child (CRC) which the Convention under Art 35 call for the prevention of abduction of, sale of traffic in children for any purpose or any form.⁵⁵ The provision of CRC strength through the adoption of Optional Protocol to the Convention on the Rights of Child on Sale of Children and Child Pornography (OP CRC on sale of child)⁵⁶

At regional level, Ethiopia ratified the African Charter on Human and People’s Rights (Banjul Charter) on 5th June 1983.⁵⁷ The Banjul Charter is the most robust human rights instrument on the continent with universal ratification among member states of the AU. Accordingly, the Charter provides that:

*“every individual shall have the right to respect of human dignity inherent in human being, and the recognition of his/her legal status. All form of exploitation and degradation of man, particularly slavery, slave trade and torture, cruel, inhuman or degrading treatment and treatment shall be prohibited.”*⁵⁸

Ethiopia had also ratified the African Charter on the Right and Welfare of Child (ACRWC) on 2nd Sep 2002.⁵⁹ The ACRWC under Art 27, 28, & 29 deals about the prevention of sexual exploitation, abduction and trafficking of children.⁶⁰ Mostly, Protocol to the African Charter on Human and Peoples Rights on the Rights of Women in Africa (hereafter Maputo Protocol) oblige

⁵³CEDAW adopted by GAR 34/180 of December 1979, entered into force 3 Sep 1981, Art 6

⁵⁴ CAT adopted by GAR 39/46 of 10 December 1984, entered into force 26 June 1987, preamble paragraph 5

⁵⁵ CRC adopted by GAR 44/25 of 20 November 1989, entered into force 2 Sep 1990, Art 35

⁵⁶ OP CRC on sale of child adopted in 2000, Art 1-3

⁵⁷ African Charter (n22) Available at: <http://www.achpr.org/instruments/achpr/ratification> (accessed on: 7/20/2015)

⁵⁸ Ibid, Art 5

⁵⁹ACRWC, Available at: <http://www.achpr.Org/instruments/achpr/ratification> (accessed on: 7/20/2015)

⁶⁰ Ibid, Art 27, 28 & 29

“states parties to take appropriate and effective measures to prevent and combat trafficking in women prosecute the perpetrators of such trafficking as well as and to protect those women most at risk.”⁶¹

2.6 Domestic Laws for Addressing Human Trafficking and Smuggling of Migrants

In addition to the aforementioned discussed international and regional legal instruments, the prohibition of human trafficking and smuggling of migrants are also covered under the domestic laws of Ethiopia. The Constitution of the Federal Democratic Republic of Ethiopia (FDRE Constitution) under Art 9(4) provides “international agreements ratified by Ethiopia are an integral part of the law of the land.”⁶² The FDRE Constitution under Art 13(2) provides that;

*“the fundamental rights and freedoms specified under chapter three of the constitution shall be interpreted in a manner conforming to the principle of the Universal Declaration of Human Rights, International Covenants on Human Rights and international instruments adopted by Ethiopia.”*⁶³

Thus, Ethiopia is bounded by the obligations provided under the ratified international and regional legal instruments to prevent and combat trafficking and smuggling of persons within its domestic jurisdiction. Accordingly, this section deals with the relevant provisions related to trafficking in persons under the FDRE Constitution, Criminal Code of FDRE and the Prevention and Suppression of Trafficking in Persons and Smuggling of Persons Proclamation No 1178/2020.

2.6.1 Federal Democratic Republic of Ethiopian Constitution

The issue of human trafficking is given constitutional recognition in Ethiopia. The FDRE Constitution provides human trafficking as a form of inhuman treatment.⁶⁴ Specifically, the problem of human trafficking is addressed under Art 18 of the FDRE Constitution as follows:

⁶¹ Maputo Protocol adopted by the 2nd ordinary session of the assembly of the union, 11 July 2003, Art 4 (2)(g)

⁶² FDRE Constitution (n6), Art 9(4)

⁶³ FDRE Constitution (n6), Art 13(2)

⁶⁴ This can be inferred from the caption of Art 18 of the FDRE Constitution, which reads; “Prohibition against Inhuman Treatment”

1. Everyone has the right to protection against cruel, inhuman or degrading treatment or punishment.
2. No one shall be held in slavery or servitude. Trafficking in human beings for whatever purpose is prohibited.
3. No one shall be required to perform forced or compulsory labor.

Therefore, the FDRE Constitution prohibits the trafficking of human beings for whatever reasons and acts of inhuman treatment and makes clear that everyone has the right to protection against cruel, inhuman or degrading treatment or punishment. Besides, trafficking of person for the sake of slavery and servitude is strictly prohibited as per Art 18(2) of the FDRE Constitution.

2.6.2 Criminal Code of the Federal Democratic Republic of Ethiopia

The Criminal Code of FDRE (2005) incorporates various provisions related to the prohibition of the offence of trafficking in persons.⁶⁵ For Example, trafficking in women and children for labor exploitation is criminalized under Art 597, stated as;

1. Whoever, by violence, threat, deceit, fraud, kidnapping or by giving 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 labor, is punishable with rigorous imprisonment from five years to twenty years, and fine not exceeding fifty thousand birr.

2. Whoever knowingly carries off, or transports, whether by land, by sea or by air, the victim mentioned in sub-Art (1) with the purpose stated therein, or conducts, or aids such traffic, is liable to the penalty prescribed under sub -Art (1) above.

Trafficking women and minors for the purpose of exploitation of prostitution is also subject to punishment based on Art 635 of the Criminal Code of Ethiopia. Furthermore, the Criminal Code of Ethiopia set up different forms of exploitation. For example, enslavement (Art.596), forced labor (Art.597), prostitution (Art.636), endangering the life of another (Art.571), aggravation to the crime (Art. 636), organization of traffic in women and minors (Art.637). Additionally, it criminalizes attempts to commit a crime (Art. 27), participation as an accomplice in an intentional

⁶⁵ Criminal Code of FDRE (n7)

crime (Art.37) and organizing others to commit trafficking (Art.599), criminalizing the participation of juridical person in human trafficking (Art.599(2))

However, none of the above provisions recognizes a clear cut definition of human trafficking and its distinction from smuggling of migrants. The absence of clear definitions of trafficking in persons has its own negative impact on the appropriate investigation and prosecution of human trafficking cases.⁶⁶ When we see the scope of application of the Criminal Code of FDRE, it only covers trafficking of women and children, unlike the UN Trafficking Protocol. Another critical constraint is that the Criminal Code solely criminalizes trafficking for prostitution and labor exploitation. Trafficking for exploitive purposes other than prostitution and labor exploitation, including forms of sexual exploitation, slavery or practices similar to slavery, servitude or the removal of organs is not covered under the Criminal Code of Ethiopia.⁶⁷

2.6.3 Prevention and Suppression of Trafficking in Persons and Smuggling of Persons Proclamation No 1178/2020

As a specific law enacted to criminalize the offence of trafficking, the Prevention and Suppression of Trafficking in Persons and Smuggling of Persons Proclamation No 1178/2020 is applicable at the federal level and in all regional states of Ethiopia.⁶⁸ The federal first instance court has first instance jurisdiction on the offences of trafficking provided under the Prevention and Suppression of Trafficking in Persons and Smuggling of Persons Proclamation No 1178/2020.⁶⁹ For the sake of avoiding confusion in the applicability of the proclamation, it is clearly stated under Art 45 of the Proclamation that the Criminal Code provisions that address human trafficking are repelled.⁷⁰

⁶⁶ ILO study, p.71, US Trafficking in Persons (TIP) Report 2013, p.166

⁶⁷The Criminal Code of FDRE, Art 635 states “trafficking in women and children for exploitation of prostitution” is penalized under this provision. However, other forms of exploitation are not covered under this code

⁶⁸The FDRE Constitution establishes the federal form of government (Art 1). In apportioning legislative power between the federal government and regional states, Art 55/5 provides that enacting criminal law is a power of the federal government. Art 243(2) and (3), Art 596, 597, and Art 598 incorporate various provisions related to the prohibition of the offence of trafficking. Art 599 and from Art 634 to Art 638 of the Criminal Code of FDRE that deals with the crime of trafficking have no more application, as they are repealed by Proc. No.1178/2020, See Art 45(2 of Proc. No.1178/2020

⁶⁹ Proc. No. 1178/2020 (n9), Art 42 (1)

⁷⁰ Proc. No. 1178/2020 (n9), Art 45(2 & 3) states the Criminal Code provisions under Art 243(1(b), Art 243(2) & (3), Art 596, Art 597, Art 598, Art 599 & from Art 634 up to Art 638 were repelled

To give much attention to the problem of human trafficking,

*“the government of Ethiopia replaced the Prevention and Suppression of Human Trafficking and Smuggling of Migrant’s Proclamation No 909/2015, because it lacks clarity and inconsistent with other laws as well as the Proclamation does not provide adequate response to the problem; there by necessitated for replacement with a new and comprehensive legal framework.”*⁷¹

Proclamation No 1178/2020 gives a lot of consideration to the issue of prevention, protection, rehabilitation and compensation for victims of human trafficking.⁷² This is made, as can be cross referred from the preamble of the Proclamation through giving special attention to the most vulnerable group of the society taking into consideration age, sex and special needs of the victims and facilitating international cooperation.⁷³ The Proclamation is going to be applicable to the offence of human trafficking and smuggling of persons. It also regulates the conduct of criminals who are involved in unlawful sending of persons abroad for work.⁷⁴ In the proclamation, four aspects are addressed: I, criminalization and prosecution, ii, prevention, investigation and appropriation of property iii, protection, rehabilitation and compensation and IV, cooperation.

