
Protection of the Rights of Migrant Workers under International law: the case of Ethiopians in Middle East and Gulf countries

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Acronyms and Abbreviations

CEDAW- Convention on Elimination of All forms of Discrimination Against Women

C 97- ILO Migration for Employment Convention of 1949 (revised) (No 97)

C 143- ILO Migrant Workers Conventions (supplementary Provision)1975 (C 143)

CMW- Committee on Migrant Workers

FDRE- Federal Democratic Republic of Ethiopia

ICCPR- International Covenant on Civil and Political Rights

ICESCR- International Covenant on Economic, Social and Cultural Right

ICRMW- International Convention on the Right of All Migrant Workers and Member of their families (1990)

ILO- International Labor Organization

IOM- International Organization for Migration

MoFA- Ethiopian Ministry of Foreign Affairs

MoLSA- Ethiopian Ministry of Labor and Social Affairs

UDHR- The Universal Declarations of Human Rights

UN- United Nations

UNDP- United Nations Development Program

Definition of Terms

Destination Country (Country of Employment): The country that is a destination for migratory flows.

Gulf Countries: Bahrain, Kuwait, Oman, Qatar, Saudi Arabia, United Arab Emirates

Irregular Migration: Movement that take place outside of the regulatory norm of the sending, transit and receiving countries.

Middle East Countries: Egypt, Iraq, Jordan, Lebanon, Palestine, Syria and Yemen

Migrant worker(s): A person who is to be engaged is engaged or has been engaged in a remunerated activity in a state of which he or she is not a national.

Documented Migrant Worker: A migrant worker or members of his family authored to enter, to stay and to engage in a remunerated activity and to engage in a remunerated activity in the state of employment pursuant to the laws that state and to international agreements to which that state is a party.

Countries of Origin (sending Country): the country that is a source of migratory flows (legal or illegal).

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Chapter one

1. Introduction

1.1 Background

International migrants in 2010, estimated to be 214 million, represent three percent of the global population; these number amounts to the total population of Brazil.¹ Women make up almost fifty percent of international migrants.² International migrants today are a very mixed group, including seasonal workers, temporary contract workers, skilled migrant workers, students, asylum seekers and refugees, workers with irregular status and victims of trafficking and forced labor.³

Migrant worker(s), a person who is to be engaged, is engaged or has been engaged in a remunerated activity in a State of which he or she is not a national,⁴ comprises the largest group of people who travel across borders, and they account for 90 percent of the total migrants worldwide.⁵

In terms of migrant workers, Ethiopia can be described as a sending state. The Middle East and Gulf countries are the major destinations of Ethiopian migrant workers, receiving an annual migrant of twenty to thirty thousands, estimated in 2009.⁶ When we put the Ethiopian labor migration to these places in terms of gender categorization, more than eighty percent of them are women.⁷

¹ ILO, *International Labor Migration: The Right Based Approach*, Executive Summary, Geneva, 2010, p. 1

² Timothy J. Hatton, *Should we have a WTO for International Migration?*, University of Essex, 2007, P. 3

³ Id, p. 2

⁴ Convention on the Rights of All Migrant Workers and Members of their Family, UN General Assembly, A/RES/45/15869th, 1990, Entered into Force in 1 July (2003) (hereafter ICMW), Art 2(1)

⁵ ILO, Supra note 1, p.3

⁶ MoLSA, *LMI Bulletin 2008/9*, p. 18. In the year 2008/9 21,256 employment contracts has been approved by MoLSA, of these 17,382 were female and 3, 874 were Male. It has to be noted that this shows the number of Migrant workers traveled through the legal channel.

⁷ Ibid

This is of high deviation from the global average, where only fifty one percent of migrant workers are women.⁸ Almost one hundred percent of Ethiopian women migrant workers traveling to the Middle East and the Gulf countries engage in domestic works.⁹

The category of women migrating to these nations came from the middle and low class Ethiopian families and who are earnestly in need to improve their lives and have better future for themselves and their families. Most of them migrate to the Middle East and Gulf countries to escape poverty and unemployment, and to earn enough money to send their children or siblings to school or to set up a small business.¹⁰ Therefore, migration to the Arab world has a unique social understanding among the Ethiopian community.

The economic contribution of remittance send from Ethiopians living and working abroad is significant. The remittance send through the formal channels between the year 2007 and 2010 was three billion USD. ¹¹ The total foreign currency earned from formal remittance flow in the fiscal year 2008 exceeds the total income generated from export of Coffee and Oil seeds, which are the top two export items of Ethiopia.¹²

The remittance that Ethiopian migrants in Middle East and Gulf countries send to their relatives is expected to be significant; this is mainly due to strong cultural expectation of responsibility for younger siblings and parents. Therefore, the issue of migrant workers, in addition of being a human rights concern, it is also an economic and development issue.

⁸ ILO, Supra note 1,p. 4

⁹ MoLSA, 2009 supra note 6,p. 19

¹⁰ Anti-slavery International, *Trafficking in Women, Forced Labor and Domestic Work in the context of The Middle East and Gulf Region*, Anti slavery International, (2009). P. 13

¹¹ Ethio-Channel, A weekly Amharic News paper, October 9, 2010, Vol. 05 No. 255 p. 4

¹² Ibid

Ethiopian migrant workers suffer from multifaceted issues as they migrate to the Middle East and Gulf countries. There are gross human and labor rights violations both in Ethiopia and in the countries of employment.

Ethiopian migrant workers lured by false promises of agents and illegal brokers usually travelled to their place of work with wrong expectations as to their work conditions and remunerations. These Migrant workers being unable to change their employers because of a sponsorship system that forbids women to leave their employers without his consent and satisfaction of their agencies makes them vulnerable to human rights and labor rights violations, which includes but not limited to, sexual exploitation and rape, salary withholding, confinement and forced labor.

Female labor migration into the Middle East and Gulf countries is concentrated in few female dominated occupations associated with labor market segmentations and stereotypes that defined the demand for women migrant workers, the demand is mainly for care services in less skilled and devalued jobs of domestic works.¹³ The problem in this is most countries exclude domestic workers from minimum wage laws as well as statutes providing for worker's compensation, unemployment benefits, health care and civil right laws. The case will even be more complicated for those who are victims of trafficking and smuggling, who will be regarded as "illegal" migrant or migrants with irregular status.

The protection of the rights of migrant workers must have been seen within the entire migration process, which comprises preparation for migration, departure, transit and the entire period of stay and remunerated activity in the state of employment as well as return to the state of origin or the state of habitual residence.¹⁴

¹³ Mona Chemalli Khalaf, *Women's International Labor Migration in the Arab world: Historical and Socio-Economic Perspective*, United Nation's Division for the Advancement of women, Malmo, Sweden, December (2003). p. 3

¹⁴ Theresa Lawson, "Sending Countries and the Rights of Women Migrant Workers: The case of

It is however apparently clear that the rights of migrant workers had not been sufficiently recognized everywhere and therefore require appropriate international standard of protection.¹⁵ Accordingly, there is a body international law instruments intended to recognize, promote and protect the rights of migrant workers.

The International law standard for the protection of the rights of these migrant workers can be seen in two complementary sets. First, those international Human rights law standards which are found in the international bills of human rights which contains the Universal Declaration of Human Rights (UDHR)¹⁶ and the two Human rights treaties, the International Covenant on Civil and Political Rights (ICCPR)¹⁷ and The International Covenant on Economic, Social and Political rights (ICESCR).¹⁸

Second, the International Labor Organization (ILO) and United Nations (UN) conventions pertaining to the protection of the rights of migrant workers, which includes Migration for Employment Convention of 1949 (revised) (No 97),¹⁹ Migrant Workers Conventions (supplementary Provision) 1975 (No 143),²⁰ International Convention for the Protection of the rights of All Migrant workers and Members of their families of 1990,²¹ UN convention Against Transitional Organized Crime (2000)²² UN protocol to prevent, suppress and Punish trafficking in persons, Especially women and children (The Trafficking Protocol)

Guatemala,” 18 *Harv. Hums.Rts.J.*225, p. 5

¹⁵ The need for appropriate international standards is recognized under the Preamble of ICMW, supra note 4

¹⁶ The Universal Declaration of Human Rights, G.A .Res. 217A (III), U.N. Doc. A/810, (December 10 1948).

¹⁷ The International Covenant on Civil and Political Rights, opened for signature Dec. 19,1966, entered into force Mar. 23, 1976, U.N.G.A Res. 2200 (XXI) UN doc. A/6316 (1967)

¹⁸ The International Covenant on Economic, Social and Cultural Rights, opened for signature Dec.19, 1966, entered into force, Jan.3, 1976, U.N.G.A Res. 2200(XXI), UN doc. A/6316 (1967)

¹⁹ The ILO Convention concerning Migration for Employment (Revised 1949), (C 97) Entered in to force, 22, January, (1952)

²⁰ ILO Convention concerning Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers (C 143), Entered into force: 09:12:1978

²¹ ICMW, supra note 4

²² UN convention Against Transitional Organized Crime A/RES/55/25 of 15, 2000 Entered into force 29 September (2003)

(2000),²³ Protocol against the Smuggling of Migrants by Land, sea and Air (Smuggling Protocol)(2000).²⁴

The body of international law is also supplemented by institutional arrangements with a mandate to supervise and check the implementation of these bodies of international instruments.

The International Labor Organization (ILO), in the preamble of its constitution is mandated for the protection of the rights of men and women migrant workers and the promotion of their equal opportunity and treatment.²⁵ ILO is also in direct supervision of its two important conventions; Migration for Employment Convention of 1949 (revised) (No 97), Migrant Workers Conventions (supplementary Provision) 1975 (No 143) and the recent non-binding ILO Multilateral Framework on Labor Migration (ILO 2005).

The United Nations also had institutional makeup for the advancement and protection of the rights of migrant workers, since the appointment of the UN special rapporteur on human rights of migrants in 1997 and the formation of the commission on the status of women. The Committee on Migrant workers is the UN treaty body that monitors the implementation of the convention on the Rights of All Migrant workers and members of their families.

When we see the Ethiopian legal framework concerning migration in general and migrant workers in particular we can see that there are some domestic laws of such relevance. These include the Constitution, particularly Art 6 and 32 and 33 of the same²⁶, Immigration proclamation No. 354/2003²⁷ and

²³ The Protocol to Prevent, suppress and punish Trafficking in persons, especially women and children, Supplementing the United Nations Convention against Transnational Organized crime, A/RES/55/25, 2000, Entered into Force, 25 December (2003)

²⁴ The Protocol Against the Smuggling of Migrants By Land, Sea and Air, Supplementing the United Nations Convention against transnational Organized Crime, A/RES/55/25, 2000, Entered into Force, 28 January (2004)

²⁵ International Labor Organization (ILO), Constitution of the International Labor Organization (ILO), 1 April 1919, available at: <http://www.unhcr.org/refworld/docid/3ddb53919.html>, accessed on 22, June, (2010)

²⁶ The Constitution of the Federal Democratic Republic of Ethiopia 1995, proc. No 1, *Neg. Gaz.*, 1st Year No.1

²⁷ Immigration proclamation 2003, proc. No. 354, *Neg. Gaz.*, 9th Year No. 75

Regulation No. 114/2004²⁸, Refuge Proclamation No. 409/ 2000²⁹, Proclamation No.270/2002,³⁰ and the most pertinent proclamation concerning migration for employment, Employment Exchange Service Proclamation No. 632/2009.³¹

The criminal code also contains provisions that punishes, facilitating irregular migration and involving in trafficking activities. These provisions includes Article 596, which criminalize enslavement and trafficking of such persons by land, sea or air; Article 597, which punishes trafficking in women and children and Article 598, which criminalize unlawful sending of Ethiopians for work abroad.

However, Ethiopia is yet to adopt a policy towards Labor Migration. The issue of migrant workers is also given to The Ministry of Labor and Social Affairs. Ethiopia does not have a bilateral agreement in area of labor migration and employment exchange with any one of the major receivers of Ethiopian migrant workers in the Middle East and Gulf countries. No labor attaché is placed in any of the Middle East and Gulf countries. Ethiopia has not ratified the ILO instruments on Migration for Employment Convention of 1949 (revised) (No 97), ILO's Migrant Workers Conventions (supplementary Provision) 1975 (No 143) and the most comprehensive International Convention on Migrant workers and Members of their families (1990) which entered in to force in 2003.

²⁸ Immigration Council of Ministers Regulation 2004, Regul, No. 114, *Neg. Gaz.*, 11th Year No.4

²⁹ Refuge Proclamation 2000, Proc. No. 409, *Neg. Gaz.*, 10th Year No. 54

³⁰ proclamation Providing Foreign Nationals of Ethiopian Origin with Certain Rights to be Exercised in their Country of Origin 2002, Proc. No. 270, *Neg. Gaz.*, 8th Year No.17

³¹ Employment Exchange Service Proclamation 2009, Proc. No. 632, *Neg. Gaz.*, 15th Year No 54

1.2 Statement of the Problem

Each day, many Ethiopian migrant workers, mainly women, travel through regular and irregular channels to some of the major destinations countries of the Middle East and the Gulf.

Ethiopian migrant workers primarily engage in low skilled areas of domestic and care services. They are usually victims of gross human, labor and migrant rights violations in their preparation for migration, travel to the place of work, in the place of Employment and after they return back home.

Domestic and care works are not regulated by the domestic labor laws of destination countries. This works which are primarily occupied by women migrant workers appeared to be left out from a right based discourse.

However, the major problems faced by migrant domestic workers are violations of those basic rights which are apparently protected under international Human rights instruments and the international law on migration.

Therefore, this research analyze the body of international human rights instruments and international law on migration and their applicability to migrant workers in general and migrant domestic workers in particular. It also deals with the rights of irregular migrant workers.

The research analyzes the responses taken by the Ethiopian government to protect the rights of Ethiopian migrant workers in Middle East and Gulf countries. The research also makes an effort to explore the major causes that hinders the promotion and protection of the rights of Ethiopian migrant workers in the Middle East and Gulf countries.

1.3 Research Questions

The research makes an attempt to address various questions, including:-

- What are the Human right imperatives that require the promotion and protection of rights of Ethiopian migrant workers traveling to Middle East and Gulf countries?
- Did the International instruments provide adequate protection to the rights of migrant workers in general and migrant domestic workers in particular?
- What are the rights of irregular migrant workers under the International law instruments?
- What are the factors that results in low ratification of the ILO and United Nations conventions on migrant workers by the receiving countries?
- What are the legal and institutional responses of the Ethiopian government towards protecting the rights of Ethiopian migrant workers, regularizing and benefiting from labor migration?
- How effective are the measures taken by the Ethiopian government to protect the rights of its migrant workers in Middle East and Gulf countries?

1.4 Objectives of the Study

A. General Objective

The general objective of the research is to analyze the minimum standards and rights accorded to migrant workers under the international law instruments. It also aimed at evaluating the violations of these rights and minimum standards when Ethiopian migrant workers travel to the Middle East and Gulf countries. The research also aimed at pinpointing the major bottlenecks of effective protection of the rights of Ethiopian migrant workers traveling to the Middle East and Gulf countries.

B. Specific Objectives

More specifically the paper aimed at achieving the following objectives

- Evaluate the rights accorded to domestic migrant workers and irregular migrants under the International Instruments.
- To scrutinize the exploitations and violations of the rights of Ethiopian migrant workers in the Middle East and Gulf countries.
- To analyze the general pattern of Ethiopian labor migration to the Middle East and Gulf countries.
- To evaluate the current strategies and methods used by the Ethiopian government for the protection of the rights of Ethiopian migrant workers and analyze their effectiveness.
- To look into possible measures that should be taken by the government of Ethiopia towards protecting of the rights of Ethiopian migrant workers.

1.5 Methodology

The Research employed both quantitative and qualitative approaches. In this regard, some important statistical and quantitative analyses are used throughout the research to show the magnitude, statistics and quantify data that can be numerically expressed and analyzed. A qualitative analysis of the information gathered from interviews, legal and policy documents as well as other sources of information are also used for the research.