2.6.3.1 Criminalization of Trafficking in Persons and Smuggling of Persons under Proclamation No 1178/2020

A Proclamation No 1178/2020 came up with human rights concerns to prevent trafficking in persons, smuggling of person and illegal overseas employment crimes that cause serious harm to the physical, life and safety of citizens and exposing them to grave violation of human rights.⁷⁵ The Proclamation incorporates various provisions that facilitate the prosecution of human trafficking. In addition, to strengthen the prosecution of smuggling of persons, Art 8 of the Proclamation provides

⁷¹ Proc. No. 1178/2020 (n9), preamble paragraph two

⁷² Proc. No. 1178/2020 (n9) preamble paragraph four and section three and four

⁷³ Proc. No. 1178/2020 (n9), preamble paragraph four

⁷⁴ Proc. No. 1178/2020 (n9), Art 11(1)

⁷⁵Proc. No. 1178/2020 (n9), preamble paragraph one

“any person for direct or indirect financial or material gain for himself or for another person, enable a person to illegally enter a territory of Ethiopia, transit through the territory of Ethiopia to cause exit of another person from Ethiopian territory, make preparation, found in the process, transport or receive shall be punishable with rigorous imprisonment from five years to ten years and fine from ten thousand to one hundred thousand birr.”

The other provision under the Proclamation that deals with the crime of unlawful sending of a person abroad for work under Art 11(1) provides

“any person who sends a person abroad for work without having obtained a license has been suspended or canceled or sent to a country where permission is not granted under the license is punishable with rigorous imprisonment from seven years to twelve years and fine from twenty thousand to one hundred thousand birr.”

The issue of consent is adequately dealt with under the Proclamations per Art 3(4) expressly stated that “if the means mentioned under sub-Art (2) of this Art have been used, the fact that the victim has consented or has the knowledge to the exploitation shall not relieve the perpetrator from criminal liability.”⁷⁶ From this provision one can infer that the consent and prior knowledge of the victim will not serve as a defense to the perpetrator to be exempted from criminal liability. The Proclamation under Art 4(1) stipulates that “circumstances in which the punishment on the perpetrator can be aggravated if a crime is committed by public officials or civil servants and the person committed the offence by abusing the powers entrusted to him.” The Proclamation considered this one as one ground of aggravating the crime.⁷⁷ But, the phrase “in abusing power” is difficult to prove in practice because most of the time public officials take part in the commission of an offence in secret and far from participating themselves directly.”⁷⁸ Besides, the above thresholds are contradictory to the United Nations on Drug and Organized Crimes (UNDOC) standard laws, since it is only important for others to be public officials or civil servants to

⁷⁶ Proc. No.1178/2020 (n9), Art 3(4)

⁷⁷ Proc. No. 1178/2020 (n9), Art 4(1(c))

⁷⁸ Interview with Mr. Mikiys Cherenet, Judge at the Federal First Instance Court of Ledeta criminal bench, held on May 16, 2022 at 2: 00 PM

aggravate the punishment of the crime.⁷⁹ Furthermore, the failure of the Proclamation to put and address the extent of physical, physiological damage of the victim creates practical difficulties.⁸⁰ The Proclamation prescribes various methods of protection of persons who are vulnerable to danger such as repatriation of victims; repatriation of foreign nationals to their country, protection and rehabilitation of victims, protection of witnesses' and awarding compensation to the victims.⁸¹ Moreover, Proclamation No 1178/2020 come up with the establishment of national council, national partnership coalition, federal attorney general and others concerned institutions to work in collaboration and cooperation to one another to tackle the offenses of trafficking by adopting regulations, directives and through creating awareness' programs.⁸²

⁷⁹ UNDOC, "Model Law against Trafficking in Person", United Nations publications (August 2009), p. 32

⁸⁰ W/ Michael Shiferaw Zelalem (n3)

⁸¹ Proc. No.1178/2020 (n9), Art 23-26

⁸² Proc. No.1178/2020 (n9), Art 33- 41

CHAPTER THREE

3. Legal framework of the presumption of innocence and the burden and standard of proof in criminal proceedings under human rights instruments

3.1 Introduction

The burden of proof in a criminal proceeding is related to the right of presumption of innocence, inferring that the prosecution has the burden of proving each element constituting a crime that the accused has committed beyond reasonable doubt. This chapter discusses the normative frameworks that provide the right to presumption of innocence of accused persons under international, regional and domestic human rights instruments, the burden of proof in criminal proceedings, the relationship between the burden of proof and the right of presumption of innocence in criminal cases, the burden and standard of proof under Ethiopian domestic laws, including the offences of trafficking and exceptions that shift the burden of proof in criminal cases for the accused also part of this discussion.

3.2 Presumption of Innocence under International, Regional and Domestic Instruments

Major international human rights instruments, such as UDHR and ICCPR have explicitly and impliedly safeguarded the right of presumption of innocence of the accused person. Likewise, at the regional level, the Banjul Charter provides relevant provisions that guarantee the right of presumption of innocence. Besides, at domestic level, the FDRE Constitution recognizes the right of the accused to be presumed innocent until proved guilty according to law under chapter three, as a fundamental human right. These instruments are analyzed below.

The UDHR as one of the major human rights documents was adopted on 10 December 1948. The presumption of innocence of the suspect has been provided in this document. Art 11(1) of UDHR states “everyone charged with a penal offence has the right to be presumed innocent until proven guilty according to law in a public trial at which he has had all the guarantees necessary for his defense.”⁸³ Even though UDHR has no binding effect among states, it serves as an inspiration for the promulgation of the two legal binding international human rights treaties, ICCPR and ICESCR.

⁸³ UDHR (n50), Art 11(1)

⁸⁴ The ICCPR guaranteed the right for the accused person to be presumed innocent. Under Art 14(2) of the ICCPR, “everyone charged with a criminal offence shall have the right to be presumed innocent until proven guilty according to law.”⁸⁵ At regional level, with a particular focus on Africa, the Banjul Charter gives recognition to the rights of suspected persons to be presumed innocent. The Charter under Art 7(1(b) provides “every individual shall have the right to be presumed innocent until proven guilty by a competent court or tribunal.”⁸⁶

At domestic level, regard to the right of presumption of innocence of the suspected person under Ethiopian laws are some specified provisions. These are under the FDRE Constitution and Criminal Procedure Code of Ethiopia. The FDRE Constitution under Art 20(3) provides “during proceedings, accused persons have the right to be presumed innocent until proven guilty according to law.”⁸⁷ So, in Ethiopia, it is a fundamental constitutionally protected right that, the accused persons to be presumed innocent until proven guilty and the right shall be respected and enforced by all organs of government at all levels.⁸⁸ The constitution provides for accused right to be presumed innocent which is to show that it is an obligation of the prosecution to prove that the suspected is liable for the alleged criminal charge.

The other domestic legal instrument is the Criminal Procedure Code of Ethiopia, which was adopted in 1961 and is being used as a procedural law to enforce and to execute the criminal justice process. The Criminal Procedure Code incorporates the provisions for the protection of the right of a suspected person in criminal proceedings. The Criminal Procedure Code under Art 141 placed a title that reads “acquittal of accused when no case for prosecution.” From this provision one can infer that unless the prosecution proved the accused guilty with sufficient evidence, the courts order would be order of acquittal. It means that the accused has the right to be presumed innocent until he is proved guilty by the public prosecutor with sufficient evidence.

⁸⁴ <http://www.un.org/en/about-us/udhr/foundation> of international human rights treaties

⁸⁵ ICCPR (n51), Art 14(2)

⁸⁶ ACHPR (n22), Art 7 (1(b)

⁸⁷ FDRE Constitution (n11)

⁸⁸ FDRE Constitution (n6), Art 13(1)

3.3 Burden of Proof in Criminal Proceedings

The “burden of proof” is the necessity or duty of affirmatively proving a fact or a fact in a dispute on an issue raised between the parties in a case.⁸⁹ As a principle, the prosecution has the burden of proving every element of the crimes that have been committed by the defendant.⁹⁰ The required degree of proof in criminal cases on the prosecutor must be proved beyond reasonable doubt is fundamental to the right of presumption of innocence.⁹¹ Thus, the beyond reasonable doubt in criminal trials arises from the human right standard of the presumption of innocence which is the right of the accused to have the prosecutor prove his guilty rather than prove his/her innocent. In other words, the prosecutor has the burden of conducting a criminal proceedings and the accused has the right to be presumed innocent until proven guilty.

The burden of proof consists of two elements: The burden of production and the burden of persuasion.⁹² The burden of production is an obligation of the party to introduce evidence to prove the existence or non-existence of the matter.⁹³ The burden of persuasion is the duty of party to convince the court that the evidence established by either the party to support his/her allegation.⁹⁴ Mostly, the prosecution bears both the burden of production and burden of persuasion.⁹⁵ Sometimes, either the legal or evidential burden may be borne by the accused.⁹⁶ The party who

⁸⁹ <https://theblacklawdictionary.com/2nd-edition/the-meaning-of-burden-of-proof/>

⁹⁰ Glanville Williams, “the proof of guilt”, (Stevens and Sons, 3rd ed, 2013)

⁹¹ In *Momcilovic v The Queen* (2011), the French CJ said “the presumption of innocent is not distinct from the requirement that the prosecution must prove the guilt of an accused person beyond reasonable doubt.

⁹² A. Singh (1998), the principle of law of evidence 11th ed, Central law, publication, Allahabad: G. Ding wall (2002),” statutory exceptions, burden of proof and human rights act 1998”, modern law review

⁹³ The Criminal Code Act (1995) (Cth) crossed on evidence states that the burden of production known as evidential burden is the obligation of party, to show the existence or non-existence of fact in issue through introducing sufficient evidence

⁹⁴ *Ibid* (n93), refers to the burden of persuasion, sometimes known as a legal burden, the obligation of parties to meet the requirement of the rule of law that a fact in issue must be proved or disproved either by a preponderance of evidence or beyond reasonable doubt, as the case may be.

⁹⁵ Where the prosecution bears the legal burden, the standard of proof is beyond reasonable doubt, unless another standard of proof is prescribed.

⁹⁶ Where the defendant bears the persuasive burden, the standard of proof is a balance of probabilities.

has initial burden has the obligation to produce evidence.⁹⁷ When such a party produces evidence, the other party doesn't have to disprove anything. If either the prosecutor has the burden of production or the other party doesn't adduce evidence to support their allegation, they may lose their right, unless they do not produce rebuttable evidence. In criminal cases, the prosecution has a duty to establish evidence to convict the defendant that has committed the criminal offence.

3.4 Relationship Between the Burden of Proof and the Right of Presumption of Innocence

The right of presumption of innocence is recognized as one of the fundamental principles of criminal justice under Art 20(3) of the FDRE Constitution, Art 14(2) of the ICCPR⁹⁸ and Art 11(1) of the UDHR.⁹⁹ Under Art 20(3) of the FDRE Constitution provides during criminal proceedings accused persons have the right to be presumed innocent until proven guilty. According to Art 13(2) of the FDRE Constitution, “this right is to be interpreted in a manner conforming to the principle of the Universal Declaration of Human Rights, International Covenants on Human Rights and international instrument adopted by Ethiopia.”¹⁰⁰ The Human Rights Committee interprets Art 14(2) of the ICCPR as imposing on the prosecution the burden of proving the charge, guaranteeing that no guilt can be presumed until the charge has been proved beyond reasonable doubt.¹⁰¹ The Human Right Committee specified the required burden and standard of proof under Art 14(2) of the ICCPR by providing that;

The presumption of innocence, which is fundamental for the protection of human rights, imposes on the prosecution the burden of proving the charge, guarantees that no guilt can be presumed until the charge has been proved beyond reasonable doubt, ensures that the

⁹⁷ C.B. Mueller and L.C Kirkpatrick (2000) Evidence Under Rules: Texts, Case and Problems 4th Ed, New York: Aspen Law and Business)

⁹⁸ It states “everyone charged with a penal offence has the right to be presumed innocent until proven guilty, according to law.

⁹⁹ It states “everyone charged with a penal offence has the right to be presumed innocent until proven guilty according to law in a public trial at which he has had all the guarantees necessary for his defense.

¹⁰⁰ FDRE Constitution (n63)

¹⁰¹UN HRC, General comment no 32 (n13)

*accused has the benefit of doubt, and requires that persons accused of a criminal act must be treated in accordance with this principle.*¹⁰²

From the above provision, one can note that the presumption of innocence as a legal principle means that the prosecution has the burden of proving each element of the charges and the guilt of the accused in the alleged offence is proved beyond reasonable doubt. As clearly provided under the FDRE Constitution and other international instruments, appealing the right of the presumption of innocence imposes the burden of proof on the prosecutor and it guarantees that guilty can't be presumed. Therefore, the recognition of the presumption of innocence under international, regional, and domestic human rights instruments serves as a prerequisite to establishing the required standard of proof in criminal proceedings, including the offence of trafficking, by imposing its duty on the public prosecutor beyond reasonable doubt. Thus, the burden of proof in criminal proceedings arises from the right of the accused to be presumed innocent.

3.5 Burden and Standard of Proof Under Ethiopian Laws

The burden and standard of proof in criminal proceedings, including the offence of trafficking, is not expressly provided under the Ethiopian legal instruments. That does not mean there are not any statutory and constitutional provisions relevant to the burden and standard of proof in criminal proceedings under the domestic laws of Ethiopia. Rather, there are some provisions that show the burden of proof bears on the prosecution in criminal cases. Discussing the right of presumption of innocence of the accused under the FDRE Constitution is used as a bench mark to establish the required degree of proof in criminal proceedings. To this effect, the following sections examine the laws and other documents in Ethiopia relevant to the burden of proof in criminal proceedings, including the offences of trafficking.

3.5.1 FDRE Constitution

The right to be presumed innocent in criminal proceedings in the Ethiopian legal system is a fundamental constitutional human right. The FDRE Constitution provides “during proceedings,

¹⁰² Ibid, paragraph 30, emphasis added

accused persons have the right to be presumed innocent until proved guilty according to law.’’¹⁰³ By the virtue of the FDRE Constitution, this right is a fundamental human right. Accordingly, this fundamental right requires all organs of the government, including the judiciary, to respect and enforce it. ¹⁰⁴ As has been repeatedly pointed out, the constitution recognizes the presumption of innocence, which imposes an obligation on the prosecution to prove its case at the requirement of proof beyond reasonable doubt. Thus, prosecution on an offence of trafficking is not an exception to this rule that requires the proving of each element of the charge against the accused. It follows that the defendant on his part is not compelled to prove it before the prosecutor introduces evidence. By appealing the right of presumption of innocence under the FDRE Constitution, the burden of proving each element of the charge is imposed on the prosecution. The FDRE Constitution provision on the presumption of innocence has no limitation, unlike other human rights. ¹⁰⁵ At least theoretically, in Ethiopia regarding to the right to be presumed innocent, any limitation/restriction to it is not tolerable. Because of this fact, the constitution of Ethiopia gives a lot of attention to the right of presumption of innocence by imposing the burden of proof on the prosecution which has to convince the court that the accused is guilty beyond reasonable doubt.