Semi-structured interviews with twenty women preparing for migration to Middle East or Gulf countries have been conducted in Dessie town. The women were found at the local branch of the main department of immigration while they were processing their passports. They confirmed to the researcher that they are processing their passport to travel to Arab countries as migrant workers.

In Dessie and Kombolcha towns a semi structured interviews were conducted with twelve families with at least a woman who is a member of their family traveled to any of the Middle East or Gulf countries as a migrant worker.

The justification behind conducting these interviews in the above areas is because of existence of significant number of migrant workers to the Middle East and Gulf countries from North and South Wollo areas.³²

Using a snowball sampling method, where one contact leading to another, both in Addis Ababa and Dessie, twenty semi structured interviews were conducted with returnee migrant women workers, who has been working in Arab countries within the past five years.

Seven owners or managers of private employment agencies operating in Addis Ababa are also interviewed. Interviews with an officer from Ministry of foreign Affairs of Ethiopia and two other officers from ministry of Labor and Social Affairs were also incorporated to the research.

Secondary data from International Organization for Migration (IOM) Ethiopia mission, Ethiopian women Lawyers Association, articles and journals are also used as inputs for the research.

A uniform citation guided by the 1965 book of citation of the faculty of law of Haile Selassie University, has been used throughout the research. However, in those areas where there are no citation guidelines under the book, such as citation of internet materials, citation of international instruments, the Blue book constant rules of citation has been used.

³² Interview with an officer from MoLSA, September 21, 2010, Addis Ababa, Ethiopia tells that Addis Ababa, North and South Wollo and Arsi areas are sources of the highest number of documented migrant workers.

1.6 Significance

The research brings results that help to appreciate the International law framework for the protection and advancement of the right of migrant workers. It will also help to identify the extent to which the rights of Ethiopian migrant workers are violated when they try to migrate to the Middle East and the Gulf countries; work as domestic workers and return home as returnee migrant workers.

The research will help to understand the existing problem in the protection of the rights of Ethiopian migrant workers traveling to the Middle East and Gulf countries. It will also help as an input for framing domestic policies for the advancement and protection of the rights of migrant workers.

The outcome of the research can also be vital reference to design strategies of helping Ethiopian migrant workers for governmental and nongovernmental organizations entrusted and interested in promoting and protecting the rights of women migrant workers travelling to the Middle East and Gulf Countries.

1.7 Limitations

There is a significant lack of statistics and appropriate data on the exploitations and some of the clandestine abuse of the rights of migrant workers that are taking place within Ethiopia and destination countries.

The researcher encounters problems in finding some of the primary witnesses of the severe abuse and human rights violations in the place of work, stay and detention. It was very difficult to find, persuade and convince the “illegal” agents and people participating in sending women migrant workers to Middle East and Gulf countries. It has also been very difficult to have a trust of those women migrant workers preparing for migration to the Arab countries, which results in a shallow conversation as to their main causes of migration.

The researcher also encounters problems to find some necessary data from the Ministry of Labor and social affairs and Ministry of foreign affairs, mainly due to lack of proper documentation and absence of officers responsible for dispensation of information.

The number of interviews are small and it is by no means representative of hundred thousands of Ethiopian women migrate to the Middle east and Gulf countries, engaged in domestic work in the Middle East and gulf countries and return to their home every day. The purpose of these interviews was not to make conclusions but to take cases and to see trends and to update some of the already documented issues in previously made researches.

1.8 Delimitations

This research aimed at a right based discourse towards protection of the rights of migrant workers in general and Ethiopian migrant workers traveling and working in some of the Middle East and Gulf countries, in particular.

Therefore, the issues of Ethiopian migrant workers traveling to places other than the Middle East and Gulf destination countries are not within the scope of this research.

In terms of protecting migrant workers, measures taken by other organs which include NGOs and Multinational organizations are not the direct concerns of this work; however, the research deals with the measures and actions taken by the government of Ethiopia.

1.9 Organization of the thesis

The thesis is divided into five chapters, the first chapter is an updated version of the proposal of the study and it is intended to help the reader finds a brief glance of the theme of the research and to guide the expectation of the reader as s/he go through the research. The second chapter deals with the rights of

migrant workers under international law instruments. The third chapter went to explore the history of Ethiopian labor migration to the Middle East, the push and pull factors of these migration and routes or channels of Ethiopian migration to the Middle East and Gulf countries. The fourth chapter explores the violation of rights of Ethiopian migrant workers and the responses and measures taken by the Ethiopian government to regulate and regularize the migration. This chapter also deals with factors that affect protection of the rights of Ethiopian migrant workers. Conclusions and recommendations come at the fifth chapter.

Chapter Two

2. The Rights of Migrant Workers under International Law

This chapter will focus on the international law framework for the protection of the rights of migrant workers. The applicability of the international human rights instruments to migrant workers is closely analyzed under this chapter. A detail analysis of the United Nations and International labor organization's conventions on migration and migrant workers is also made.

The international protection of Undocumented and domestic and care migrant workers is also considered.

2.1 Definition of Migrant workers Under International Instruments

The ILO convention on migration for employment (revised) (No. 97), 1949¹ define “A Migrant for Employment” as “a person who migrate from one country to another with a view to being employed otherwise than on his own account and includes any person regularly admitted as a migrant for employment.”² The convention excludes, frontier workers, short-term entry of members of the liberal professions and artistes and seamen from its scope.³

¹ The ILO Convention concerning Migration for Employment (Revised 1949), (C 97) Entered in to force, 22, January, 1952. (hereafter C 97)

² Id, Article 11(1)

³ Id, Article 11(2)

According to the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICMW) (1992)⁴ "migrant worker" refers to a person who is to be engaged, is engaged or has been engaged in a remunerated activity in a State of which he or she is not a national."⁵ ICMW mention list of those people who are not regarded as migrant workers for the purpose of the convention.⁶

The status of "migrant worker" for the cases of the above instruments is hinged up on the requirements of once participation in a remunerated activity and being employed outside of his country of nationality. The term 'employed' as used under the former instrument and "remunerated activity" in the latter document are not further qualified.

It has to be understood that "migrant workers" are different from "refugees". In principle, refugee's rights are handled by the 1951 convention on the status of refugees⁷ whereas migrant workers' rights are defined by the 1990 UN Convention on Migrants' rights and ILO conventions on Migrant workers.

2.2 The Rights of Migrant workers Under International Law

The International law instruments and standards defining and protecting the rights of migrant workers can be seen in to two complementary sets.

⁴ International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families A/RES/45/158, 1990, Entered Into Force in 1 July 2003.(hereafter ICMW)

⁵ Id, Article 2(1)

⁶ Id. Article 3

The present Convention shall not apply to:

(a) Persons sent or employed by international organizations and agencies or persons sent or employed by a State outside its territory to perform official functions, whose admission and status are regulated by general international law or by specific international agreements or conventions (b) Persons sent or employed by a State or on its behalf outside its territory who participate in development programmes and other co-operation programmes, whose admission and status are regulated by agreement with the State of employment and who, in accordance with that agreement, are not considered migrant workers; (c) Persons taking up residence in a State different from their State of origin as investors;(d) Refugees and stateless persons, unless such application is provided for in the relevant national legislation of, or international instruments in force for, the State Party concerned; (e) Students and trainees; (f) Seafarers and workers on an offshore installation who have not been admitted to take up residence and engage in a remunerated activity in the State of employment.

⁷ Convention relating to the Status of Refugees, GAR 429(V), December 1950, entered into force 22, April, 1954.

The first of these refers to those International Human rights law instruments which are found in the international Bills of Human Rights, which contains the Universal declaration of Human Rights (hereafter, UDHR)⁸ and the two general Human rights treaties, the International Covenant on Civil and Political Rights (hereafter, ICCPR)⁹ and The International Covenant on Economic, Social and Political rights (hereafter, ICESCR).¹⁰

The second set includes the ILO and UN conventions pertaining to the protection of the rights of migrant workers, which together form the International law on Migration.

The ILO instruments includes; Migration for Employment Convention of 1949 (revised) (No 97)¹¹, Migrant Workers Conventions (supplementary Provision) 1975 (No 143)¹² and the recent non-binding ILO Multilateral Framework on Labor Migration (ILO 2005).¹³

UN Instruments includes; International Convention for the Protection of the rights of All Migrant workers and Members of their families of 1990, which is the only UN instrument directly applicable for migrant workers. In their broader applications, UN convention Against Transitional Organized Crime (2000)¹⁴, UN protocol to prevent, suppress and Punish trafficking in persons, Especially women and children (The Trafficking Protocol) (2000)¹⁵, Protocol

⁸ The Universal Declaration of Human Rights, G.A .Res. 217A (III), U.N. Doc. A/810, December 10 1948.

⁹ The International Covenant on Civil and Political Rights, opened for signature Dec. 19,1966, entered into force Mar. 23, 1976, U.N.G.A Res. 2200 (XXI) UN doc. A/6316 (1967) (Hereafter, ICCPR)

¹⁰ The International Covenant on Economic, Social and Cultural Rights, opened for signature Dec.19, 1966, entered into force, Jan.3, 1976, U.N.G.A Res. 2200(XXI), UN doc. A/6316 (19967) (Hereafter, ICESCR)

¹¹ C No. 97, Supra note 1

¹² ILO Convention concerning Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers (C 143), entered into force: 09:12:1978 (hereafter C 143)

¹³ ILO International Migration Program, *ILO's Multilateral Framework on Labor Migration; Non-binding nonbinding principles and guidelines for a right based approach*, Geneva, ILO Labor office, (2005)

¹⁴ UN convention Against Transitional Organized Crime A/RES/55/25, 2000, Entered into force 29 September 2003

¹⁵ The Protocol to Prevent, suppress and punish Trafficking in persons, especially women and children, Supplementing the United Nations Convention against Transnational Organized crime, A/RES/55/25, 2000, Entered into Force, 25 December 2003

against the Smuggling of Migrants by Land, sea and Air (Smuggling Protocol) (2000)¹⁶, also help to protect the rights of Migrant workers.

It is a sacrosanct norm that all persons, regardless of their nationality, race, legal or other status, are entitled to fundamental human rights. In addition, Migrants are also entitled to certain human rights and protections specifically linked to their vulnerable status.

International Human rights law has developed separately from international law on migrants, but neither is exclusive rather they work together for the advancement and protection of the rights of migrant workers.¹⁷

Now let us critically analyze the synthesis of international human rights and international law on migration, towards recognition, promotion and protection of the rights of migrant workers.

2.2.1 International Human Rights Instruments Applicable to Migrant workers

International Human rights law found in the international “Bill of Rights”, which contains the Universal Declaration of Human Rights and two general human rights treaties, the international covenant on Civil and Political Rights and the International Covenant on economic, social and cultural rights and other International instruments for the protections of fundamental human rights are universally applicable for all human beings regardless of their nationality and legal status.¹⁸

¹⁶ The Protocol Against the Smuggling of Migrants By Land, Sea and Air, Supplementing the United Nations Convention against transnational Organized Crime, A/RES/55/25, 2000, Entered into Force, 28 January 2004

¹⁷ Guy S. Goodwin-Gill, “International law and Human rights: Trends Concerning International Migrants,” *International Migration law Review*, Vol. 23 No.3, 1989. P. 1

¹⁸ Universal Declaration of Human Rights, Supra note 8, Art 2. In addition, the generic designations of rights in terms such as “everyone”, “no one” which are popular under the International Human rights Instruments, are often understood to guarantee the nondiscriminatory application of the rights found under the instruments.

Since 1945, the UN has progressively developed human right principles by reliance on Article 55 and 56 of its charter.¹⁹ Through adoption of the Bill of rights and other diversified human rights instruments, the UN dissolve the controversy which had hitherto divide adherents of the international minimum standard school and those who argued foreign nationals could not expect treatment better than that accorded to local citizens.²⁰ Therefore the international human rights instruments appeared to be the universal instruments accepted as a yardstick towards defining fundamental rights of human beings.

According to Cholewinski, the Human rights standards embodied under the UDHR, ICCPR and ICESCR are universal for two reasons. First they are standards open to ratification by all states and secondly, they are universal in personal scope, which is reflected in the use of terminology such as ‘everyone’, “all persons”.²¹

The existence of non-discrimination as a virtual ground norm and the inclusion of “nationality” as a ground of non discrimination under the major international human rights instruments are vital in extending the rights granted therein to both nationals and non-nationals.

However, “nationality” as a ground of non-discrimination is not unequivocally established within the existing international Human rights instruments, therefore this created an illusion that non-nationals are not entitled to the same human rights as nationals. However, discrimination on the basis of nationality is expressly and impliedly outlawed under the major human rights instruments.

¹⁹ United Nations, Charter of the United Nations, 24 October 1945, UNTS XVI, Article 55 and 56

²⁰ Guy S. Goodwin-Gill, *supra* note 17. P. 1

²¹ Ryszard Cholewinski, *International Human Rights Standards and the Protection of Migrant Workers in the Asia Pacific Region*, p. 6, available at: [http:// www.2008.december18.net/web/docpapers/doc552.pdf](http://www.2008.december18.net/web/docpapers/doc552.pdf), last visited at August 6 2010.

Another major issue needed to be considered is the status of “*de facto*” discrimination and discrimination by non-state actors. These are uniquely important for migrant workers as the place where they face severe discriminations are at the work places where they are discriminated by non-state actors and it is usually “*de facto*” rather than “*de jure*”. Therefore, does international human rights law obliged states to outlaw and observe the proper enforcement of international human rights principles in cases of *de facto* discriminations and discrimination by non- state actors?

Migrant workers are human beings both in the origin and destination countries; therefore they shall be entitled to a uniform protection of their human rights. International Bills of human rights go with the person of every individual.

There are certain rights under the international Human rights instruments which proclaim equal protection and due process as inalienable rights which are inherent limits to the power of the government.²² They include the right to life, liberty and security, to freedoms of speech, thought, conscience and religion, to freedom of movement, freedom from punishment under retrospective laws, to non-discrimination, and to equality before and equal protection of the law. These rights as legal rights have frequently been proclaimed self-evident, but they are also authoritatively documented and established in international Jurisprudence.²³ They apply generally and independent of the individual’s status as citizens or non citizen.

Now let us analyze the inclusion of non-discrimination as a principle and “nationality” as a ground of non-discrimination under the major international Human rights instruments. Therefore, International Human right instruments work for everyone without any discrimination and migrants as non-nationals

²² Id, p. 3

²³ Id, p. 8

are entitled to the rights under the international human rights instruments because nationality is not a ground of discrimination under the instruments.

The Universal Declaration of Human rights (UDHR) include a broad non-discrimination clause.²⁴ The list of grounds of nondiscrimination is not exhaustive as it can be inferred from the term “such as” so it might include, race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.²⁵

The International convention on the Elimination of all forms of racial discrimination (hereafter, ICERD)²⁶ enunciates a principle of non-discrimination in terms of any distinction, exclusion, restriction or preference based on the ground of race, which has the purpose or effect of nullifying or impairing human rights and fundamental freedoms.²⁷ Under ICERD’s broad non discrimination clause is included. Therefore states shall not apply any law or policy which inflicts discrimination on the basis of any grounds mentioned in the convention.

ICERD binds States parties to outlaw discrimination on the ground of race, color, descent, or national or ethnic origin against all individuals within the jurisdiction of the state and to enact sanctions for activities based upon such discrimination.²⁸ One can argue that the absence of a clear mention of “nationality” as a ground of non-discrimination under the convention stultify the importance of the principle for migrant workers, which are obviously non-nationals.