3.5.2 Criminal Procedure Code of Ethiopia

Adopted in 1961, the Criminal Procedure Code is still applicable as a procedural law regulating criminal proceedings in Ethiopia. The rules governing criminal proceedings don’t expressly provide the required degree of proof. However, the Criminal Procedure Code of Ethiopia provides some provisions from which inferences can be made regarding the required degree of proof in criminal proceeding. Art 141 of Criminal Procedure Code provides “when the case for the prosecution is concluded, the court, if it finds that no case against the accused has been made [out]

¹⁰³ FDRE Constitution (n11)

¹⁰⁴ FDRE Constitution (n87)

¹⁰⁵ FDRE Constitution, Art 15 (the right to life) “every person has the right to life .no person may be deprived of his life except as punishment for a serious criminal offence determined by law.” Art 17 (the right to liberty) “no one shall be deprived of his/her liberty except on such grounds and in accordance with such procedure as are established by law.”

which, if unrebutted, would warrant his conviction, shall record an order of acquittal.”¹⁰⁶ On the contrary, “where the court finds that a case against the accused has been made out and the witness for the injured party if any, have been heard it shall call on the accused to enter upon his defense...”¹⁰⁷ Art 141 and 142 of the Criminal Procedure Code of Ethiopia it is a carbon copy of the Criminal Procedure Code of Malaysia which requires the prosecutor has an obligation to proving each element of the charges of the accused beyond reasonable doubt.¹⁰⁸ In the same explanation, Hanna argues “the Criminal Procedure Code of Ethiopia impliedly provides beyond reasonable doubt.”¹⁰⁹ As Worku also argues the “defendant only adduce evidence that would make the prosecutor evidence doubtful, they are not required to prove beyond reasonable doubt.”¹¹⁰ From the aforementioned discussion, it can be noted the Criminal Procedure Code of Ethiopia impliedly shows the burden of proof in criminal prosecution lies on the prosecutor and also applied to individuals who are suspected the offence of trafficking.

3. 5. 3 Draft Evidence Rules

The Draft Evidence Rule was an unpublished document drafted in 1967 that still came into force. It serves as a gap filling role to the Civil Procedure Code of 1965 and the Criminal Procedure Code of 1961. So, it is not an authoritative source of law. Art 81 of the draft states that “the burden of proof lies on the party who wishes to relay the facts he asserts.”¹¹¹ Based on this provision, the prosecutor who needs to convict the accused, the burden of proving to assert facts whether existed or not existed lies upon him. Thus, the Draft Evidence Rule also shows a clue to the burden of proof in criminal proceedings including the offence of trafficking.

3.6 Exceptions for Shifting the Burden of Proof in Criminal Proceedings

As a principle, the right of an accused to be presumed innocent imposes the burden of proof on the prosecution to prove each ingredient of the crime that the accused is charged with. However, there

¹⁰⁶ Criminal Procedure Code (n16), Art 141

¹⁰⁷ Criminal Procedure Code (n16), Art 142

¹⁰⁸ Stanley Z Fisher, *Ethiopian Criminal Procedure, A Sourcebook* (Haile Selassie I University Press, 1969)

¹⁰⁹ Hanna Arayaselassie Zemichaeale, “the standard of proof in criminal proceedings: the threshold to prove guilty under Ethiopian law,” (2014),8(1) *Mizan law review* 84,85,91.102

¹¹⁰ Worku Yaze Wodge, “Presumption of Innocence and the Requirement of proof beyond reasonable doubt.”

¹¹¹ Draft Evidence Rule, 1967, (Unpublished), Art 81

are some laws that limit the scope of the right of presumption of innocence and the obligation it imposes on the prosecution by shifting the burden of proof to the accused. These are; the FDRE Criminal Justice Policy and the Ant-Corruption Law. In this sub section, it tries to discuss in what circumstances the required burden of proof shifts to the accused. In other words, exceptions that limit the right to be presumed innocent of the accused are analyzed below.

3.6.1 FDRE Criminal Justice Policy

The FDRE Criminal Justice Policy of Ethiopia was adopted by the council of ministers in March 2011 to oversee government actions and decisions in executing criminal justice in conformity with the FDRE Constitutional principles, rules and values.¹¹² The policy objectives come with various issues of the criminal justice system and setting indicators for laws within the process that requires to be included and others that requires further amendment.¹¹³ The principles and the strategies of the policy is designed and enforced in conformity with the constitutional principles and other international instruments that Ethiopia is a party to. The decision making process in criminal litigation shall be “the innocent is properly sorted out apart from the guilty.”¹¹⁴ The policy is applied to all bodies and institutions that are involved in criminal offences and the criminal justice system.¹¹⁵ Part four of the policy includes provisions that enhance the effectiveness and fairness of criminal justice.

The policy provides an exceptional circumstance of shifting the burden of proof to the accused in some serious crimes, such as crime against constitutional order, terrorism, corruption and organized crimes.¹¹⁶ Furthermore, the Criminal Justice Policy envisions provisions that would recognize plea bargaining and the resulting plea of guilt.¹¹⁷ The policy justifies this approach on the grounds that it expedites the criminal process, thereby saving time and other resource of the

¹¹²Criminal Justice Administration Policy of Ethiopia (FDRE Criminal Justice Policy) adopted on 4 March 2011, Sec.1.4

¹¹³ Id., section 1.3

¹¹⁴ Id., sec 1.4

¹¹⁵ Id .sec 1.6

¹¹⁶ Id, sec 4.4

¹¹⁷ Id, sec 4.5

court and the prosecution.¹¹⁸ By introducing plea of bargaining and the exceptions of shifting the burden of proof in the policy, the prosecution may convicts the accused without proving each element of the offence beyond reasonable doubt that has been alleged challenges the right of presumption of innocence of the accused.

According to Art 20(3) of the FDRE Constitution, there is no exception to the presumption of innocence that it provides unlike other rights of the accused.¹¹⁹ Here the question may arise the compatibility of such laws with the right of an accused to be presumed innocent until proven guilty.¹²⁰ In criminal proceedings, “the presumption of innocence... requires that persons accused of a criminal act must be treated in accordance with this principle.”¹²¹ Thus, persons who are suspected of the offence of trafficking must be treated in accordance with the requirement of proof beyond reasonable doubt. Even though the Criminal Justice Policy of Ethiopia incorporates an exception of shifting the burden of proof to the accused in some serious crimes, the offence of trafficking does not fall under this exception.

3.6.2 Corruption Crimes Proclamation No 881/2015

There are corruption law provisions that relieve the prosecution from proving one or more ingredients in the offence of possession of unexplained property/ illicit enrichment. This occurs when the law presumes such ingredients from another ingredient of the offence that the prosecutor has already proved or from circumstances. In such circumstances, the court is authorized to draw a presumption and the accused on his part should be responsible for producing contrary evidence

¹¹⁸ Id, the policy includes some justification for the introduction of plea bargaining under section 4.5.4.1

¹¹⁹ FDRE Constitution, (n103)

¹²⁰ It can be challenged, because it provides an opportunity for serious perpetrators to be beneficial from their criminal activities.

¹²¹ UN HRC, General comment no.32 (n13) paragraph 30, emphasis added

against the presumed facts by the court.¹²² The Corruption Crimes Proclamation No 881/2015 reads.¹²³

*Unless evidence is produced to the contrary, where it is proved that the material element (the act) has been committed as defined in a particular provision providing for a crime of corruption perpetrated to obtain or procure undue advantage or to cause injury of another person, such act shall be presumed to have been committed with intent to obtain for one self or to procure for another undue advantage or to injure the right or interest of a third person.*¹²⁴

The above provision envisages that to convict the accused's for corruption crimes, the prosecutor is exempted from the burden of proving the accused mental element rather than proving the public servant's conduct of misusing their official position. In such situations, the court has discretion to presume facts from the proved conduct, "an intent" that the conduct needs to be presumed by intent to obtain for oneself or to procure for another an undue advantage or to injure the rights of the third. By conditioning the presumption of intent in which no evidence is established on the contrary, the provision shows that the presumption of intent resulting in proof of the material element is subject to rebuttal. It gives a chance to the defendant to introduce evidence to show the proved material elements that were not proved by intent to obtain undue advantage for oneself or to procure another or to injure the right or interest of the third party.

¹²² Worku Yaze Wodage titled "burden and standard of proof in possession of unexplained property," Mizan law Review, vol.8. The author argues that the court has discretion to draw a factual presumption of illicit gain. If such a court draws a presumption, the accused, in order to avoid the risk of one's case, would be responsible for introducing evidence to rebut what has been presumed by the court. This refers to shifting the burden of a tactical or provisional burden of proof to the accused.

¹²³ The provision has replaced Art 403 of the 2004 Criminal Code of FDRE which is repealed by Art 36 of the Corruption Crime Proclamation No 881/2015.

¹²⁴ Corruption Crime Proclamation No. 881/2015, Fed, Neg, Gez, year 21st, no 36, 3rd April 2015, Art 3(1)

Another corruption law provision requires the prosecutor to prove only circumstances but not all ingredients of the offence. Under Art 21 of possession of unexplained property is read;¹²⁵

1. Any public servant or employee of a public organization, being or had been in office, who:
 - a) Maintains a standard of living about that which is commensurate with the official income from his present or past occupation or other means
 - b) Is in control of pecuniary resources or property disproportionate to the official income, his present or past occupation or other means;

Unless he proves satisfactorily before the court of law as to how he was able to maintain such a standard of living or how such a pecuniary resource or property came under his control, it shall be punishable ... with simple imprisonment and fine, or in serious cases, with rigorous imprisonment not exceeding five years and fine not exceeding five years and fine not exceeding birr five thousand.¹²⁶

2. Where the court, during proceeding under paragraph (b) sub Art (1) of this Art, is satisfied that there is a reason to believe that any person, owing to his closeness to the accused or other circumstances, was holding pecuniary resource or property in trust for or otherwise on behalf of the accused, such resources, or property shall, in the absence of evidence to the contrary, be presumed to have been under the control of the accused.

The above provision requires the prosecutor to prove that the defendant as a public servant fulfilled the conditions mentioned under the above sub-Arts, a public servant has maintained a standard of living or and that he is in control of property that is not proportional to his official income. This is known as possession of unexplained property/illicit enrichment. Pursuant to Art 21(1(b) of the proclamation, it provides “unless the accused as a public servant gives a satisfactory explanation to the court as to how he was able to maintain such a standard of living or how such pecuniary resource or property came under his control.” Accordingly, the court has discretion to draw

¹²⁵ Corruption Crime Proc. No. 881/2015 (n123), Art 21 of the provision has replaced Art 419 of the Criminal Code of Ethiopia

¹²⁶ What standard of proof is required of the accused to be considered as having “satisfactorily” proved how he/she was able to maintain such a standard of living ... or other than through corruption, is unclear?

presumption the accused as a public servant involved in the offence of unexplained property or illicit enrichment. Because the court did not make a presumption, the accused has provided a satisfactory explanation of the source of the disproportionate money or property. This creates a condition where shifting the burden of proving one important element of the offense, i.e. as to how the accused was able to maintain such a standard of living or how such pecuniary resource or property came under his control. In order to avoid such a presumption, the accused is required to prove that the standard of living or pecuniary resource or property under his control is not sourced from being a public servant. In such a case, unless the accused produces rebuttable evidence about “how he was able to maintain such a standard of living or how such resource or property came under his control,” the court will convict the accused for committing the possession of unexplained property or unspecified corruption crime. In such circumstances, the court has shifted the burden of proof to the accused. That is, the prosecution proved some, but not all, elements of the offence and then the court required the defendant to prove that some elements of, did not exist.

As discussed above, there are exceptions where shifting the burden of proof has been acceptable for some serious crimes, including crimes of corruption. In the case of human trafficking, Proclamation No 1178/2020 under Art 6 provides that:

“where it is proved that a person recruit, transport, transfer, harbor, hide or receive another person using means mentioned under Art 3(2) of this Proclamation; or without using means mentioned commit such act against child; presumption may be made on the basis of circumstantial evidence for which such exploitation purpose the person committed such act.”

Accordingly, if the act/s performed by an offender and the means used is proved, the purpose for exploitation can be presumed by taking into consideration the circumstantial evidence. In such circumstances, the court is empowered to draw a presumption for the purpose of exploitation without further proving the act/s and means elements of the offence of trafficking alleged by the prosecution. If such a court draws a presumption, the accused, in order to avoid the risk of one’s case, would be responsible for producing evidence to rebut what has been presumed by the court. This refers to a situation of shifting the burden of a tactical or provisional burden of proof to the accused. However, proving exploitation on the basis of circumstantial evidence which is less than the requirement of beyond reasonable doubt in criminal proceedings including persons who are

involved in the offence of trafficking. Therefore, the researcher argues that under the FDRE Constitution, not only shifting but also easing the burden of the prosecutor is not acceptable. Thus, in the case of the offence of trafficking, if the prosecutor shifts the burden of proof on some elements of trafficking to the accused and proving exploitation through circumstantial evidence, it is inconsistent with the prosecution proving its case beyond reasonable doubt. It is also contrary to the constitutional principle/ provision of the right of the accused to be presumed innocent.

CHAPTER FOUR

4. Constitutionality of Burden and Standard of Proof under Proclamation No 1178/2020 and Its Practice under Criminal Division of Federal Courts in Addis Ababa; Case Analysis

4.1 Introduction

In chapter three, we have seen the normative frameworks of the presumption of innocence under international, regional, and domestic instruments, the burden of proof in criminal proceedings, the relationship between the burden of proof and the right of presumption of innocence, the burden and standard of proof under the Ethiopian laws, including the offence of trafficking and exceptional circumstances that shift the burden of proof to the accused. In this chapter, we will discuss the practice of the burden and standard of proof on the prosecution of human trafficking under criminal division of federal courts normally located in Addis Ababa and its impacts upon the constitutional rights of the accused persons. For example, the right to presumption of innocence, prohibition against self-incrimination and other related human rights. We shall also discuss the constitutionality of the burden and standard of proof under Prevention of Trafficking in Persons and Smuggling of Persons Proclamation No 1178/200, the contradiction between the burden and standard of proof in the crime of trafficking with the constitutional due process rights of the accused.

4.2 Burden of Proof in the Prosecution of Human Trafficking and Smuggling under Criminal Division of Federal Courts in Lideta Bench and Analyze Some Practical Cases

This part attempts to discuss and analyze the practice of the burden of proof and standard of proof in the prosecution of the offences of human trafficking and smuggling of persons' charges under criminal division of federal courts normally located in the city of Addis Ababa. In this regard, due to time and space of paper reasons, we proceed to examine two practical criminal charges related to the prosecution of human trafficking cases that were decided under criminal divisions of federal first instance court located at Lideta involving constitutional rights and the presumption of innocence of the accused.

4.2.1 Federal Public Prosecutor (FPP) V Kidanie Zekarias ¹²⁷

FPP v. Kidanie Zekarias involves two defendants: Kidanie Zekarias and Saba Mender Haile. The prosecutor charged the accused with eight counts of human trafficking cases at the federal first instance court in Lideta criminal bench. ¹²⁸ In the first and second counts on the first accused is charged, the prosecution indicates violations of Art 32(1) (a) of the Criminal Code of FDRE (2005) and Art 3(1) and 6 of the Prevention and Suppression of Human Trafficking and Smuggling of Migrants Proclamation No 909 /2015. He was charged with the alleged of trafficking against deceased Daniel Telahun and deceased Mohammed Alemu. He committed the offence of trafficking with his collaborators against the victims. Both deceased in April 2016 and moved from Addis Ababa to Sudan by crossing the Libyan Desert to Europe to change their family life. The two deceased were abducted by the accused and his offence collaborators in February 2018 in his warehouse. On count one and count two, the accused gained as debt bondage 187,000 birr and 230,000 birr respectively. Both the deceased were tortured and treated with inhuman treatment. They were under the custody of the accused in the absence of separate accommodation, without adequate water. They were fed once per day. Finally, all these harsh acts of the accused led to the death of the deceased.

On the third count, up to eight counts, the prosecutor charged him with violation of Art 32(1) (a) of the Criminal Code of FDRE and Art 3(1) (c) & 3(2) (c) of the Prevention and Suppression of Human Trafficking and Smuggling of Migrants Proclamation No 909 /2015. On these consecutive counts, the accused committed the act of trafficking with his collaborators against the victims of Danachew Fekadu, Abel Melese, Matias Fekiru, Tsegaye Getu, Mateuos Kebede and Daniel Yano. The accused and his collaborators committed the offence of trafficking against these victims by kidnapping them in his warehouse, by nagging their bodies through electricity, arresting them without affording food and water. By his criminal act, the accused gained a total of 181,000 birr from each victim as debt bondage. The inhuman treatment of the accused against the victims results in physiological, mental and economic problems for them.

¹²⁷ FPP v Kidanie Zekaris, Federal First Instance Court of Lideta, July 6,2020, Criminal Bench File No. 230/12

¹²⁸ Filed as the charges of trafficking, under count one and count two, the accused is charged with the crime of trafficking in violation of Art 32(1) (a) of the Criminal Code of FDRE and Art 3(1) and Art 6 of Proc. No. 909 /2015 and on the other 6 counts, the accused is charged in violation of Art 32(1) (a) of the Criminal Code of FDRE and Art 3(1) (c) and Art 3(2) (c) of Proc.No.909/2015

The prosecutor filed the charge on 6 July 2020 at the federal first instance court of Lideta criminal bench. In the next month, the charge was presented to the accused person at the trial and the court heard both testimonial and documentary evidence, including circumstantial evidence from the prosecutor who ordered the accused to defend the case. But, the accused did not appear at trial and did not bring rebuttal evidence against his charge. Finally, on 16 June 2021, the court convicted the defendant on a total of eight counts and sentenced him to life imprisonment and with a fine of one million birr.