²⁴ UDHR, supra note 8, Article 2

²⁵ Ibid

²⁶ International convention on the Elimination of all forms of racial discrimination, UNGAR No. 47/111 , Entered in to Force, 4 January 1969. (hereafter ICERD)

²⁷ Id, Article 1

²⁸ Id, Article 2

The Covenant on Civil and Political Rights (ICCPR)²⁹ and International Covenant on Economic, Social and Cultural rights (ICESCR)³⁰ contain basic provisions on non-discrimination.

The covenant on civil and political Rights obliges states to respect and to ensure the rights to “all individuals within its territory and subject to its jurisdiction”.³¹ The anti-discrimination provision is widely drawn and includes national or social origin, birth or other status.³² Article 4(1), which permits derogation in certain circumstances, contains a narrower statement of the principle of non-discrimination; this would allow distinction between nationals and non-nationals, but measures of derogation must be consistent with states’ other obligations under international law.³³

However, no derogation is permitted from those provisions which guarantee the right to life, or which forbid torture or inhuman treatment, slavery, servitude, conviction or punishment under retroactive laws.³⁴ The right to recognition as a person before the law and the right to freedom of conscience, thought and religion are also declared in absolute terms.³⁵ Therefore migrants have inalienable rights as declared under the ICCPR.

ICESCR also declares states undertake to guarantee the various rights without discrimination of any kind, including specifically discrimination as to the “birth or other Status”.³⁶ An exception allows “developing countries” to determine to what extent would guarantee economic rights to non-nationals.³⁷ However, apart from this provision, no special limitation on the rights of foreign national appears in other articles of the covenant.

²⁹ ICCPR, Supra note 9

³⁰ ICESCR, supra note 10

³¹ ICCPR, supra at note 9, Article 2(1)

³² Ibid

³³ Id, Article 4(1)

³⁴ Id, Article 4(2)

³⁵ Id, Article 16, article 18(1) (2), Article 19

³⁶ ICESCR, supra at note 10, Article 2(2)

³⁷ Id, Article 2(3)

The Convention on Elimination of Discrimination against Women (CEDAW)³⁸ also draws a broad non discrimination clause. Some argued that the convention has potent tools for defining the rights of women migrant workers especially those involved in less skilled areas of domestic work.³⁹ Jennifer argued that the substantive equality guarantee of CEDAW, combined with the obligation of the state to take all appropriate measures to eliminate discrimination by “any person, organization, or enterprise,” render the Convention a powerful tool to hold both sending and receiving states accountable for violations of rights of women migrant workers.⁴⁰ Given both the larger number of states that have ratified CEDAW⁴¹ and the convention’s optional protocol mechanism,⁴² CEDAW provides the most useful tool for holding states accountable for violations of the human rights of migrant workers within their territories.

Furthermore, CEDAW’s guarantee of substantive equality is particularly valuable for women migrant workers claiming the rights.⁴³

CEDAW does not contain a new version of rights, but it consolidates the provisions of existing UN instruments concerning discrimination on the basis of sex and applies to citizens and non citizens.⁴⁴ Similar to the above mentioned International human rights instruments, no specific mention of migrant workers is found in the text of CEDAW; however CEDAW contains a broad discrimination definition.⁴⁵ It also condemn discrimination against women “in all forms” and obliges states to take appropriate measures “in all

³⁸ Convention on the Elimination of All forms of Discrimination Against Women, United Nations, Treaty Series, Vol.1249, Entered in to Force, 3 September 1981(hereafter CEDAW)

³⁹ Jennifer S. Hainsfurther, “A right-based approach: Using CEDAW to protect the human Rights of Migrant workers,” *Am. U. Int’l L. rev.*, 2009, p.5

⁴⁰ Ibid

⁴¹ 186 states have ratified CEDAW as of 11/11/ 2010 see <http://www.treaties.un.org/Pages/Treaties.aspx?id=4&subid=A&lang=en>, accessed on 11/11/2010.

⁴² Optional Protocol to the Convention on Elimination of All Forms of Discrimination against Women, G.A. Res. 54/4, U.N. GAOR, 54th Sess., U.N. Doc. Ares/ 54/4 October 15, (1999)

⁴³ Jennifer S. Hainsfurther, *supra* note 39 p. 6

⁴⁴ CEDAW, *supra* note 38, the preamble

⁴⁵ Id, Article 1

fields” to guarantee women enjoy their human rights.⁴⁶ CEDAW, in contrast to other several human rights treaties it does not explicitly distinguish between the rights of citizens and non citizens.⁴⁷

There are certain rights which are proclaimed under the international bill of human rights which are uniquely important for migrant workers in general and migrant domestic workers in particular. These rights includes, the right of everyone to opportunity to gain their living by works which is freely chosen and accepted, and the right of everyone to enjoyment of just and favorable conditions of work, the right to leave any country including once own⁴⁸, the right to return to state where one is a national,⁴⁹ freedom of movement,⁵⁰ Freedom from; slavery,⁵¹ forced labor,⁵² torture or cruel, inhuman or degrading treatment or punishment.⁵³

The treaty bodies monitoring the implementation of the legally binding human rights treaties have dispelled any doubts as to whether the principle of non-discrimination applies to non-citizens. The Human Rights Committee, interpreting Article 2 of the ICCPR has clarified that ICCPR applies to non-citizens on equal terms with nationals.⁵⁴

...In general, the rights set forth in the covenant apply to everyone, irrespective of reciprocity, and irrespective of his or her nationality or statelessness. Thus, the general rule is that each one of the rights of the covenant must be guaranteed without discrimination between citizens and aliens. Aliens

⁴⁶ Id, Article 3

⁴⁷ For example, ICCPR Article 25 grant several rights to citizens in an exclusive manner, Article 2 of ICESCR, permits developing countries to limit the economic rights of non-nationals. ICMW, distinguish between the human rights of all migrant and the human rights of documented migrant workers,

⁴⁸ UDHR, supra note 8, Article 13(2), ICCPR, supra note 9 Article 12(2) and CERD, supra note 28, Article 5(d) (ii)

⁴⁹ UDHR, supra note 8, Article 13(2), ICCPR, supra note 9, Article 12(4) and CERD, supra note 28, Article 5(d)(ii)

⁵⁰ UDHR, supra note 8, Article 13, ICCPR, supra note 9, Article 12, under ICCPR freedom of movement and right to choose Residence, are subjected to once lawful existence.

⁵¹ UDHR, supra note 8, Article 4, ICCPR, supra note 9, Article 8(1)

⁵² ICCPR, supra note 9, Article 8(3)

⁵³ UDHR, supra note 8, Article 5 and ICCPR, supra note 9, Article 7

⁵⁴ Ryszard Cholewinski, “The human rights of Migrants: Vision of Equality,” 22 *Geo. Immigr. L. J.* 177, 2008, p. 3

receive the benefit of the general requirement of non-discrimination with respect to the rights guaranteed in the covenant, as provided for in Article 2 thereof. This guarantee applies to aliens and citizens alike...”⁵⁵

The Non-discrimination principle of ICESCR has been applied by the Committee of Economic, Social and Cultural rights to unjust distinction based on nationality and immigration status.⁵⁶

The jurisprudence of International human rights instruments and the practice of the committees monitoring the Instruments dictate that human rights protected by the instruments are applicable without any discrimination of what so ever unless the instruments allowed a possibility of discrimination on the grounds clearly stipulated therein. Therefore basic human rights are applicable to migrant workers both in their countries of origin and countries of destination.

In the process of promoting and protecting the rights of migrant workers the international law instruments put an obligation on both origin and destination countries.⁵⁷ In this regard it is an accepted norm that all states must recognize and protect the fundamental human rights which are common for all people including Migrant workers.

Under the world conference on human rights, States declare that they will extend due protection to the human rights of migrant workers.

...great importance must be given to the promotion and protection of the human rights of persons belonging to

⁵⁵ U.N Human Rights Comm’n General Comment 15, the Position of Aliens under the Covenant, 27th Sess., U.N Doc, A/41/40(Nov.4, 1986), in Ryszard Cholewinski, Id, p. 5

⁵⁶ Committee on economic, Social and Cultural Rights, concluding observations of the committee on economic, Social and Cultural Rights: Dominica republic, p 34 UN. Doc. E/C. 12/1/Add. 16(December 12 1997) (Recommending, to Dominica republic, “ the state party take all necessary measures to ensure that Haitian Immigrants in the Dominica Republic enjoy their economic, social and cultural rights fully without discrimination”)

⁵⁷ This is a simple corollary that every country has the duty to recognize, promote and protect fundamental human rights of persons within its territory.

groups which have been rendered vulnerable, including migrant workers, the elimination of all forms of discrimination against them.... The World Conference on Human Rights urges all State to guarantee the protection of the human rights of all migrant workers and their families. The World Conference ... considers that the creation of conditions to foster greater harmony and tolerance between migrant workers and the rest of the society of the State in which they reside is of particular importance...⁵⁸

While origin and destination countries share the responsibility to protect the rights of migrant workers, their respective obligation differs for two reasons. First, different events take place during worker's migration experience in their own countries before they leave, than take place after their departure and during their work in destination countries. Second, origin and destination countries have the ability to exercise more supervision in their own countries and much less ability to control what takes place in another.

Therefore, during the first stage before migrants leave home, greater responsibility rests on their countries of origin. During the second stage, that is, after their arrival and while they work, greater responsibility rests on the countries of destination. During the third stage when they return home, greater responsibility shifts back again to their countries of origin.

However, the effective implementation of International standards depends strongly on cooperation between sending and receiving countries, in a mutually beneficial manner.

⁵⁸ Vienna Declaration, the World Conference on Human Rights, Vienna, United Nations Doc. A/CONF 157/23, (1993), Part II, Paragraphs 24, 33 and 34.

2.2.2 International Convention on the Rights of All Migrant Workers and Members of their Families (1990)

The International Convention on the rights of all migrant workers and members of their families usually shortened as Convention on Migrant Workers (hereafter, ICMW) is the only UN instrument directly relevant to the protection of the rights of migrant workers.⁵⁹ The ICMW does not attempt to create new rights. Rather, it explicitly extends to migrants those rights set forth in other UN documents.⁶⁰ In enumerating these rights, the convention invokes a principle of equal treatment between migrant workers and nationals.⁶¹

The convention is composed of nine parts. Part I, gives a conceptual definition, Part II provides general non-discrimination clauses. Part III lists the right that all migrants should enjoy, irrespective of their status, which therefore applies to undocumented migrants; Part IV then adds rights that are specific to migrants in regular situation. Part V deals with the rights applying to specific categories of migrants, while part VI details the obligation and responsibilities of states in combating illegal migration and establishing lawful migration condition. Finally Parts VII to IX deal with the application of the Convention as well as with possible reservation and restriction by states.

The ICMW is the most recent UN human rights instrument to come into force, 1 July 2003, which is after thirteen years of its adoption. Currently the convention had forty- three parties.⁶² The convention provides that all part of

⁵⁹ Ryszard Cholewinski, *Migrant Workers in International Human Rights Law: their Protection in the Country of Employment*, Clarendon Press Oxford (2003) p. 120

⁶⁰ Antoine Pecoud and Paul de Guchteneire, *Migration, human Rights and the United Nations: an Investigation into the low ratification record of the UN Migrant Workers Convention*, Global Commission on International migration, Geneva, (2004), p. 6

⁶¹ Jennifer Yau, *Promise and Prospects of the UN's Convention on Migrant Workers*, Migration Policy Institute, (2005), p. 5

⁶² Ratification Status at: 24-09-2010, found at http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-3&chapter=4&lang=en, accessed on 24/09/2010.

the treaty must be accepted by state parties,⁶³ unlike ILO Convention No.143, which allow selective ratification of certain Provisions.

Most of the major receiving countries are not parties to it.⁶⁴ It has been stated that the disagreement in the inclusion of the rights of undocumented migrant workers, the view that the instruments is drafted considering factors that are no more relevant to the issue of migration today, where now labor migration is basically held by private employment agencies and migrants' own network, unlike the period of 1970s and 1980's where migration was basically through government domain and the significant administrative burdens and challenge to resource of countries are the usual reasons for a limited membership by the major receiving countries.⁶⁵

Some also reasoned the convention's limited ratification stating that it is a "pre-globalization" treaty that does not fully take into account the changes in the world economy that took place in the last decade, including the decline of the industrial sector in advanced economies, the growing importance of the service sector, the deregulation of some economic sectors, the withdrawal of that state from large segments of economic activity, and the growth of small firms and self-employment.⁶⁶

The Major Human right Provisions of the ICMW apply equally to documented and non-documented workers, who are to be protected by both sending and receiving countries.⁶⁷ Within the ICMW, states parties pledge to respect and

⁶³ ICMW, Supra note 4, Article 88

⁶⁴ Ibid, it can be discern from the ratification list that no major receiving countries of Europe, Middle East, North America and Australia are parties to the treaty.

⁶⁵ Jennifer Yau, supra note 61, p. 8

⁶⁶ Antoine pecoud and Paul de Guchteneire, Supra note 60, p.10

⁶⁷ ICMW, Supra note 4, Article 7, states that: The Present Convention is applicable, except as otherwise provided hereafter, to all migrant Workers and members of their families without distinction of any kind such as sex, race, color, language, religion or conviction, political or other opinion, national, ethnic or social origin, nationality, age, economic position, prosperity, marital status, birth or other status.

ensure the migrant workers' rights enumerated therein without distinction on the basis of *inter alia*, sex, race, national origin, and nationality.⁶⁸

Among the rights the convention provides for are the right to leave any state, including one's state of origin;⁶⁹ "the Right to Life";⁷⁰ the right to be free from "torture or cruel, inhuman or degrading treatment or punishment"⁷¹ and the right to be free from being held in Slavery servitude or from performing forced or compulsory labor.⁷²

The convention is divided in to two parts. The first part identifies fundamental rights for all workers, including the undocumented; the second category provides rights for documented workers. The convention granted documented migrant workers a more extended rights.⁷³

However, this two-tiered approach has been criticized as departing from the existing standards in the ICCPR, ICESCR, and ILO Conventions, which arguably protect illegal migrants as well.⁷⁴

The convention permits state parties to limit the rights of particular categories of migrant workers, including temporary migrant workers, project-tied workers, and specified-employment workers.⁷⁵ It oblige states to consult and cooperate one another to ensure that international labor migration takes place in sound, equitable, humane, and lawful conditions. Includes collaboration to prevent and eliminate irregular migration through imposition of sanctions on those such as traffickers, smugglers or employers who exploit irregular migrants.⁷⁶

⁶⁸Ibid

⁶⁹ Id. Art. 8. This is subject only to the restrictions provided by law that "are necessary to protect national security, public order (*ordere Public*), public health or morals or the right and freedoms of others and are consistent with the other rights recognized in the present part of the convention."

⁷⁰ Id. Art. 9

⁷¹ Id. Art. 10

⁷² Id. Art 11

⁷³ See for example the rights listed under Art 43 of ICMW, which includes equality with nationals of the state of employment in respect with, access to education, vocational training, Housing and Social housing schemes, to health services etc.

⁷⁴ Guy S. Goodwin-Gill, *Supra* note 17, p. 34

⁷⁵ ICMW, *Supra* note 4, Article 2(2)

⁷⁶ Id, Article 68,

According to Chelckowniski, the inclusion of this clause dispels the myth that ICRMW somehow promotes irregular migration.⁷⁷

The Committee on Migrant workers is the UN treaty body that monitors the implementation of the convention.⁷⁸ Within the UN, a working group of Intergovernmental experts on the Human rights of was appointed by the UN Human rights Commission in 1997.⁷⁹ It recommended a specialized mechanism to follow-up the protection of migrants' rights; this lead to the appointment of a special rapporteur on Human rights of Migrants in 1999.⁸⁰

Neither Ethiopia nor any of the Middle East and Gulf Countries ratified the convention.⁸¹

2.2.3 ILO Conventions On Migrant Workers

Defense of interest of workers employed abroad is expressly included in the preamble of its constitution, among the objectives of the international labor organization.⁸² The ILO standard setting activities have in turn produced a Varsity of conventions and recommendations aimed at migrant workers, the most important of which that apply directly to migrant workers are the Migration for employment Convention (Revised) 1949 (NO.97);⁸³ The Migration for Employment Recommendation (revised) 1949 (No. 86);⁸⁴ the Migrant

⁷⁷ Chelckowniski, Supra note 54, p. 188

⁷⁸ The Committee On Migrant Workers, the structure and functions of the committee can be accessed from the official Website of the Committee, <http://www.ohchr.org/english/bodies/cmw/index.htm>.accessed on August 12, 2010.