4. 2.2 Federal Public Prosecutor (FPP) V. Saba Mender Haile ¹²⁹

In this case, Saba Mender Haile was charged under Art 37(1) of the Criminal Code of FDRE and with violation of Art 3(1) and Art 6 of the Prevention and Suppression of Human Trafficking and Smuggling of Migrants Proclamation No 909/2015 at the federal first instance court in Lideta criminal bench. On the ninth count, the prosecutors charged the defendant on count two and count eight as an accomplice with the first defendant for the alleged offence in a trafficking case. The prosecution filed the case on 6 July 2020 against the accused to assist the first defendant in the act of trafficking against the death of Mohammed Alemu and the victim of Daniel Yano. She gave her Wogagen Bank account to the first defendant to receive money from the parents of the victims. By the order of the first defendant on count two of the deceased, Mohammed Alemu, on behalf of the 5th witness of the prosecutor, Alemu Seid, and on count eight, upon the victim, Daniel Yano received 30,000 birr and 200,000 birr respectively. The participation of the second defendant as an accomplice against the victims, who suffered from hunger and bodily harm. The actions of the accused resulted in the death of Mohammed Alemu and led to the torture of Daniel Yano.

After the charge was presented to the accused at the trial, the accused denied the offence charged to the court with the assistance of a lawyer. The court heard the prosecution's evidence and ordered the accused to defend the case. Thus, the defendant's lawyer raises objections to the charge of the prosecutor. Such as, the charge of prosecution in violation of Art 3(1) of Proclamation No 909/2015 has been repelled by Proclamation No 1178/2020, there was no cause-effect relationship between the acts of the accused and the death of the deceased, the charge alleged was not granted

¹²⁹ FPP v. Saba Mender Haile, Federal First Instance Court of Lideta, July 6, 2020 Criminal Bench File No. 230/12

in a separate trial, where she was tried. After ruling on the objections of the defendant and hearing evidence presented by the prosecutor, the court convicted the defendant on one count on the charge of the first accused of twelve years' life imprisonment and a fine of seventy thousand fifty hundred birrs'.

4. 3 Evidential Matters, Rulings and Judgments of the Court

In both human trafficking charges of the FPP v. Kidanie Zekarias and FPP v. Saba Mender Haile, the prosecution charged the defendants with violation of Art 3(1) and Art 6 of Proclamation No 909/2015 at the federal first instance court in Lideta criminal bench. But, Proclamation No 909/2015 has been repelled by Proclamation No 1178/2020. The Proclamation No 1178/2020 on the indicated charges of trafficking comes with a minimum penalty against the accused than the repelled Proclamation No 909/2015. On the first defendant, on count one and count two and on the second defendant, on count nine, the court has decided the case in accordance to Art 4(2) (d) and on counts three up to eight under Art 4(2) (b) of the Proclamation No 1178/2020 respectively. Accordingly, the exceptional principle of the non- retrospective effect of criminal law provided under Art 6 & 9(1) of the Criminal Code of FDRE and Art 22(2) of the FDRE Constitution states “if a law promulgated subsequent to the commission of the offence shall apply if it is advantageous/more favorable to the accused or convicted person obliges the court to decide the case in accordance to new Proclamation No 1178/2020.”¹³⁰ In such a situation, the principle of non-retroactivity effect of criminal law is applicable when a law is given retroactive effect.¹³¹ By this reason, in order to protect the advantage of the accused, the court decided the cases of trafficking in accordance to the more favorable law of Proclamation No 1178/2020.

In charge of FPP v Kidane Zekarias, during the trial, the prosecutor charged that the accused had committed the offence of trafficking. After identifying the identity of the accused, the court ordered him to produce a defense against the charge. But, the accused failed to present at trial. Thus, the prosecutor requested a court order to produce evidence. After that, the prosecutor introduced documentary and testimonial evidence including the circumstantial evidence to convict the

¹³⁰ Ibid (n126), Federal First Instance Court of Lideta, 9 June,2013, Criminal Bench File No. 284774(Judgment)

¹³¹ FDRE Constitution, Art 22(2), Criminal Code of FDRE, Art 6 & 9(1), and Proc. No. 1178/2020, Art 44(1) are relevant provisions for the exceptional application of the effect of criminal law if the new law is in fact more favorable/advantageous to the accused

accused on the offence of trafficking. The prosecutor further alleged that the accused had committed the offence intentionally, the commission of a crime was inhuman, and the offender committed the act with an organized criminal group. To know whether the ruling of the court has decided the case at hand in accordance to the requirement of proof beyond reasonable doubt, critical analyzing of the FDRE Constitutional provision of the right of presumption of innocence of the accused person is a very important point.

Accordingly, Art 20(3) of the FDRE Constitution provides “during proceeding, accused persons have the right to be presumed innocent until proved guilty according to law.” Furthermore, by the Cross referring to Art 9(2) and Art 13(1) of the FDRE Constitution, the courts are under a duty to respect and enforce fundamental rights and freedoms enshrined under chapter three of the constitution. Thus, the court has an obligation to perform their duty in accordance with constitutional law and prove every element of the offence of trafficking under the requirement of proof beyond reasonable doubt. After the court heard the prosecutor’s evidence, ordered the defendants to produce their defense for the offence of trafficking. The second offender presents testimonial and documentary evidence to show their activities are not considered as an act of trafficking. She introduced five witnesses and the first witness, proved that she was not perversely suspected of another criminal act. However, the court undermines these testimonies on the grounds that the witnesses were not able to know everything that the accused had done. The court presumed that because the witnesses knew what the defendants told them, their previous knowledge about the defendant’s background was not fully known.

The court, after analyzing the evidence of the defense, established that the evidence did not sufficiently rebut the prosecution's charge. The court in both human trafficking charges did not prove every element of the charge by the prosecutor in the required degree of proof beyond reasonable doubt. Rather, the trial court ordered the defendants to produce defenses in order to ensure their presumption of innocence instead of further investigation into whether the act/s, means, and purpose elements are cumulatively fulfilled to establish the offence of trafficking. So, in the case of the offence of trafficking, as demonstrated by the case at hand, the court does not prove to the extent whether each element of trafficking has been committed by the accused under the requirement of proof beyond reasonable doubt. The court simply concluded that the defendant had been involved in the offence of trafficking. The court reached this conclusion without further

investigating each element of trafficking by the prosecution on the requirement of proof beyond reasonable doubt. As a result, due to the lack of a court to prove each element of the offence of trafficking on the requirement of proof beyond reasonable doubt in criminal proceedings became in question. It undermines the FDRE constitutional provision/ right of the accused person to be presumed innocent until proven guilty, including persons who are suspected of the offence of trafficking.

4.4 Constitutionality of Burden and Standard of Proof under Proclamation No 1178/2020

In criminal proceedings, Art 20(3) of the FDRE Constitution implicitly imposes the burden of proof on the prosecution, granting the accused a presumption of innocence. The right to presumption of innocence is guaranteed by the constitution for all defendants. As a result, the accused has the constitutional right to have the prosecution prove him guilty. This right is violated when the burden of proof is shifted from the prosecution to the defendant, or when the requisite standard of proof is lowered beyond reasonable doubt. This has the effect of undermining the suspect's constitutional human rights. There are various circumstances that should be taken into consideration during proof of prosecution by the prosecutor. If the prosecutor suspects that the accused has committed a crime of trafficking and placed the burden of proof upon him to produce contrary evidence that requires conviction or acquittal. This is outside of the rule of ordinary criminal cases where the conviction does not depend on the extent of the accused person's defense and contrary to the requirement of proof beyond reasonable doubt by the prosecutor on each element of the offence of trafficking against the accused.

Thus, the constitutional way to convict the accused is that the prosecutor should prove every element of the offence of trafficking that has been committed by the suspect beyond reasonable doubt. However, the Prevention and Suppression of Trafficking in Persons and Smuggling of Persons Proclamation No 1178/2020 states that

“a person who passes through a criminal process stipulated under Art 3(2) of this Proclamation, whether the exploitation is started or completed, the perpetrator, as well as

*his collaborates, shall be punishable with rigorous imprisonment from seven years to twelve years and with fine from forty thousand to one hundred thousand birr.*¹³²

The Proclamation states “where it is proved that a person recruit, transport, transfer ... receive another person using means mentioned commit such act against child; presumption may be made on basis of circumstantial evidence for which exploitation purpose the person committed such act.”