⁷⁹ Bustamante, Jorge A., "Immigrants Vulnerability as Subject of human Rights", *international Migration Review*, (2002) p. 21

⁸⁰ Mattila, Heikki S, "Protection of Migrants' Human rights: Principles and practices", *International migration V. 38 Issue 6*, 2000, p. 53

⁸¹ Ratification Status at: 24-10-2010, available at http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-3&chapter=4&lang=en accessed on 24. 10. 2010.

⁸² International Labor Organization (ILO), Constitution of the International Labor Organization (ILO), 1 April 1919, available at: <http://www.unhcr.org/reforward/docid/3ddb53919.html> accessed on 22, September 2010.

⁸³ C 97, Supra note 1

⁸⁴ The ILO Migration for employment Recommendation 1949 (No. 86), Supplementing C 97.

Workers (Supplementary Provisions) Convention 1975 (No.143);⁸⁵ the Migrant Workers Recommendation 1975 (No.151).⁸⁶

The ILO's core conventions concerning the abolition of forced labor, elimination of child labor, trade union rights and non-discrimination applies to both national and non-nationals.

When considering the application of International labor law to all persons, including migrant workers and members of their families, it is important to note that non-ratification of one or more of the eight fundamental ILO conventions, which are concerned with the abolition of forced labor, elimination of child labor, trade union rights and non-discrimination,⁸⁷ does not excuse member states from the general obligation found therein. This can be discern from the ILO declaration of fundamental principles and rights to work,⁸⁸ which underscore that by virtue of their membership in the organization states are required to respect, promote and realize in good faith the principles concerning the fundamental rights which are the subject of these conventions.⁸⁹

Conventions No.97, convention No. 143 and their optional protocols are ILO instruments directly relevant to the protection of the rights of Migrant workers. These conventions, similar to ICMW, follow the principle of protection of the rights of migrant workers through the whole stage of migration, which includes

⁸⁵ C 143, Supra note 12

⁸⁶ The ILO migrant workers Recommendation 1975 (No.151), supplementing C 143.

⁸⁷ These Conventions which are considered as core ILO conventions includes; Convention (No.122) concerning Employment Policy, Convention (No.154) concerning the Promotion of Collective Bargaining, Convention (No.169) concerning Indigenous and Tribal Peoples in Independent Countries, Convention (No.182) concerning Prohibition and Action for Elimination of Child labor, Convention (No.29) concerning Forced Labor, Convention (No.87) concerning Freedom of Association and Protection of the Right to organize, Convention (No.98) concerning the Application of the Principles of the Right to, Organize and to Bargain Collectively, Convention (No.100) concerning Equal Remuneration for Men and Women Workers for Work of Equal Value, Convention (No.111) concerning Discrimination in Respect of Employment and Occupation, Convention (No.138) concerning Minimum Age for Admission to Employment.

⁸⁸ ILO, Declaration on Fundamental Principles and Rights to Work, ILO (1998)

⁸⁹ Id, Art 2, the convention contains a "promotional follow-up" enabling the ILO member states which have not ratified these conventions to supply information on the efforts undertaken to give effect to the fundamental rights and freedoms.

preparation to migration, period of stay and work and finally return to their country of origin.

Convention No.97 covers the conditions governing the orderly recruitment of migrant workers and also enunciates the principle providing equal treatment with national workers with respect to working conditions, trade union membership, and enjoyment of the benefits of collective bargaining, accommodation, social security, employment taxes and legal proceedings relating to matters outlined in the convention.⁹⁰

Whereas Convention No. 143 has two objective first, to regulate migration flows, eliminate clandestine migration and combat trafficking and smuggling activities; and second, facilitate integration of migrants in host societies.⁹¹

The further objective of convention NO.143 is the suppression of migration in abusive conditions, including illegal migration and illegal employment of migrant workers.⁹² States are required to take steps to detect and suppress such activities and to provide minimum legal protection to migrant workers whose situations are irregular; basic human rights, which are not conditional up on the circumstances of residence.⁹³

The Convention also provides specific guidance regarding treatment of irregular migration. It contains minimum norms of protection applicable to migrants in irregular situation, or who were employed illegally, including in situations where their status cannot be regularized.⁹⁴ This principles is expressed in Article 1, where it establishes the obligation of ratifying States to “respect the

⁹⁰ C 97, Supra note, 1, Article 6(1)

⁹¹ C 143 supra notes 12, See, part I of the Convention dealing with Migration in Abusive Condition and Part II dealing with equal opportunity and treatment of migrant workers.

⁹² Id, Article 3

⁹³ A joint reading of Article 1 and Article 3 of C. 143

⁹⁴ Patric A. Taran, Eduardo Geronimi , *Globalization, Labor and Migration: Protection is paramount*, ILO, Geneva (No year) p. 24

basic human rights of all migrant workers,” independent of their status or legal situation in the host state.⁹⁵

The ILO conventions rely on the principle of choice of methods by states and on the principle of progressive implementation, an approach intended to encourage greater readiness on the part of states with different legal and administrative systems, and at different levels of development, to adopt the standard in question.⁹⁶

In promoting and developing standards, the ILO has nonetheless acknowledged the unique weak position of Migrant workers. They are exposed to hostility and exploitation and commonly face major problems in assimilation or integration, as well as in the preservation of their national ethnic and linguistic base.

The two ILO conventions have low ratification status so far. Convention No. 97 is ratified by forty-nine states;⁹⁷ whereas, Convention No.143 is ratified only by twenty-three countries.⁹⁸ Similar to the ICMW, Ethiopia and any of those Middle East and Arab countries are not parties to any of the two ILO conventions.

It is usually argued that owing to the composition of the governing body of ILO⁹⁹ and because of the fact that migrant workers are not likely to be members of a worker organization having standing at the ILO, and nongovernmental Organization (NGOs) concerned with human rights are not able to participate at the ILO as they can in the work of other UN human right bodies, it is hardly surprising that few violations of migrant workers rights have been addressed by the ILO.¹⁰⁰

⁹⁵ C 143 Supra note 12, Article 1

⁹⁶ Guy S. Goodwin-Gill, Supra note 17, p.24

⁹⁷ Ratification Status of Convention No. 97 as of 5.11.2010, available at [http://www.ilo.org/ilolex/cgi-Lex/ratific.pl? C 97](http://www.ilo.org/ilolex/cgi-Lex/ratific.pl?C 97), accessed on November 5 2010.

⁹⁸ Ratification Status of Convention No. 143 as of 5. 11. 2010, available at [http://www.ilo.org/ilolex/cgi-lex/ratific.pl? C 143](http://www.ilo.org/ilolex/cgi-lex/ratific.pl?C 143), accessed on November 5 2010.

⁹⁹ The ILO governing body is composed of Government, Employer and Workers representative.

¹⁰⁰ Ryszard Cholewinski, supra note 59, p. 111

Therefore, it is usually criticized that even though the ILO has taken innovative steps to protect and promote human rights generally, and conducted studies of problems specifically involving migrant worker issues, its procedures have not been used in any meaningful way to address violations of their rights.¹⁰¹

2.3 International Protection of domestic and care migrant workers

Domestic workers, the majority of whom are women, constitute a large portion of today's migrant worker population.¹⁰² In most rich and middle income countries, especially the Middle East and Gulf countries the position of domestic work and care services are filled by migrant women workers.¹⁰³ Domestic work is the single most important category of employment among women migrants to the Gulf States, Lebanon, and Jordan.¹⁰⁴

Despite working and generating income, they are not considered as “real” or “formal” workers. Most often they are referred as workers in the informal sector.¹⁰⁵ They work in households, which are not considered as workplaces, and they work for private persons, who are not considered employers. Works such as domestic work, child care, and care for the elderly are often unprotected by labor legislations.¹⁰⁶

The body of international law for the protection of the rights of migrant workers also poorly recognize (if not disregard them at all) domestic and care workers. In this regard no specific mention is made both under the International

¹⁰¹ Ibid

¹⁰² ILO, *Gender and Migration in Arab States: The Case of Domestic Workers*, ILO, 2004, p. 1

¹⁰³ Ibid

¹⁰⁴ Gloria Chammartin, *Domestic Workers: Little Protection for the Underpaid*, ILO, available at <http://www.migrationinformation.org/feature/display.cfm?ID=300>, accessed on, 2 October, 2010.

¹⁰⁵ Anti-slavery, *International, trafficking in Women, forced labor and domestic work in the context of the Middle east and Gulf countries*, Anti Slavery International, Working Paper, (2005), p. 8

¹⁰⁶ Ibid, see also Ethiopian labor Proclamation No. 377/2003, Article 3(d), excluding “contracts of personal service for no-profit making purposes” which definitely include domestic and care works, from the scope of the Labor law. See also, Labor law of Jordan, exclude domestic servants, gardeners, cooks, and all agricultural employees from various labor protections under Jordanian law); See also Article 7(a) of Saudi Arabia’s Labor Law, Royal decree No. M/51, 23 Sha’ban 1426/27 September 2005, provides that, it “shall not apply” to “domestic servants and persons regarded as such”

Convention on the rights of Migrant workers and members of their families and the two ILO conventions; Convention No. 97 and Convention NO. 143. However this might account to the general nature of the conventions, which do not follow job specific protections.

However, the writer argue that migrant domestic workers should enjoy the protection of international Human rights instruments and those UN and ILO international migration instruments despite the fact that they work for private persons and their work places are households.

Migrant domestic workers are human beings, protected under International Human Rights Instruments and they are also migrant workers, who are protected under the international law on migrant workers; the ILO instruments and ICMW.

The definition of Migrant worker, both under the ILO Instruments and ICMW, are broad to include anyone who is engaged in a remunerated activity outside of a country where she or he is a national.¹⁰⁷ This has to include Migrant domestic workers, who are actually engaged in remunerated activity and obviously outside of their country of nationality.

The participants on the committee on Migrant workers in its 11th session noted that Migrant domestic workers are entitled to protection under the fundamental ILO conventions, related to freedom of association and collective bargaining, forced labor, non-discrimination and child labor.¹⁰⁸ ILO Conventions No. 97 and No. 143 on migrant workers also apply fully to migrant domestic workers.¹⁰⁹

The ICMW did not make a clear mention of the status of Migrant domestic workers. However, the need for a certain guidelines seemed to have attention in

¹⁰⁷ C 97 supra note 1, Article 11(1) and ICMW, supra note 4, Article 2(1)

¹⁰⁸ Report of the Day of General Discussion on Migrant Domestic Workers, The committee on Migrant workers, 11th Session, 12 – 16 October 2009, available at <http://www.ohchr.org/english/bodies/cmw/dgd141009.htm>, accessed on, November 1, 2010.

¹⁰⁹ Ibid

the monitoring body of the ICMW, Committee on the rights of migrant workers (CMW), the Committee started consideration of a general comment on migrant domestic workers at its 12th session, held in April 2010. The Committee will continue its deliberations during its 13th session, due to be held from 22 November to 3 December 2010.¹¹⁰

Despite a huge neglect of the issues of domestic migrant workers both under the international law framework and domestic law structure, currently, there are moves towards recognition of migrant domestic workers as “workers” ,recognizing their rights and also proposing international instrument for the effective promotion and protection their rights as human beings and as migrant workers.

2.4 The Rights of Non-documented Migrant Workers

Migrant workers without a valid document or permit to live and work in a certain country are known as non-documented migrant worker or migrant workers in irregular status. Those workers who stay beyond the time they are permitted to stay, without revising their work permits, where their travel and work permits are limited by time will also falls under this group.

The ICRMW defines non-documented migrant workers in respect with documented migrant workers. Article 5(b) of the convention defines non-documented migrant workers as those who are not documented migrant workers. And migrants will be considered as documented migrant workers;“...if they are authorized to enter, to stay and engage in a remunerated activity in the state of employment pursuant to the law of that State and international agreements to which that state is a party.”¹¹¹ Non-documented migrant workers are entitled to protection under international human rights law as argued *supra* at section 2.1.

¹¹⁰ Committee on Migrant Workers - General Comment on Migrant Domestic Workers, URL http://www.ohchr.org/english/bodies/cmw/cmw_migrant_domestic_workers.htm. accessed on October 29, 2010

¹¹¹ ICMW, *supra* note 4, Article 5 (b)

The fundamental ILO conventions also apply to workers in an irregular situation; accordingly Article 1 of the ILO convention No.143 which imposes an obligation on state parties “to respect the basic human rights of all migrant workers, which confirms the applicability of the instrument to irregular migrant workers. More specifically, article 9(1) of the Convention emphasize that irregular migrant workers should be entitled to equal treatment with regular migrant workers with respect to “rights arising out of past employment with regard to remuneration, social Security and other benefits.”¹¹²

The Inter American court on Human rights also gives an advisory opinion in 2003 which reaffirms the idea reflected under the ILO convention No. 143. The court pronounced that

...the migratory status of persons can never constitute a justification in depriving them the enjoyment and exercise of their human rights, including those related to work, and that migrants, upon taking up a work related role, acquire rights by virtue of being workers that should be recognized and guaranteed independently of their regular or irregular situation in the state of employment.¹¹³

Cholewinski, consider this as a landmark articulation of the Universal application of human rights and labor standards.¹¹⁴ In addition this opinion of the court guarantees the rights of irregular migrant workers that arise from their participation in to the labor force and those rights that arise from past employment. Therefore, Irregular migrant workers should be treated as workers and enjoy the labor law protection and protection from work place discrimination as they join the formal labor force or get employed.

¹¹² C 143, supra note 12, Article 9(1)

¹¹³ Juridical Conditions of Undocumented Migrants, Advisory Opinion OC-18/03. Inter-Am. Ct. H. R. (Ser. A) No 18, 2003

¹¹⁴ Cholewinski, “the Human and Labor rights of migrant Workers Vision of Equality,” 22 *Geo.Immigr. L .J.* 177, p. 185

Irregular Migrant workers can also duly claim any rights, payments or benefits that arise from previous employment.

As discussed above ICMW classified migrants into Documented and Undocumented (non-documented) migrant workers. Undocumented migrants refer to migrants with an irregular status in the country of employment.¹¹⁵ Part III of the convention listed the basic rights which are applicable for both regular and irregular migrant workers, where as the rights listed under Part IV are limited to migrant workers and members of their families who are documented or in a regular situation. Therefore, according to the convention the rights of non documented migrant workers are those found within part III of the same.

It can be said that the ICRMW is the most protective instrument of irregular migrant in the areas of international Human rights law and explicitly guarantees not only the basic rights found under the general instruments but also affords them additional rights, such as elaborating individualized safeguard against expulsion, which are limited to lawfully resident migrants in other instruments such as ICCPR.¹¹⁶

There were disagreements over the inclusion of the rights of non-documented migrant workers, and even some consider, the inclusion of specific rights to irregular migrant workers, as a reason for low ratification of the convention by the major migrant workers receiving countries.¹¹⁷

Working group on migrants have argued that granting anything more than fundamental right to undocumented workers would serve to encourage illegal migration.¹¹⁸ The inclusion of the rights of undocumented workers, which some countries viewed it as a way to encourage or even reward undocumented migrants' who violate of national immigration laws.

¹¹⁵ ICMW, supra note 4, Article 5(a) and (b)

¹¹⁶ ICMW, supra note 4, Article 22(2) and ICCPR, supra note 9, Article 13

¹¹⁷ See the discussion Supra at section 2.2.1.1

¹¹⁸ Ryszard Cholewinski, supra note 59, p.187

There is a strong counter argument that guaranteeing basic rights to undocumented workers would serve to discourage illegal immigration, guaranteeing basic rights remove the potential for exploiting those persons and therefore decrease demand for their services.¹¹⁹ Extending certain rights, such as those concerning equal working condition, to undocumented migrant workers would remove the advantage some employers derive from hiring undocumented migrant workers. As a result, employment conditions for nationals and migrant workers would improve, and migrants would be discouraged from entering into a country illegally.¹²⁰

In addition, some viewed the inclusion of protection for undocumented workers as a proper application of Universal human rights to vulnerable group.¹²¹ Irregular migrants should be entitled to basic protection of their human rights and labor rights until the arrangement of regular and voluntary return of the same.

The problem attached with exercise of rights by undocumented migrants is that they will face another major problem of detention and arbitrary expulsion if they want to enforce any of the rights they have under International Human Rights instruments and international law on migration. Therefore, for the fear of expulsion, undocumented migrant workers remained with those violating their rights.

¹¹⁹ Ibid

¹²⁰ Jennifer Yau, *supra* note 61, p. 18

¹²¹ Ibid

Chapter Three

3. History, trajectory and causes of Ethiopian labor migration to the Middle East and Gulf countries

Migration is a social phenomenon. There are demographic and social factors which need to be considered in order to understand the nature, trends and aspects of migration. In this regard we will discuss the basic country profile of Ethiopia and the status of women in Ethiopia; this is basically because of the feminization of migration to the Middle East and Gulf countries. We will also discuss the historical background of Ethiopian labor migration and the push and pull factors of Ethiopian labor migration. A brief discussion of the routes of migration to the Middle East and Gulf countries is also included under this chapter.

3.1 Ethiopia: Country Profile

Ethiopia covers a surface area of over 1.1 million Km² and a population of 76.9 million in the year 2008.¹ By this it is the 10th largest and the second most populous country in Africa.² The UN estimation of the country's population is even higher, around 81 million.³ The population grows at an annual growth rate of 2.6 percent.⁴ Ethiopia has more than eighty ethnic groups. 62 million or 83 percent of the population lives in rural areas⁵ its economy is heavily dependent on agriculture, which engage 80 percent of the population and

1 Ethiopia population Census Report (2007)

2 Africa Countries Ranking, http://www.joinafrica.com/Country_Rankings/area_africa.htm, accessed on July 14, 2010

3 United Nations Country Profile, <http://data.un.org/CountryProfile.aspx?crName=Ethiopia>, accessed on August 28, 2010.

4 Ethiopian population Census Report (2007)

⁵ Ibid

contributes to 46 percent of the economy.⁶ Coffee and oil seeds are the major export items of the country. Ethiopia's GNI per capita in 2010 is estimated to be 992 USD.⁷

Ethiopia is the oldest independent country in Africa and even considered as a cradle of "human civilization".⁸ Ethiopia is Africa's only country that survived European colonialism.

However, Ethiopia is also one of the poorest countries in the world, according to the United Nations Development Program (UNDP) human development index Ethiopia ranked 157 out of 170 countries, forty four percent of the population lives under the national poverty line.⁹ Life Expectancy at birth is 55.4 years and it is 195th compared to countries of the world.¹⁰

Now Ethiopia is one of the fastest growing economies in Africa with a real GDP growth of 9.6-9.8percent in 2010.¹¹ However, still the century old poverty stricken and traditional agrarian economy is yet to transform the lives of many million Ethiopians.

3.2 The Status of Women in Ethiopia

The fact that most of Ethiopian migrant workers traveling to the Middle East and the Gulf countries are women necessitates us to briefly describe the socio economic conditions of women in Ethiopia.

The traditional Ethiopian society is patriarchal and division of work is based on gender segregation. Women have been pushed out of the role they can play to the community and the country because of stereotypes and segregation.

⁶ United Nations Country Profile, *supra* note 3

⁷ United Nations Development Program (UNDP), Human Development Report 2010 Statistics. <http://hdrstats.undp.org/en/countries/profiles/ETH.html>, accessed on, November 5, 2010.

⁸ CIA world fact Book, <https://www.cia.gov/library/publications/the-world-factbook/geos/et.html>, accessed on August 27, 2010

⁹ United Nations Development Program (UNDP), 2010, *supra* note 7

¹⁰ CIA world fact Book, *supra* at note 8

¹¹ BBC, http://news.bbc.co.uk/2/hi/africa/country_profiles/1072164.stm, accessed on August 28, 2010

There are sayings especially in rural areas which reflect the popular belief of the inability of women to make decisions, engage in works that requires skills, to go to school or to lead a family; such as “seit *menem betawk bewond yalk*” to mean “No matter how much a woman knows, man finishes”; “*Seit le majet wond le shumet*” to mean that “Women for domestic service and men for official appointment”. Early marriage, abduction and arranged marriage are still prevalent among different Ethiopian ethnic groups.¹²

Fifty percent of adult males are literate compared to 22.8 percent of adult females.¹³ Some of the factors that contribute to the lower female attendance rate of school are early marriage, abduction for marriage and other types of violence like rape and sexual harassment committed against girls on their way to school as well as at school. The unfair division of household labor that puts too much responsibility on young girls greatly contributes their dropping out of school as they move up to higher grades.¹⁴

Women in Ethiopia have less opportunity to receive education than does men. As a result, women have less opportunity for employment.¹⁵ Feminization of poverty, lack of access to resources and the growing rates of unemployment and insecurity has expanded the pool of recruits for trafficking.¹⁶

In 2007/08 tertiary level educational participation show a great disparity between women and men. While there were 38,048 male undergraduate students, but there were only 9,931 female students.¹⁷

Unemployment is a problem for females and urban dwellers.¹⁸ In 2005, 27.9% women in urban areas were unemployed.¹⁹ Unemployment is even higher

¹² B. Alemu, “Early Marriage in Ethiopia: Causes and Consequences,” *Exchange on HIV/AIDS, Sexuality and Gender*, No. 1, Royal Tropical Institute. (2008), p. 7

¹³ United Nations Development Program (UNDP) 2009, Human Development Report 2009. *Overcoming Barriers: Human Mobility and development*. New York. UNDP, (2009).

¹⁴ Emebet Kebede, *An Assessment of the International Labor Migration Situation: The Case of Female Labor Migrants*. ILO, Gender Promotion Program, Geneva (2002), p. 9

¹⁵ Rakeb Mesele, *Modern Enslavement of Women: Legal redress for Trafficking in Domestic Workers in Africa*, university of Western Cape, South Africa (2000), p. 1

¹⁶ Ibid

¹⁷ Ministry of Education, Educational Statistics Annual Abstract, 2007/08

among urban women between the ages of 15 and 24 where, 43.66% of them are unemployed.²⁰

Women unemployment is even higher in those who attend tertiary level of education, for example in 2005, only 6.6 % of male with diploma and above educational qualification were unemployed where as 16.2% women with same educational qualifications were unemployed. In Ethiopian women's participation in the formal sector of the economy is lower than that of males',²¹

3.3 An overview of the History of Ethiopian Labor Migration to the Middle East and Gulf Countries

Despite absence of a clearly recorded history of Ethiopian labor migration to the Middle East and Gulf countries there are some historical records that help to understand the historical trends of Ethiopian labor migration to these countries.

The Arabian slave trade was the cause for the historical women migration from East African countries. The Arab slave trade from East Africa is one of the oldest slave trades, predating the European transatlantic slave trade by 700 years.²² In the historic slavery as while Europeans targeted men in West Africa, the 'Arab' trade primarily harvested the women of East Africa to serve as domestic slaves, wet nannies and sex-slaves in the infamous harems.²³

The land of Arabia and Middle East were popular destination of women slaves from Ethiopia and East Africa. However, Slavery was abolished internationally and by the early 1940's Ethiopian Emperor Haile Selassie abolishes bonded

¹⁸ Ministry of Labor and Social Affairs(MoLSA), Labor Market Index(LMI) Bulletin, 2008/9, (2008) p.23

¹⁹ Ibid

²⁰ Ibid

²¹ Ibid

²² Mintz, S. *Digital History Slavery, Facts & Myths*, available at, http://www.Digitalhistory.uh.edu/historyonline/slavery_fact.cfm accessed on 13, August 2010.

²³ Murray Gordon, *Slavery In the Arab World*, Dee Ivan R. Publisher (1990), p. 24

labour especially domestic labour both within Ethiopia, and exported to neighbouring countries of Egypt and Middle East countries.²⁴

Once slavery was abolished in Ethiopia, another wave of Ethiopian migration arose in the late 1960 and 1970's. The period between 1970's and early 1990's are times where Ethiopian civilian migration hit unprecedentedly high. Most of these migrants were refugees. The major causes of these refugees were escaping political conflict, famine, and persecution often by the military government.²⁵ The Number of refugees from Ethiopia increased from 55,000 in 1972 to over a million in 1992.²⁶ In the early nineties following the end of the civil war in Ethiopia many Ethiopians migrate to countries like Sudan and Yemen.²⁷

The motives to flee have changed over time. Migrants initially flee for political reasons and to escape conflict now shifted to more economic motives.²⁸ This is where the labour migration in all its present forms started.

In 1989, the number of migrants from Ethiopia to the Middle East doubled, from 1742 to over 3000 in 1990; with a slightly higher percentage of male migrants.²⁹

This continued in the rest of the nineties, with roughly stable and equal numbers of men and women. The new government recognized the freedom of movement of every Ethiopian in and outside the country.³⁰ Coupled with the

²⁴ Binna Fernandez, *Disposable in the Downturn? Ethiopian Domestic Workers in the Middle East*, University of Leeds, 2009, p. 8

²⁵ De Waal. A, *Evil Days: Thirty Years of War and Famine in Ethiopia*. Human rights Watch (1991) In, Sonja Fransen and Katie Kuschminder, *infra* note 26, p. 10

²⁶ Sonja Fransen and Katie Kuschminder, *Migration in Ethiopia: history, Current trends and Future Prospects*, Maastricht Graduate School of Governance, 2009. p.10.

²⁷ Marina de Regt, *Ethiopian women in the Middle East: The case of Migrant Domestic Workers in Yemen*, Amsterdam School for Social Science Research, 2007 p. 4

²⁸ De Waal, *supra* note 26, p.11

²⁹ Sonja Fransen and Katie Kuschminder, *supra* note 26, p. 23

³⁰ The Constitution of the Federal Democratic Republic of Ethiopia 1995, Article 32, Proc. No.1, *Neg. Gaz.* 1st Year No. 1

absence of suitable jobs at home, Ethiopians mainly women migrate to the Middle East and Gulf countries in search of job and opportunities.³¹

Following the authorization of private employment agencies to work in international employment exchange,³² the total number of Ethiopian migrants rose again dramatically in 2003, with 5510 migrants leaving the country; this time, 72% of them were women, a percentage that has today increased to over 96% of official or documented migration.³³

3.4 Major Destination Countries for Ethiopian Migrant Workers

Migrant workers from Ethiopia travel to some of the Middle East and Gulf countries both regularly and irregularly. MoLSA approve almost one hundred work contracts of Ethiopians travelling to the Middle East and Gulf countries to work as Domestic workers, every day.³⁴ In the year 2008/09, from the total Ethiopian overseas employment 59.5% were secured through private employment agencies, while 40.4% were obtained through self effort or popularly known as public employment service.³⁵

It has been shown that it is very difficult to know the exact number of Ethiopian women migrant workers in the Middle East and gulf Countries; this is mainly because of prevalence of high irregular migration.³⁶

The major receiving countries of Ethiopian migrant workers are Lebanon (until 2006), Saudi Arabia, Kuwait, Bahrain, U.A.E, Syria and Yemen.

³¹ Marina de Regt, *supra* note 27, p. 5

³² Private Employment Agency Proclamation 1998, Proc No. 104, *Neg. Gaz.* 4th Year No. 28

³³ Bina Fernandez, *supra* note 24, p. 9

³⁴ *Ibid*

³⁵ MoLSA, LMI Bulletin, *supra* note 18, p. 25

³⁶ Between the period 1996 and 1998 there were only 1978 women migrate through the government employment service however in 1999 there were 17'000 Ethiopian women were reportedly working as housemaids in Lebanon, In Emebet Kebede, *supra* note 14, p. 22

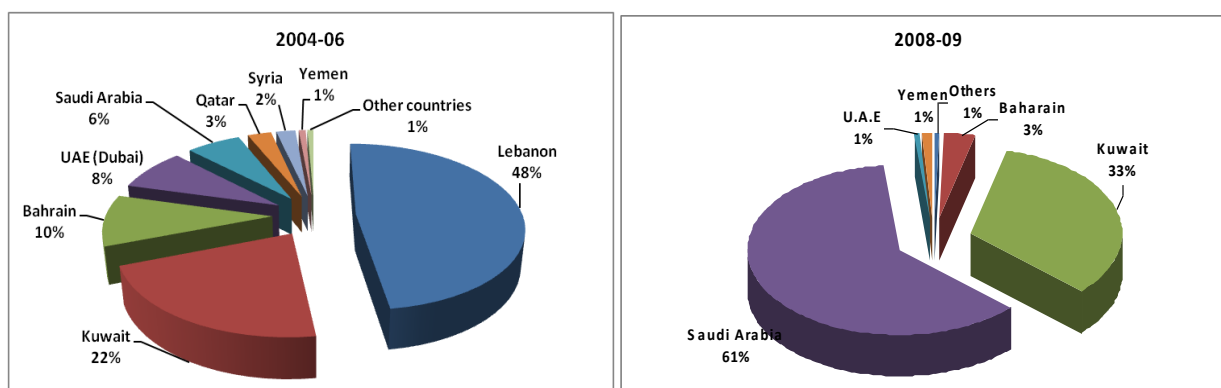


Fig. 1.1 Major destination countries of Ethiopian migrant workers between the years 2004 and 2009. Source, MoLSA, Labor Migration Index (LMI) Bulletin, 2008/09

In 2007 Ethiopia banned labour migration to Lebanon³⁷ and Cut diplomatic relations with Qatar in 2008,³⁸ because of an alleged Qatari destabilizing and deconstructive involvement in the politics of East Africa and harm to the political interest of Ethiopia.³⁹

3.5 Ethiopian Migration trajectory to the Middle East and Gulf Countries

Dessie is a town located at South Wollo Zone of the Amhara Region. According to the figures of immigration, Addis Ababa, South and North Wollo and Arsi areas of Ethiopia are the source of highest number of women migrant workers traveling to the Middle East and Gulf countries.⁴⁰

The local branch of the main department of immigration located in Dessie issues an ordinary passport which is valid for all countries. In the first week of August 2010, there were more than two hundred people most of them women,

³⁷ Tesfa-alem Tekle, Ethiopia bans economic migrations to Lebanon

<http://www.sudantribune.com/spip.php?article26981> Accessed on June 25, 2010

³⁸ Ethiopian News Agency (ENA), "Ethiopia break Diplomatic Relation with Qatar",

<http://www.ena.gov.et/EnglishNews/2008/Apr/21Apr08/56013.htm>, accessed on, 20 August 2010.

³⁹ Ibid

⁴⁰ MoLSA, Labor Market Index (LMI) Bulletin, 2008/09, Employment Promotion Service Directorate April (2010)

lined up at the main entrance and the compound of the office. It is apparently clear that most of them are from the rural provinces.

“A” is an 18 years old girl from *Woledi*, a province around sixty-five kilometers south east of Dessie, the researcher found her at the main entrance of the local immigration branch in Dessie town, she was there to get her passport as she was preparing to travel to an Arab country for work, she dropped out of school from grade ten, she said “I took the tenth grade national secondary school leaving certificate examination and my points were not enough to join a preparatory program and my families do not have money to send me to *kemise*, a nearby town, for vocational training so I stayed home for a year with no job and nothing to be done. A friend of mine with same situation told me that we can travel to Arab countries and make money for ourselves and help our families too, I found this as a very good plan and we find someone who is ready to contact us with another man in Addis Ababa who can help us travel to Arab countries if we have our passports and ready to pay some money. Me and my friend talk to our families and convinced them to give us the money for the process and now I am here to collect my passport today”. “A” lied to be twenty one years old in her passport application, for she has heard that it is good to be above twenty years old to facilitate her visa.