¹³³ For this reason, from the above provisions and detailed understanding of the criminal charges that were alleged based on the repelled Proclamation No 909/2015 and its decision of the court in accordance to the new Proclamation No 1178/2020 on the basis of circumstantial evidence without proving each element of a charge and lowering the required degree of proof beyond reasonable doubt have challenged the constitutionality of burden and standard of proof under the Prevention and Suppression of Trafficking in Persons and Smuggling of Persons Proclamation No 1178/2020.

Because of the principle of beyond reasonable doubt in criminal proceedings, it is recognized under the FDRE Constitution as providing the presumption of innocence for the accused person as a fundamental human right without exception. The constitutional provision of the presumption of innocence imposes the burden of proof on the prosecution in every element of the charge beyond reasonable doubt to convict the defendant. However, the Cross referring to Art 3(2) and Art 6 of Proclamation No 1178/2020 in proving each element of the act/s performed by the trafficker and means to achieve the offence of trafficking, only focuses on the purpose of exploitation through circumstantial evidence, the constitutionality of burden and standard of proof under Proclamation No 1178/2020 in accordance to beyond reasonable doubt would be in question. It violates the FDRE provision of the right of presumption of innocence of the accused.

4.5 Conflict Between the Burden of Proof and Constitutional Due Process of Accused Person

Due process rights are procedural rights found in human rights documents that are granted to anybody, including accused persons who are suspected of committing the offence of trafficking. In the case of the offence of trafficking, the individual accused of committing these offences must be treated in line with the laws authorized principles and procedures. The principle of due process

¹³² Proc. No. 1178/2020 (n9), Art 3(2)

¹³³ Proc. No. 1178/2020 (n9), Art 6

rights has been impliedly established in the Ethiopian under the FDRE Constitution in this manner, “No one shall be deprived of his/her liberty except on such grounds and in accordance with such procedures as are established by law.”¹³⁴ Even though the explanation of the constitution is subject to ambiguity because of missing the word due process and it reads “in accordance with such procedure as are established by law.”¹³⁵ As a result, the prosecutor should consider the accused person's due process standards and constitutional rights during the prosecution of the charges of trafficking. In this regard, in both trafficking cases, the prosecutor charged the accused with the offence of trafficking and the court decided and passed the case in accordance to the Prevention and Suppression of Trafficking in Persons and Smuggling of Persons Proclamation No 1178/2020.

During the trials, the prosecutor establishes both testimonial and documentary evidence, including circumstantial evidence to convict the defendants on the suspected offences of trafficking. However, when the prosecution introduces such evidence, the court lacks to prove whether each element of the crime of trafficking is fulfilled on the requirement of proof beyond reasonable doubt. The court has missed evaluating evidence presented by the prosecutor in line with the constitutional due procedure and established by the law. For this reason, there is an incident between the burden of proof in the offence of trafficking under Proclamation No 1178/2020 and the constitutional due process right of the accused in accordance to procedures established by law. Thus, Proclamation No 1178/2020, the prosecution process must be complied with by the constitutional standards of due process and procedures. However, the trafficking charges at hand, during the prosecution process, various human rights of the accused persons are violated. The right to presumption of innocence of the accused is the most prominent one.

It is obvious that the right to presumption of innocence is guaranteed by major international and regional human rights instruments, including the FDRE Constitution.¹³⁶ The presumption of innocence needs the prosecutor to prove the guilt of the suspect in criminal proceedings, including suspects who are involved in the offence of trafficking. However, on both trafficking charges, the

¹³⁴FDRE Constitution (n6), Art 17(1)

¹³⁵The FDRE Constitution under Art 17(1) reads “on such grounds in accordance with the procedure and established by the law.”

¹³⁶UDHR, Art 11(1), ICCPR, Art 14(2), ACHPR, Art 7(1(b) and FDRE Constitution, Art 20(3)

prosecutor charged the defendants in violation of Art 3(1) and Art 6 of Proclamation No 909/2015 and passed its decision in accordance to the new Proclamation No 1178/2020. During the trial of the cases, the prosecutor introduced documentary and oral pieces of evidence including circumstantial evidence to show the accused had been involved in the offence of trafficking. For this reason, the court ordered the defendant to produce their defense in order to rebut the charge of the prosecution. They tried to challenge their prosecution. But, during the evaluation of evidence produced by the suspects, the court failed to prove every element of the charge of the prosecution on the requirement of proof beyond reasonable doubt. Rather than simply focusing on the purpose of exploitation of the trafficker. Therefore, the adoption of circumstantial evidence as a presumption to prove the purpose of exploitation under Art 6 of the Proclamation No 1178/2020 is contrary to the requirement of proof beyond reasonable doubt in criminal proceeding, including the offence of trafficking.

Besides, the two charges of trafficking cases at hand, also affect the right to silence and the right of the prohibition against self-incrimination of the accused persons. The FDRE Constitution under Art 19(2) states “persons arrested have the right to remain silent. Upon arrest, they have the right to be informed promptly, in a language they understand, that any statement they make may be used as evidence against them in court.”¹³⁷ The Criminal Procedure Code of Ethiopia has also strengthened that any arrested person “... shall not be compelled to answer and shall be informed that he/she has the right not to answer and any statement he may make be may use in evidence.”¹³⁸ Yet, the ambiguous issue in the above- stated provision of the FDRE Constitution is that the right to silence seems only entitled to the arrested persons. In a similar explanation, there is no contrary provision specifying the same right in Art 20(3) of the FDRE Constitution that addresses the accused person. The FDRE Constitution has impliedly recognized the right to remain silent pursuant to Art 20(3) of the last statement, which reads “not to be compelled to testify against themselves.”¹³⁹ Thus, it proves that the accused person has also enjoyed the right to remain silent. During the investigation process of the accused that are suspected, the crime of trafficking hasn’t compelled us to give his/her testimony unless he/she is a volunteer. In the case at hand, when the

¹³⁷ FDRE Constitution (n6), Art 19(2)

¹³⁸ Cr. Pr. Code (n17), Art 27(2)

¹³⁹The FDRE Constitution under Art 20(3) reads that persons arrested are not to be compelled to testify against themselves.

prosecutor produces evidence during trial, the right to remain silent of the defendants and their testimony taken upon them used as evidence is not taken into account by the court. In criminal proceedings, the suspect cannot be compelled to answer questions brought by an investigator or prosecutor. Thus, perpetrators who are charged with an offence of trafficking would benefit from the right to remain silent. “Everyone has the right to protection against cruel, inhuman or degrading treatment or punishment.”¹⁴⁰ Art 18(1) of the FDRE Constitution, by way of interpretation, the word “everyone” in the first statement of the provision of accused persons who are free from cruel, inhuman or degrading treatment or punishment when they are subjected to human trafficking. As a result, the accused cannot be forced to answer questions posed by the police or prosecutor during a criminal prosecution process. Such silence cannot be used as evidence against the accused and it is unconstitutional as the right against self-incrimination is protected under Art 18(1) of the FDRE Constitution. Additionally, when the prosecution of a trafficking crime is lowered from the required degree on the requirement of proof beyond reasonable doubt, other human rights of the accused are also in question.

¹⁴⁰ FDRE Constitution (n6), Art 18(1)

CHAPTER FIVE

5. Conclusions and Recommendation

5.1 Conclusion

Ethiopia has criminalized the crime of trafficking and smuggling in its domestic legal frameworks. The FDRE Constitution, Criminal Code of FDRE and the Prevention and Suppression of Trafficking in Persons and Smuggling of Migrants Proclamation No 1178/2020 are the most pertinent instruments that address the offence of trafficking. Ethiopia has also ratified the UN Convention against Transnational Organized Crime and the Protocols thereto that have the effect of defining, preventing and prosecuting the crime of trafficking. In criminal proceedings, including human trafficking, the burden of proving each element of the crime bears on the prosecutor beyond reasonable doubt. The FDRE Constitution under Art 20(3) provides “during criminal proceedings, accused persons have the right to be presumed innocent until proven guilty according to law.” By appealing the provision of presumption of innocence, inferring that the prosecutor has the burden of proving each element of the charge including cases trafficking with the requirement of proof beyond reasonable doubt. Thus, an element of a crime cannot be proved by presumption and the suspect has the right to be presumed innocent. So, unless the prosecutor proves the guilt of the suspect beyond reasonable doubt, its constitutionality of burden and standard of proof in the offence of trafficking becomes at stake. Art 6 of Proclamation No 1178/2020 states “where it is proved that the act/s and means are mentioned under sub-Art 3(2) of this Proclamation; or without using means... a presumption may be made on the basis of circumstantial evidence for which the exploitation purpose the person committed such an act against child.” However, presuming exploitation through such kinds of evidence may not prove the guilt of the defendant beyond reasonable doubt. The charges of trafficking in violation of Art 3 and 6 of the Proclamation No 909/2015 and the decision of the court in accordance to Proclamation No 1178/2020 without proving each constituent element of trafficking beyond reasonable doubt have challenged the constitutionality of burden and standard of proof under Proclamation No 1178/2020.