Women preparing to migrate to Middle East and Gulf countries from South and North Wollo areas of Ethiopia have the following patterns. Most of them are from semi urban areas and major cities of Dessie, Kombolcha, woldeya and kobo, who drop out of school either from secondary school or from primary school. The girls are solicited by a friend, a neighbor or a relative to travel to Arab countries. Most of them want to travel to a place where they know someone resides or works. These girls have their families consent to pay for their travel expenses which include money for the issuance of passport and other payments for the person who is to help them to travel to the Arab countries or the ‘*Delalas*’ “brokers”. Most of them relied on someone who is member of their family, relative or a friend to process and arrange their travel

and they are not personally involved in processing of their travel. Most of the girls between the age of 17 to 20 lied their age in their passport application,⁴¹ this is because they are informed by their friends, relatives or someone else that their visa applications will mostly succeed if they are between twenty two and twenty four years of age.

Another group of women preparing to travel to Arab countries are those who work as housemaids, cafeteria ushers and cleaners in restaurants and cafes, bartenders and dishwashers in small hotels and bars. These people are usually approached by someone they work with or whom they knew at their work place and told them that they can find a better job and better payment if they travel to Arab countries. These people usually do not have money to pay for their travel so they enter in to a loan agreement with someone who is going to send them to Arab countries to work and pay him after they travel, mainly with the person who is going to send them or the one who introduced them with the person sending them.

These women are first domestic migrants from rural areas to the urban sections of Dessie and Kombolcha. This clearly shows the link between rural-urban migration and international trafficking.

There are also another group of women with a high migration tendency to the Middle East and Gulf countries. These are girls who dropout of higher education or Universities and with a poor family background. These girls who are dismissed from Universities and came back to their families and whose families are not able to pay for them to send them to private colleges have a high tendency of migration to Middle East and Gulf countries.

⁴¹ The Immigration officers rely on the age of the applicants mentioned in their primary school leaving certificate but for those who are not able to produce this document the immigration officers guess the age of the applicant and if they think that the she is under age (18) they will reject her passport application.

3.5.1 Regular Migration

An Ethiopian national may be employed abroad when the MoLSA obtain adequate assurances that his rights and dignity shall be respected in the country of Employment.⁴²

The regular (legal) labor migration of Ethiopian women to the Middle East and Gulf countries can take place according to the laws governing migration for employment. In principle, the legal employment recruitment is to be conducted through private employment agencies.⁴³ The ministry might also allow direct employment by the employer upon fulfillment of the requirements found under Article 32 of the proclamation.⁴⁴ The Ministry also approves job contracts secured by the private effort of the worker.⁴⁵

3.5.2 Irregular Migration

The term irregular as it used for the purpose of migration represent any unlawful way of migration.⁴⁶ Irregular migration takes the form of trafficking, smuggling and any unauthorized border crossing of one or more countries.

Previous studies show that Ethiopia is highly affected by irregular migration taking the form of International trafficking and smuggling to the Middle East and Gulf countries.⁴⁷

IOM research in 2007 also shows the prevalence of a well-organized smuggling network that ran from the Ethiopian capital, Addis Ababa to port of Bossasso

⁴² Labor Proclamation 2003, Article 175, Proc. No377, *Neg. Gaz.* 10th Year No. 12

⁴³ Employment Exchange Service proclamation 2009, Article 34(1), Proc. No. 632, *Neg. Gaz.* 15th Year No. 54

⁴⁴ Id, Article 32

⁴⁵ Id, Article 32(1)(d)

⁴⁶ Irregular Migration refers to movement that takes place outside the regulatory norms of the sending, transit and receiving countries. There is no clear or universally accepted definition of irregular migration. From the perspective of destination countries it is illegal entry, stay or work in a country, meaning that the migrant does not have the necessary authorization or documents required under immigration regulations to enter, reside or work in a given country. IOM, *Glossary on Migration*, IOM, 2004, p. 34

⁴⁷ Yoseph Endeshaw *et al*, Assessment of Trafficking in Women and Children in and From Ethiopia, IOM, Addis Ababa, Ethiopia (No year), P.5

in Somalia's Puntland en route to Yemen.⁴⁸ The majority of Ethiopian migrants making the journey to Bossasso were young single men from the northeast of the Ethiopia with little or no education; there were also women and some girls as young as 14-16 years of age.⁴⁹

This research also revealed that there are chains of irregular migration from North and South Wollo areas of the Amhara region to the Middle East and Arab countries. The irregular immigration from these areas usually takes place with an assistant from relatives, kin's and neighbors of the women immigrants and with no or little direct participation of the women themselves.

Irregular migrations are also held by some "famous" agents residing in Addis Ababa who had facilitators in the rural provinces and also in the cities. These agents are known by many of the people in the rural provinces and they are from the provinces themselves but now having businesses in Addis Ababa and these people hold monopoly of sending women to the Middle East and Gulf Countries from the specific rural provinces. In some cases the relatives of the women, themselves working as migrant workers in the Middle East and Arab countries also play a major role in pulling the girls with an assistant of the brokers.

The facilitators usually provoke young girls and school dropouts and contact them to the agents in Addis Ababa. The facilitators help the young girls to have their passport and prepare for the emigration. They also help to convince the families' of the girls.

⁴⁸IOM, "Report Provides Clearer Picture on Irregular Migration From Ethiopia to Yemen" available at <http://www.iom.int/jahia/Jahia/media/press-briefing-notes/pbnAF/lang/en?entryId=13200>, last Visited at July 10 2010

⁴⁹ Ibid

3.6 Push and pull Factor of Ethiopian Labor migration to the Middle East and Gulf countries

Researches indicated that landlessness, agricultural policy, land fragmentation, environmental degradation, population pressure, drought, famine, war and political crises have all been responsible for spatial mobility in Ethiopia.⁵⁰

The causes of rural-urban migration from the northern Ethiopia shows that Rural out migration in the northern Ethiopia has been a response to push factors related to ecological degradation and poverty in rural areas rather than a response to pull factors from urban areas.⁵¹

Immigration decisions are determined by a combination of the so called “pull” and “Push” forces. The push factors are the aspect of life in the migrant’s country that produce dissatisfaction and provide the impetus to move.” The “pull” factors have been defined as “the anticipated benefits that draw the migrant to a particular place.”

Among the push factors that causes female immigration are gender inequality and discrimination, which often have a disproportionate effect on women. On the pull side is the increasing demand for women in domestic position and service jobs.⁵²

International trafficking in Ethiopian women and children was found to be prevalent mainly for the purpose of engaging victims as housemaids in the Middle East countries. Wide spread poverty, unemployment and the

⁵⁰ RRC 1986, Abate 1989, Berehanu and white 1998, cited at, Markos Ezra, *infra* note 51, p. 3

⁵¹ Markos Ezra, *Ecological Degradation, Rural Poverty, and Migration in Ethiopia: A contextual Analysis*, (2001) p. 4

⁵² Lesley Wexler, “The Non-Legal; role of International; Human Rights Law in Addressing Immigration,” *U. Chi. Legal F.* 359, (2007) p. 364

disadvantageous economic and social position of women are the major push factors identified.⁵³

It has been discovered that women between the age of eighteen and twenty four, who are high school dropouts with poor families living in urban areas, are more vulnerable.⁵⁴ Recruiters for trafficking in women and children to the Middle East are local brokers working through facilitators who are neighbors, relatives or friends of the victims who play the major role in the trafficking process until the victims leave the country, include individual with relatives in the country of destinations; owners of travel agencies and owners of import/export businesses.⁵⁵

This research also discovered that major factors contributing to migration and the vulnerability of Ethiopian women to Middle East and Gulf countries are poverty, unemployment, lack of prospects, the search for better opportunities and income to support themselves and their families.⁵⁶

This research also uncovers that there is a high level of international trafficking in women from some of the urban and semi urban areas of South and North Wollo Zones of the Amhara region.

The women travelling to the Middle East and Arab countries usually takes it as a desperate measure to run out of the situation in which they are living. These girls from urban and semi urban areas have the information about the abusive working conditions prevalent in the places of destination. However they also know some successful girls able to improve their own and their families' life after they work in the same countries. Therefore, success is like a game of chance for them. "D" is an 18 years old girl from a place known as *Hike*, a town 30 kilometers north of Dessie. When she states her reason for preparing to

⁵³ Yoseph Endeshaw *et al*, *Assessment of Trafficking in Women and Children in and From Ethiopia*, IOM, Addis Ababa, Ethiopia (No year), p. 6

⁵⁴ Ibid

⁵⁵ Id, p.10

⁵⁶ Interview with women preparing for migration to the Middle East and Gulf Countries, August 2 to 10, 2010. Dessie, Ethiopia

migrate to Arab countries “I even know that the work place will not be that convenient, I have heard in media and also from people that many women came back home injured, paralyzed and even their dead body, but there are also other lucky women who succeeds to have good deal of money, help their family and also came back to their country buy a car, house and opens a business. Therefore it depends all in your luck, so I want to give it a try and be what my luck will take me. Because there is nothing I can see here.”

There are also women who do not have the right information about what their future work place looks like. These women are usually enticed by the illegal brokers and legally registered agents about their working conditions and their work environment.

“M” is a 26 years old woman from Addis Ababa; in 2008 she had decided to go to Arab countries to work as a house maid, the women went to one of the employment agencies and registered. By the time when she got her work visa, the people from the agency told her that she will be working as a maid in a family of three and she will be paid 2000 Ethiopian birr. M said “the whole situation I encountered was different. I went to work for a man having two wives and eight children. I work for both wives and I rarely have a time to sleep or rest. I was also told that my monthly salary was 600 birr. I cried a lot when I knew that I am working in such a heavy load for money which I can be paid if I work the least work in Addis Ababa with all my dignity and living with my family.”

Chapter Four

4. Abuses, Exploitation and Violations of Rights of Ethiopian Migrant workers, Government Responses and their Effectiveness

In this chapter we will discuss exploitation and abuses against Ethiopian migrant workers. The human, labor and migrant rights violations of Ethiopian workers traveling to the Middle East and Gulf countries and the measures taken by the Ethiopian government. We will also analyze the effectiveness of these measures towards regulating, regularizing and benefiting from labor migration.

A critical consideration of the Ethiopian government policy on labor migration is also included at the last section of the chapter.

4.1 The Human, Labor and Migrant Rights Violations

The plight of Ethiopian migrants who travel to the Middle East and Gulf countries to work as domestic workers start during the initial stages of migration. As discussed *supra* at chapter two, Ethiopian women who are zealous to improve their life, to support their families and to have initial money to start small businesses travel to Middle East and Gulf Countries to work as domestic workers.

Women migrant workers whether documented or undocumented, are much more vulnerable to discrimination, exploitation, and abuse relative not only to

male migrants but also native born women.¹ The problems faced by women domestic migrant workers are even severe, in addition to the gender based violations; the nature of the work, the fact that it is highly unregulated makes their vulnerability even higher.

There are major violations of the rights of the migrant workers at each steps of the migration process.

During the Initial stages where the women prepare to migrate, they usually made their decisions based on false, little or no information as to the nature of the work and the possible problems that they might encounter in their work place.

Previous researches concluded that many Ethiopians women seeking employment to Middle East and Gulf countries do it without enough information, sometimes with false information and in some cases with no information.²

Pre-employment orientation is not given for any of the Migrant women Domestic workers traveling to the Middle East and Gulf countries. There is a pre-departure orientation program given at MoLSA for those migrating through the formal channels.

However, this is not enough for two reasons. First, this orientation is given to the migrants at the very last moments where they are about to leave to the places of work, at this point migrants will be less likely to change their mind even if they found out the truth about the challenge and irregularities of working as a migrant domestic worker in Middle East and Gulf countries, Second, the pre-departure orientation program will create emotional instability on the migrants who will leave to the places of work in few days time after they attend the pre-departure orientation, in this regard the researcher witnessed

¹ Emebet Kebede, Ethiopia: *An Assessment of The International Labor Migration Situation: The case of female Labor Migrants*, ILO, Geneva, (No Year), p. 3

² Id, p. 34

many women crying after the pre-departure orientation, a woman was also requesting back her employment contract from the officers.

Under the Employment Exchange Proclamation the responsibility of informing migrants about living and working conditions of the country of employment has fallen on private employment agencies.³ The agency is obliged to provide information about the living and working conditions in the receiving countries only to the migrants recruited through it. Therefore many who are traveling through the irregular channels leave the country without accurate information. The agencies' actual capacity and preparedness to do a pre-employment orientation is also in question.

Lack of information about the legal channels of migration is prevalent. The “facilitators” who usually work for the illegal brokers entice the migrant workers about the channels of migration to the Middle East and Gulf Countries.

According to a response of a manager of a private employment agency in Addis Ababa, “the women do not think that we are the legally authorized agents to send workers to Arab countries, this is mainly because we do not ask them money and they understand that it is not real unless they pay money, this is mainly true for those who came from the rural areas or those who are traveling for the first time”⁴

The interviews conducted for this research also shows that most of the women preparing to Migrate to the Middle East and Gulf countries do not know that the legally registered agents send them for free, and they are only required to pay “few” costs required for their passport, medical examination, vaccination, certificate authentication and the like.⁵

³ Employment Exchange service Proclamation 2009, Article 7(2) (C), Proc. No 632, *Neg. Gaz.* 15th Year No. 54

⁴ Interview with Manager of Hanny Private Employment Agency, August 20, 2010, Addis Ababa, Ethiopia

⁵ Interviews held with Women Preparing for Migration to Middle East and Gulf countries, August 2 to 10, 2010, Dessie, Ethiopia

The women think that the illegal channels are only those made via land and sea en route Yemen and Middle East and Gulf countries.⁶

Pre-employment orientation is vital in regulating and regularizing migration. Many might have changed their decision if they were informed that the work load is such heavy, many would have use the legally registered agents if they know they were able to travel to the Middle East and Gulf countries for a considerably few money while having greater legal and diplomatic protection.

Lack of access to pre-employment orientation is a violation of the rights of the migrant workers. Migrant workers have the right for free and reliable information on all aspects of the migration process before they make a decision to migrate.⁷ Potential migrant workers should be given an organized assistance in finding employment, if possible, and information about things such as costs they must pay to obtain jobs, the migration process, and actual terms and conditions of work in destination country.⁸ This can be done by the private employment agencies and the government organ responsible for overseas employment exchange services.

Travel to the countries of destination is not a concern for those traveling by air, however researches showed that smuggling and trafficking victims faces the worst experience while they attempt to travel crossing borders and via sea to Yemen and some of the Gulf States.⁹

Major problems of confiscation of travel documents, which ban the basic freedom of movement, restriction of movement or leaving the compound and in some severe cases, the house; a full ban from having contact with the outside world including giving phone call to family, friends or their agency, long

⁶ Ibid

⁷ ILO, *Protecting the rights of Migrant workers : A shared Responsibility*, ILO ,Geneva, 2009 p. 21

⁸ Id, p. 25

⁹ IOM, Irregular Migration from Ethiopia to Yemen, 23-02-2007, available at http://www.iom.int/jahia/Jahia/media/press_briefing_notes/pbnAF/cache/offonce/lang/en?entryId=13200, accessed on, August 2, 2010

working hours, 12 to 20 hours a day, absence of rest day¹⁰, verbal, sexual and physical, abuses, non-payment of wages are some of the human and labor rights violations Ethiopian women experience in the place of work and stay.