Thus, the adoption of circumstantial evidence under Art 6 of the Proclamation No 1178/2020 and the lack of the court to prove every element of trafficking in the required degree of proof beyond reasonable doubt would affect the constitutionality of burden and standard of proof in the case of trafficking. It contradicts the FDRE provision of the right to presumption of innocence for the

accused. Therefore, shifting the burden of proof from the prosecution to the accused and lowering the requirement of proof beyond reasonable doubt in the cases of trafficking at hand, raises the issue of constitutionality. Thus, under the FDRE Constitution, not only shifting but also easing the burden of the proof beyond reasonable doubt is not tolerable. To conclude, proving exploitation by taking into consideration the presumption of circumstantial evidence under Art 6 of Proclamation No 1178/2020 and the decision of the court without proving each element of trafficking beyond reasonable doubt, its constitutionality of the burden and standard of proof under Art 6 of Proclamation No 1178/2020 becomes in question. The rationale behind it is that it violates the FDRE constitutional right of the presumption of innocence for the accused.

5.2 Recommendation

Human trafficking and smuggling are serious criminal offences by their nature that undermine the human rights of all, including accused persons. The law of trafficking to prosecute such kinds of offences requires the prosecutor to prove each element of the crime beyond reasonable doubt. To this end, the FDRE Constitution under Art 20(3) declares “during proceedings, accused persons have the right to be presumed innocent until proved guilty according to law.” It implies that the Ethiopian constitution tacitly provides that to convict the accused, the prosecutor must convince the court beyond reasonable doubt of each element of charges that have been alleged against the defendant. But, presuming exploitation through circumstantial evidence under Art 6 of Proclamation No 1178/2020 does not sufficiently prove each element of trafficking unless the prosecutor proves its case beyond reasonable doubt. It violates the constitutional rights of the accused to be presumed innocent until proven guilty. Thus, the author recommended that criminalizing the offence of trafficking is important and it needs to be validated rather than be nullified. Accordingly, in order to validate and comply with the principle of beyond reasonable doubt as well as the constitutional right of presumption of innocence for the accused, proving the purpose of exploitation through circumstantial evidence employed under Art 6 of Proclamation No 1178/2020 should be replaced by the prosecutor proving each element of the offence of trafficking beyond reasonable doubt standard.

Bibliography

Books

- ❖ C. B. Mueller & L.C Kirkpatrick, 'Evidence under Rules: Texts, Case and Problems.' (4th ed, 2000), New York: Aspen Law and Business
- ❖ CRM Dlamini (2003), 'the Burden of Proof: Its Role and Meaning,' (2003)
- ❖ G. Dingwall, 'statutory exceptions, burden of proof and human rights act, (1998, modern law review
- ❖ Makisaka Megumi, 'Human Trafficking a Brief Overview', Social Development note. No 122, (December 2009), p.1
- ❖ Singh, 'the Principle of Law of Evidence,' (11thed, 1998), Central law publication.
- ❖ UNDOC, Model Law against Trafficking in Person, UN publications
- ❖ Vivian Deborah Wilson, 'Shifting Burdens in Criminal Law; A Burden Due Process, (7th ed, 1980)

Journals and Articles

- ❖ Simeneh Kiross Assefa 'The Principle of the Presumption of Innocence and Its Challenges in the Ethiopian Criminal Process
- ❖ WorkuYazeWodage, Burden of Proof, Presumptions and Standard of Proof in Criminal cases
- ❖ Zelalem Shiferaw Woldemichael, "prevention of human trafficking in Ethiopia: Assessing the Legal Framework." Hasanuddin law review., vol. 3(3) (208- 2017)

Laws

- ❖ African Charter on Human and People's Rights was adopted on June 27, 1981 and entered into force October 21, 1986
- ❖ African Charter on the Rights and Welfare of the Child
- ❖ Constitution of the Federal Democratic Republic of Ethiopia, Proclamation No. 1/ 1995, Fed, Neg, Gez, year 1,21Augst, 1995
- ❖ Corruption Crime Proclamation No. 881/2015, Fed, Neg, Gez, year 21st, no 36, 3rd April 2015
- ❖ Criminal Code of Federal Democratic Republic of Ethiopia, Proclamation No. 414/2004

- ❖ Criminal Justice Administration Policy of Ethiopia adopted on 4 March ,2011 Fed, Neg, Gez, Year 9th of May 2004
- ❖ Criminal Procedure Code of Ethiopia Proclamation No. 185/1961, Fed, Neg, Gez, 2nd day of November 1961
- ❖ Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment adopted by GAR 39/46 of 10 December1984, entered into force 26 June 1987
- ❖ Convention on the Rights of the Child adopted by GAR 44/25 of November 1989, entered into force 2 September 1990
- ❖ Convention on the Elimination of All Forms of Discrimination against Women adopted by GAR 34/180 of December 1979, entered into force 3 September 1981
- ❖ Draft Evidence Rule of Ethiopia (unpublished)
- ❖ International Convention on Civil and Political Rights adopted by GAR 2200A 16 December 1966, entered into force on 23 March, 1976
- ❖ International Convention on Economic, Social and Cultural Rights adopted by GAR 2200A 16 Dec 1966, entered into force 3 January 1976
- ❖ Prevention and Suppression Trafficking in Person and Smuggling of Migrants Proclamation No. 909/2015, Fed. Neg. Gez, Year 21, no. 67
- ❖ Prevention and Suppression of Trafficking in Persons and Smuggling of Persons Proclamation, 1178/2020, Fed. Neg. Gez, year 26, no.31
- ❖ Protocol to the African Charter on Human and People’s Rights on the Rights of Women in Africa (Hereafter the Maputo Protocol) adopted by the 2nd Ordinary Session of the Assembly of the Union, Maputo, 11 July, 2003
- ❖ Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (2000)
- ❖ Protocol to against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime (2000)
- ❖ Universal Declaration of Human Rights adopted by GAR 217A (III) of 10 December 1948
- ❖ United Nations Convention against Transnational Organized Crime adopted by GAR 55/25 of November 2000

- ❖ United Nations Office on Drug and Crime (2016) Global Report on Trafficking of Persons 2016. United Nations Publication

Cases

- ❖ FPP v. Saba Mender Haile, Federal First Instance Court of Lideta, July 6, 2020 Criminal Bench File No. 230/12
- ❖ FPP v Kidanie Zekaris, Federal First Instance Court of Lideta, July 6,2020, Criminal Bench File No. 230/12

Interviews

- ❖ Interview with Mr. Eyasu Kelema, Prosecutor at Federal- Attorney-General National Partnership Coalition Office for Migration, held on June 16, 2021, 8:00 PM
- ❖ Interview with Mr. Mikyas Cherenet, Judge at Federal First Instance Court of Lideta criminal bench on May, 16, 2021, 9:00 PM

Other documents

- ❖ ACHPR Available at: <http://www.achpr.org/instruments/achpr/ratification> (accessed on: 7/20/2015)
- ❖ ACRWC, Available at: <http://www.achpr.org/instruments/achpr/ratification> (accessed on: 7/20/2015)
- ❖ Gallagher, // [www.ajol.info / index, php>oil](http://www.ajol.info/index.php/oil)
- ❖ UN Convention (Palermo Convention) adopted by GAR 55/25, 15 Nov 2000 & entered into force in 2003. Status of Ratification of UN Convention. [WWW.Undoc](http://www.undoc.org) . Org > Treaties
- ❖ United Nations Office on Drug and Crime (2016) Global Report on Trafficking of Persons 2016. United Nations Publication, Sale No. E.16.IV.6. Available online at: [Https://www.unodc.org/ documents /data and analysis /glotip/2016- global report on trafficking of persons](https://www.unodc.org/documents/data_and_analysis/glotip/2016-global_report_on_trafficking_of_persons)