Absence of a clear contract of work which stipulates their duties and rights also make women vulnerable to several abuses. A domestic worker who cannot speak basic English or Arabic also faces problems in the places of work. Migrant workers traveling through the irregular channels usually do not have a signed contract of work; they even do not know the salary they are going to be paid.

“Ejigayehu went to Abu Dhabi, UAE to work as domestic worker; she travel with the “help” of a broker or “*delala*”. The broker told her that she is going to work in Dubai and paid 3000 Ethiopian birr. As she arrived at Dubai she was welcomed by an agent and she is told that she will be working in Abu Dhabi, after three days, her sponsor appear to take her and they went to a place very far from the urban section. She said “I work there for fifteen days it was very tough and my sponsor usually tell me that he loves me and want to sleep with me, his older son who was a drug addict wanted to force me to sleep with him, as I could not withstand the problems I want to leave that place, but all my travel documents are with my sponsor and the place is far from the town, as I keep on crying for many days my sponsor took me to the agency and the agency told me to go back and work, and I agree as I fear that they might send me back home. After one moth stay I asked my salary and my sponsor told me that my first month salary was paid to the agency.” Ejigayehu did not sign a contract of work with her employer and the agency and the employer agree on her payment but she did not know anything about that.

Death of migrant domestic workers is not a new phenomenon in Middle East and Gulf countries. From 1999 to 2005 the quarantine office of the Addis

¹⁰ Researches shows that domestic workers in Middle East and Gulf Countries has an average of 0 to 2 days off per month, see, Simel Esim and Monica Smith(Ed), *Gender and Migration, The case of Domestic Workers*, ILO Regional Office for Arab States, Beirut, 2004, p. 18

Ababa International Airport reported 129 female bodies from Jeddah, Dubai, and Beirut.¹¹ In all cases the cause of death was determined to be suicide.¹²

According to a report by the Human Rights Watch, between January 1, 2007 and August 15, 2008 there were a total of ninety six deaths of migrant domestic workers in Lebanon alone.¹³ Surprisingly enough the number of deaths of Ethiopians by far exceeds the number of deaths from other countries. From the total of 96 deaths 62 of them were Ethiopians, the leading cause of death of Ethiopians was suicide, while others also died from, falling from high floor, suffocation by carbon monoxide and car accident and few for natural causes.¹⁴

The reason behind a huge number of Ethiopian deaths is not clearly known. Birke *et al.* conclude that post migratory factors and severe hardship that migrant domestic workers endure in new countries threaten their physical and mental health; these might leads to stress and even suicide. ¹⁵ The research also showed that pre-migratory factors also contribute to the emotional instability of migrant domestic workers.¹⁶

The absence of an organized system of remittance facilitation is also a problem related with the last stages of migration.

Migrant workers send remittance to their families' through different ways.¹⁷ Some send money via the money transfer agents, postal service "*Hawala*",

¹¹ Yoseph Endeshaw *et al*, *Assessment of trafficking In Women and Children in and From Ethiopia*, IOM (No year), P. 53

¹² Ibid

¹³ Human Rights Watch, *Deaths of Migrant Domestic Workers in Lebanon*, available at www.hrw.org/legacy/pub/2008/.../Lebanon.MDW.Annex.082608.pdf, Accessed on August 4, 2010.

¹⁴ Ibid

¹⁵ Birke Anbesse *et al*, "Migration and Mental Health: A study of Low-Income Ethiopian Women Working in Middle Eastern countries," *Int. Jo. Soc. Psyc.*, 2009, P. 7

¹⁶ Ibid

¹⁷ Interview made with families of Migrant workers in Kombolcha and Dessie town, August 15 to 20, 2010.

through people and the agencies and in some cases they send home goods rather than sending cash.¹⁸

Women migrant workers in the Middle East and Gulf countries usually send remittance to families and relatives living in Ethiopia.¹⁹ The money they send home usually used and abused by their parents, spouses, siblings and relatives and left them with nothing as they came back home. This puts the women to huge emotional and social crisis.

An owner of a recruitment agency in Addis Ababa said that “It is our daily experience that the fact that the women after years of service as domestic workers and send a huge deal of money but finally left with nothing in their hand, this usually put them with crisis. For example I know a woman who works as a house maid in Dubai, she used to send all of her money for her husband wanting him to build a house, her husband used to tell her that he is building a decent house that they will live together, as she returned she found out that he was lying. By then the women go mad and left the house and came to our agency to register to go back again as she had nothing waiting for her in Addis Ababa.”

The fact that migrant workers also send all their money back home to their families, who may not save the money or may not use it to the purpose the sender intends is a major problem.

Absence of an efficient and cost effective remittance transfer system obliges the migrants to use their friends, their agencies and sometime people that they do even not know to send their money home.

Failure to save enough money from the first migration gives rise to a circular migration pattern among the migrant domestic workers. Many migrant workers want to go back for second and third times because they have not saved

¹⁸ Ibid

¹⁹ Ibid

enough money in their initial stays. The absence of an efficient remittance transfer tool is partly accountable for this problem. Migrants have the right to have access to effective and low cost remittance transfer channels and a means where they can save their money in their own Bank accounts.

Migration is an integrated process which cannot be seen in exclusively separate stages. The rights of Migrant workers must be protected in all stages of the migration. It is evidentially clear that those migrants whose rights were violated in the initial stages of migration will be most vulnerable and be likely denied of their rights in the latter stages of migration, as irregular migrants are usually victims of gross human, labor and migrant rights violations.

The ILO non-binding principle states that an orderly and equitable process of labor migration should be promoted in both origin and destination countries to guide migrant workers through all stages of migration, in particular planning and preparation for labor migration, transit, arrival and reintegration.²⁰

4.2 Existing Gaps in the protection of the rights of Ethiopian migrant workers in Middle East and Gulf Countries.

Numerous problems stultify actions that are taken and being taken to protect the right of Ethiopian migrant workers who are traveling to the Middle East and Gulf countries to work as domestic workers.

Prevalence of high irregular migration, the sponsorship or “*Kafala*” system of recruitment, absence of protection by the labor and other domestic laws of destination countries, low ratification of international Instruments on human rights and international migration are the basic problems which circumvent the issue of protecting the rights of Ethiopian labor migrants to the Middle East and Gulf countries.

²⁰ ILO’s Multilateral Framework On Labor Migration; Non- binding Principles and Guidelines for a right-based approach, Principle 12, Geneva ILO office, 2005

4.2.1 Prevalence of High Irregular Migration

Existence of high irregular migration is a major problem in extending adequate protection to the rights of Ethiopian women migrant Domestic workers. Irregular migration includes trafficking and smuggling.²¹

Irregular migration is usually organized and assisted by the relatives, friends and family members of the women²² and this actually makes it very difficult to prosecute the perpetrators. The existence of high irregular migration can be viewed from the disparities in the number of women who travel through the legal channels and the number of Ethiopian women actually working in the countries of employment.

In this regard, Ethiopia bans labor migration to Lebanon in 2007 because of the gross human rights violation of domestic workers in the country.²³ However, according to the Lebanon Ministry of Labor statistics, in the year 2008 there were 13,225 new comer Ethiopian domestic workers.²⁴ As these migrant workers enter Lebanon with a valid document they are not workers in irregular status, whereas as they leave Ethiopia without following the legal channels, these women migrant workers are taken as irregular migrants for the

²¹ The Protocol to Prevent, suppress and punish Trafficking in persons, especially women and children, Supplementing the United Nations Convention against Transnational Organized crime, A/RES/55/25, 2000, Entered into Force, 25 December 2003, Article 3, define “Trafficking” as “The recruitment, transportation ,transfer, harboring or recipient 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 position of vulnerability or of the giving or receiving of payment 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 prostitution of others or other forms of sexual exploitation forced laborer services, slavery or practices similar to slavery, servitude or the removal of organs.

The Protocol Against the Smuggling of Migrants By Land, Sea and Air, Supplementing the United Nations Convention against transnational Organized Crime, A/RES/55/25, 2000, Entered into Force, 28 January 2004, Article 3 (a) define “smuggling of Migrants” as “the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a state... of which the person is not a national or permanent resident”

²² Yoseph Endeshaw *et al*, supra note 11, p. 41, Emebet Kebede, Supra note 1, p. 26

²³ Tesfa-alem Tekle, *Ethiopia bans economic migrations to Lebanon*

<http://www.sudantribune.com/spip.php?article26981>, Accessed on June 25, 2010

²⁴ Caritas Lebanon Migrants Center (CLMC), Submissions to the Committee on Migrant Workers, Day of General Discussion, October 14, 2009.

case of Ethiopia. This shows the ambiguous status of irregular migrants between sending and receiving countries and absence of cooperation between the countries. This also questions the effectiveness of the measures that are being taken by the Ethiopian government.

4.2.2 Sponsorship or “*kafala*” System of Recruitment

The *Kafala* system is often referred as a system of structural dependence of the migrant worker on her/his employer.²⁵ Under the ‘*kafala*’ system, nationals can hire migrant workers who are dependent on their employers for food and shelter. Kafala is a system of sponsorship that dates back to the late 1950s. It is derived from the Bedouin principle of hospitality that sets obligations required in the treatment and protection of foreign guests.²⁶

The recruitment system is characterized by the employer as a sponsor in order to be allowed to enter the country on a working visa, which is a pre condition of legal employment; the worker must be invited by the receiving side (either the agency or the individual employer). The employer of “*kafeel*” takes in principle full legal and economic responsibility for the employee during her stay in the country.

The recruitment is usually conducted via agencies, the agents and agencies put the worker in touch with their employers. The agencies are operating in the destination country and have counterparts in countries of origin which are responsible for recruiting the workers. Under the *kafala* system of recruitment the contract is temporary and the worker’s rights are usually not expressly mentioned, if mentioned, they are limited; essentially the migrant workers are seen as temporary workers and their rights are kept to minimum.

²⁵ Anh Nga Longva; “*Keeping Migrant Workers in Check, The Kafala System in the Gulf ; Middle East Report*, Nr 211/1999” In, Anti-Slavery International- Trafficking in women Forced Labor and Domestic Work: In the context of the Middle East and Gulf Region, Working Paper, Anti-Slavery international (2006), p. 11

²⁶ R. Jureidin, “*Middle East Guest Worker; Global Migration in the 20th Century: An Encyclopedia* (Oxford: ABC-CLIO)” In, Anti-Slavery International, Ibid

Workers are dependent on the employer for all legal aspects of their stay in the country such as work permit, renewal of the permit, registration at the relevant state institutions. The employee cannot leave or change the employer without leaving the country or having government approval.

The *kafala* system left the workers at the mercy of the employer. The employer, at any time, can threaten the deportation of the worker and take advantage of her vulnerability. The system is open to abuse. The employers confiscate the passport to the employees for the entire period of stay, so that the worker cannot physically leave the place of employment without the risk of being liable to be arrest, sent to detention centers and deportation. The employee faces the same risk if the employer does not renew the work permit.

4.2.3 Absence of Protection by the domestic Labor laws

Domestic workers are devoid of protection by the labor law of countries of destination. They do not have any protection from other domestic laws too. The indefinite status of domestic workers under the domestic law of destination countries is the major factor for absence of effective protection by the state machineries. Absence of complaint mechanisms and effective enforcement of rights under the domestic system are problems attached with absence of protection by the domestic law of states.

As they are recruited through the *kafala* system, their legal status and all issues surrounding them are left to the employer. In addition to this, absence of any enforceable work contract reduces migrant domestic workers to the status of “slaves” for their employers.

However, some countries showed that it is possible to regulate domestic worker via labor legislations, in this regard Labor legislation in Hong Kong sets

domestic workers have the right to a minimum wage, a weekly day of rest, maternity leave, and public holidays.²⁷

4.2.4 Low ratification of International agreements by Ethiopia and the receiving countries.

The major destination countries of the Middle East and Gulf had a very low ratification record of the International Human rights and International migration instruments. Ethiopia is also not a member to the major international migration law conventions.

In this regard only Ethiopia, Bahrain, Jordan, Kuwait and Syria are parties to the ICCPR.²⁸ Only Ethiopia, Bahrain, Jordan Lebanon, Kuwait are parties to ICESCR. CEDAW is the most widely ratified international human right treaty by the countries, where nine of the countries in the region including Ethiopia are parties to it.²⁹

The international convention on racial discrimination is also ratified by eight countries in the region including Ethiopia.³⁰ The International Convention on the Rights of All Migrant Workers and Members of their Families (ICMW) is yet to be ratified by any of the destination countries and Ethiopia. The two ILO instruments which are directly applicable for migrant workers are not ratified by Ethiopia and any of the destination countries so far.³¹

²⁷ Human Rights watch, *Maid to Order*, Human rights Watch Report, available at <http://www.hrw.org/en/reports/2005/12/06/maid-order>, accessed on September 2, 2010.

²⁸ Ratification Status as at, 11-11-2010 01:48:16 EDT, available at http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtmsg_no=IV4&chapter=4&lang=en&clang=_enlast accessed on 11/11/2010.

²⁹ Ethiopia, Bahrain, Jordan, Kuwait, Lebanon, Oman, Qatar, Saudi Arabia and UAE are members to CEDAW, See at http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtmsg_no=IV-8&chapter=4&lang=en accessed on 11/11/2010.

³⁰ Ethiopia, Bahrain, Kuwait, Lebanon, Oman, Qatar, Saudi Arabia and UAE are members to ICRD,

³¹ Ratification Status as of, 11. 10. 2010 available at, <http://www.ilo.org/ilolex/cgi-lex/ratifce.pl?C097>, accessed on October 11, 2010

The very low culture of ratifying international human rights treaties by the Middle East and Gulf countries is also reflected on the UN and ILO conventions on migrant workers.

Low ratification of the international human rights and international migration law instruments devoid a common ground between the countries of employment and Ethiopia in further protecting the rights of migrant domestic workers. It makes the application of the rights found under the international instruments under the domestic legal system.

However, it is a sacrosanct principle under international law that states had an obligation to respect and protect those fundamental rights which has the status of customary international law.

As we have seen *supra* at chapter one, the ILO instruments stipulates that non-ratification of one or more of the eight fundamental ILO conventions, which are concerned with the abolition of forced labor, elimination of child labor, trade union rights and non-discrimination does not excuse member states from the general obligation found therein.

4.3 Responses by the Ethiopian Government, their Effectiveness and the way forward

In this section we will see the measures taken by the Ethiopian government and their effectiveness. The measures are taken with a view of regulating migration and protecting the rights of migrant workers.

The responses of the Ethiopian government are fragmented. They are reactive than organized and lasting. These responses taken by the Ethiopian government can be seen as; Legislative responses, remittance facilitation, institutional structure and Protection and assistance.

4.3.1 Legislative Responses

In this regard the Ethiopian government passes some important laws which are aimed at preventing and punishing irregular migration, preventing exploitation of migrants and protecting the rights of migrant workers.

These laws include the Employment Exchange Services Proclamation No. 632/2009,³² which repeal the previous private employment Agency proclamation No. 104/1998³³ and the criminal law, which punish trafficking in women and children³⁴ and unlawful sending of Ethiopian for work abroad (participating in irregular Migration).³⁵

Ethiopia is not yet a party to the ICMW and the two ILO conventions on the rights of migrant workers. This might be for the reason that migration for employment was not a social phenomenon in Ethiopia during the 1950s and also early 1990s where ratification of the instruments was a popular agenda.

The government's labor migration policy may also be the other factor. Ethiopia tends to follow a regulative or restrictive labor migration policy especially to the Middle East and Gulf countries. Therefore, the conventions will make Ethiopia assume an obligation that is not essentially important to protect the rights of its citizens. The fact that these conventions also did not so far enjoys ratification from the major receiving countries of the Middle East and Gulf countries might discourage the Ethiopian government from taking initiative to accede to the conventions.

So far, Ethiopia does not have a bilateral or multilateral agreement on the issue of employment exchange with any of the Middle East and Gulf countries. Bilateral and multilateral agreements are popularly used by the major labor

³² Employment Exchange Services Proclamation 2009, *supra* note 3

³³ Private Employment Agency 1998, proc. No. 104, *Neg. Gaz.* 4th Year No. 28

³⁴ , The Criminal Code of the Federal Democratic Republic of Ethiopia 2004, Article 597, proc. No.414, *Neg. Gaz.* (2004).

³⁵ *Id.*, Article 598

sending countries of south East Asia as a means to strengthen the protection of the rights of their citizens in the countries of employment.

According to a research department head of MoLSA Ethiopia is now negotiating for a bilateral employment agreement with Kuwait.³⁶ Ato Yohanis Fenta said, “Negotiating a bilateral agreement has been continuously difficult with some of the Middle East and Gulf countries. These countries do not want to tie themselves up in legally binding bilateral agreements in the issues of domestic labor employment exchange; they wanted all activities to be performed by private employment agencies and with no legal obligation on the side of the government.”³⁷ However, a strong diplomatic effort has to be made by the Ethiopian government to negotiate a bilateral labor exchange agreement with the destination countries.

4.3.1.1 Employment Exchange Service Proclamation 2009

The Employment Exchange Services proclamation of 2009 is the most comprehensive law in Ethiopia that regulates the issue migrant workers in stages of recruitment, travel and work place and return.

The proclamation aimed at defining the roles of public and private employment services in employment exchange and further protects the rights and safety Ethiopians when they are employed abroad.³⁸ The proclamation totally repeals the previous private employment proclamation No. 104/1998.

The previous proclamation was aimed at defining the participation of private employment agencies and protects the rights, safety and dignity of Ethiopians going abroad.³⁹ The new proclamation tends to further protect the rights of Ethiopians when they are employed abroad, it also define the role of public

³⁶ Interview with an officer from Research department of MoLSA, September 21, 2010, Addis Ababa Ethiopia.

³⁷ Interview with Ato Yohanis Fenta, A/Director of Diaspora Participation and Coordination, Ministry of Foreign Affairs, November 23, 2010, Addis Ababa, Ethiopia

³⁸ Employment Exchange Services proclamation 2009, supra note 3, Preamble

³⁹ Private Employment Exchange service proclamation 1998, supra note 33

employment services which is provided by MoLSA. Further monitoring and regulating overseas employment exchange services is also the purpose of the proclamation.⁴⁰

The role of public employment service is precisely defined under the new proclamation. Public employment services refer to the service of issuance of license to private employment agencies, monitoring and supervision of such agencies and the issuance of work permit.⁴¹ Public employment service is to be provided by MoLSA. The specific functions of public employment services are further defined under Article 31(1) to (9) of the proclamation.⁴²

The role of the public employment services is broad and requires an organized institution to fully discharge the functions and duties found under the proclamation. The researcher is of an opinion that the MoLSA is not fully capable to render the functions of the public employment services in its present institutional structure, this is mainly due to the fact that the current institutional structure of the Ministry did not give due regard to the task of overseas employment exchange service. However, the proclamation sighted a possible restructuring of the Ministry to discharge public employment functions found under the proclamation.⁴³

The proclamation states that its provisions are applicable for “domestic migrant workers” when they are employed abroad. This is to avoid a dilemma whether the proclamation is applicable to domestic workers, as these types of works are excluded from the scope of the labor law of Ethiopia.⁴⁴

According to this proclamation, an Ethiopian is allowed to work abroad only through a private employment agency.⁴⁵ Direct recruitment is allowed only if

⁴⁰ Employment Exchange Service Proclamation 2009, Supra note 3, preamble

⁴¹ Id, Article 2(7)

⁴² Id, 31(1) to (9)

⁴³ Id, Article 38

⁴⁴ Labor Proclamation 2003, Article 3(2)(d), proc. No. 377, *Neg. Gaz.* 10th year No. 12

⁴⁵ Employment Exchange Proclamation 2009, Supra note 3, Article 31 and Article 34(1)

the Ministry permits. A public employment services are still conducted by MoLSA.

The proclamation provides that private employment service is to be provided without directly or indirectly receiving payment from the worker.⁴⁶ The proclamation also prohibits providing employment exchange service by receiving charges from the employee.⁴⁷

Receiving payment from the workers might entail in suspension and revocation of license according to Article 27 and Article 28 of the Proclamation. It might also cause a criminal prosecution under article 40(3).⁴⁸

The proclamation states the detail requirements for issuance of license, renewal of license, and operation of a private employment agency.⁴⁹ It also defines the detail obligation of the private employment agency and the obligation of the worker.⁵⁰

The proclamation also allows the means where by a direct recruitment of workers could be possible. The proclamation puts criminal sanctions for involvement in employment exchange services while the agency's license is suspended.

In addition to measures of suspension and revocation of license,⁵¹ it also puts a general criminal sanction for violation of any of its mandatory provisions.⁵²

The proclamation requires the MoLSA in consultation of Ministry of foreign affairs to assign labor attachés to ensure protection of the rights, safety and dignity of Ethiopians employed abroad.⁵³ This is a very important move towards extending diplomatic and legal protection to Ethiopian workers

⁴⁶ Id, Article 2(1)

⁴⁷ Id, Article 34(3)

⁴⁸ Id, Article 27, 28 and 40(3)

⁴⁹ Id., Part II, Article 5 to 15

⁵⁰ Id, Part III, Article 16 to Article 26

⁵¹ Id, Article 27 and Article 28

⁵² Id, Article 40(3)

⁵³ Id, Article 36

traveling to the Middle East and Gulf Countries. However, so far no labor attaché has been assigned in any of the Middle East and Gulf countries and according to responses of the officers from MoLSA and MoFA, yet no activity is being done to deploy labor attachés.

The proclamation mandates the creation of a national committee which will protect the rights, safety and dignity of citizens.⁵⁴ The committee is the organ mandated to ensure the proper implementation of the proclamation.⁵⁵ This committee is yet to be established.

4.3.1.2 The Criminal Code of the Federal Democratic Republic of

Ethiopia, 2004.

The 2004 criminal code of Ethiopia also contains some substantive Articles that punish trafficking in persons and participation in unlawful sending of migrants abroad. Trafficking is not defined under the criminal code, but it appeared that a narrow definition of trafficking seems to be used under the code.⁵⁶

Article 598 of the proclamation criminalizes unlawful sending of Ethiopian for work abroad.⁵⁷ This tends to discourage the participation of individuals in any irregular sending of migrant workers abroad.

Enforcement problem of the provisions of the criminal law is noted in previous researches. Low rate reporting of trafficking cases, lack of evidence, gap in the laws, lack of awareness and attitudinal problems, work load and lack of adequate man power on the side of the policy are the causes identified for low

⁵⁴ Id, Article 39(1)

⁵⁵ Id Article 39(2)

⁵⁶ Criminal Code 2004, Supra note, 34, Article 597

⁵⁷ Id, Article 598

prosecution of trafficking crime and weak enforcement of the provision of the criminal law.⁵⁸

An appropriate legal framework is vital in protecting the rights of domestic workers. Labor legislation must be complemented by criminal laws allowing for successful prosecution of offenses such as physical, psychological, and sexual abuse, forced labor, forced confinement, and trafficking in persons.⁵⁹

4.3.2 Remittance Facilitation

Researches indicate that from their average wages, Migrant domestic workers are able to save more than 86% and to remit 64%, which are much higher proportions than private-sector workers manage from higher wages.⁶⁰ Therefore, domestic migrant workers are able to remit a good deal of money despite they earl relatively low income.

Propensity to remit is higher for men than for women, for younger than for older workers, for those with middle rather than higher or lower levels of education.⁶¹

The amount of remittance that Ethiopian migrant workers send home is significant not just only for its amount but for the fact that it is a money send to the low and middle class Ethiopians and it is usually intended for family maintenance or to save startup capital for small businesses.

The National Bank of Ethiopia issues Directive No. FXD/30/2006,⁶² to set guideline, to enhance incoming remittance transfers and regulating the process of remittance transfer.

⁵⁸ Yoseph Endeshaw *et al*, *supra* note 11, p. 73 to 77

⁵⁹ Human Rights Watch , *Supra* note 27

⁶⁰ Simel Esim and Monica Smith (ed.), *Supra* note 10, p. 58

⁶¹ *Ibid*

⁶² National Bank of Ethiopia, Provisions for international Remittance Services 2006, Directive No. *FXD/30/2006*, (2006)

International money transfer operators in association with commercial Banks, Banks and non-financial organizations which refer to, Ethiopian Airlines and Ethiopian Shipping Lines are allowed to engage in Remittance transfer in Ethiopia.⁶³

The directive obliges remittance service providers to advertise their services, Bank Identifier Code (BICs) and International Bank Account Numbers (IBNS) through brochures, websites and Ethiopian embassies and consulates.⁶⁴ This is a substantive move towards creating awareness about the low cost and effective remittance transfer by the migrant workers.

The directive orders remittance service agency agreement to be performed based on competitive market operations. In this regard the directive prohibits an exclusive agency agreement between remittance services providers. This is a good move towards diversifying and providing access to remittance transfer at the choice of the remitter.

Most importantly the directive state that remittance service provider shall charge zero or minimum tariff on remittance transfer.⁶⁵

The commercial Bank of Ethiopia(CBE), the state owned and the biggest commercial bank in the country, both in terms of branches and capital, so far perform some activities to support a low cost remittance transfer by Ethiopian migrant workers in Gulf countries.⁶⁶

The bank took measures to operate in Abu Dhabi in correspondence with a money transfer agent located there. It also waives the charge it used to leaving on foreign transfer incoming money.

⁶³Id, Article 2(1)

⁶⁴ Id, Article 3(2)(7)

⁶⁵ Id, Article 3(2)(4)

⁶⁶ An interview with W/o. Meseret Seleshi, Advisor and training officer at the commercial Bank of Ethiopia, October 13, 2010.

The bank also introduces a Diaspora account, where Ethiopians or foreign national of Ethiopian origin can deposit money in foreign currency and can make transfers and payments in foreign currency.

However, it is still a big problem for Ethiopian migrant workers to transfer and deposit their money partly because they are not allowed by their employers to move outside of their place of work and also because of absence of low cost and effective remittance service provider with specifically favorable scheme for domestic migrant workers and most importantly because of lack of awareness about the banking service by the migrant workers.

The government shall arrange facilities for a low cost and efficient remittance transfer for Ethiopian migrant workers by opening money transfer offices in areas where there are a considerable number of Ethiopian migrant workers.

Lack of awareness about the banking system and remittance transfer by the migrant workers is also another major problem. The government has to take measures that will increase awareness about safe ways of handling their money and conducting low cost remittance.

4.3.3 Institutional Arrangement; MoLSA, National Anti-Trafficking Task Force, The National Committee

The Ministry of Labor and Social Affairs is the primary institution mandated with the power of regulating, supervising and facilitating regular employment exchange. From among its functions the Ministry is mandated to issue Directives on employment exchange and conditions whereby Ethiopians employed abroad.⁶⁷ The Ministry administers the labor law and the Employment exchange proclamation.

⁶⁷ Definition of Powers and duties of the Executive Organs of the Federal Democratic republic of Ethiopia 1995, Article 20(6), Proc. No. 1, *Neg. Gaz.* 1995 And Labor proclamation 2003, Article 170(1) (f), proc. No.377, *Neg. Gaz.* (2003)

The employment exchange service proclamation defines the role of public employment services which are to be provided by MoLSA.⁶⁸

These functions includes; issuance of license to private employment agencies and supervision of activities of the same, approval of employment contract of migrant workers, resolving disputes that may arise between the workers and private employment agencies, provision of pre-employment and pre-departure orientations to migrant workers, facilitating resettlement of returnee migrant workers, studying labor market abroad and facilitating lawful labor migration, monitoring the protection of the rights of migrant workers in the countries of employment, maintaining and disseminating information about citizens deployed abroad, and facilitating bank remittance.⁶⁹

Currently MoLSA discharge only few of those functions entrusted to it by the proclamation. Approval of contracts, pre-departure orientations, and resolving disputes between the workers and agencies, receiving compliant by the workers and families of the workers and supervision of agencies are the tasks that the ministry is currently performing.

The ministry does not appear to be ready to discharge the other tasks assigned to it by the Employment exchange proclamation. Officer in the Ministry think that some of the duties are not attainable with the current manpower and institutional structure of the Ministry.⁷⁰

The researcher is of an opinion that, MoLSA needs to restructure its institutional arrangement in order to discharge the obligations of public employment services required by the proclamation. This might be either a creation of a separate department under the ministry that handles the issue of public employment services or creating an independent institution that will totally take away the functions of foreign employment exchange service from

⁶⁸ Employment exchange Service Proclamation 2009, *supra* note 38, Article 31

⁶⁹ *Id.*, Article 31(1) to (9)

⁷⁰ Interview with an officer from the Research department of MoLSA, September 21, 2010, Addis Ababa, Ethiopia,

the ministry. In this regard through the Philippines Overseas Employment Administration, the Philippines has extended greater government protections to Filipinos employed abroad as domestic workers, including a standard contract that ensures a weekly day of rest and regulations that require employers to pay most of the costs associated with recruitment and placement,⁷¹ lessons might be taken from this institution and adapted to the labor migration policy of Ethiopia.

A National Committee on Trafficking in women and children was formed in June 1998. The Committee was chaired by the Ministry of Foreign Affairs, had created a forum for exchange of information as well as coordination among the institutions relevant in combating trafficking in women and children. The members of the Committee were the immigration and Citizenship affairs directorate, the federal Police Investigation coordination Department, The Ministry of Labor and Social Affairs, the Ministry of Justice, the Ministry of Information, and the women's affairs Department of the Prime Minister's Office. The Committee was short lived after conducting a study about the trafficking in Lebanon the committee disappeared for a reason not known.

A National Taskforce on Trafficking, chaired by the Ministry of Justice, has been established in November 2004. Members of the national committee are again included as members of the Task Force. The fate of the Task force was not different from the 1998 National Committee. Currently the committee is not functioning.

The new employment exchange proclamation also requires the creation of a National Committee.⁷² This committee is not yet established and its composition is not clearly known. However, a long list of power and duties of the committee are found under the proclamation.⁷³

⁷¹ Human Rights watch, *supra* note 27

⁷² Employment Exchange Service Proclamation 2009, *Supra* note 38, Article 38

⁷³ *Id.*, Article 39(2) (a) to (h)

This committee is mandated to ensure the proper implementation of the employment exchange proclamation.⁷⁴ Facilitate resettlement program for returnee migrant workers, conducting studies with a view of concluding bilateral agreement with receiving countries, public awareness creation about illegal employment exchange activities, ensuring that legal actions are taken against people who infringe the rights of Ethiopian migrant workers in the country of employment, ensure the effective prosecution of people participating in unlawful employment exchange service are the functions of the committee.

The national committee appeared to be a custodian of the proclamation, and is given with basic tasks help to regularize and regulate labor migration as well as protect the rights of migrant workers.

However, the composition and structure of the National Committee has to be made in a way that it will make the committee discharge its functions effectively. Lessons has to be taken from the previous National Committee and the anti Trafficking Task Force.

The relationship between the National Committee and MoLSA is also very decisive in realizing the intended purposes of the proclamation.

4.3.4 Protection and Assistance

Sending countries often extend Protection and assistance to their migrant workers using their embassies and consulates found in countries of employment and the labor attachés found therein. In this regard Ethiopia has embassies in Saudi Arabia-Riyadh, Kuwait and Yemen. It also has consulate generals in Saudi Arabia-Jeddah, Lebanon, and U.A.E.

Returnee migrant workers felt that Ethiopian government has not accorded them enough protection as compared to the governments of other migrant workers.⁷⁵ Ato Yohanis Fenta also agrees with this assertion, but he said this is

⁷⁴ Id, Article 39(2)(a)

⁷⁵ Emebet Kebede, Supra note 1, p. 37 and Interviews held with returnee Migrant workers in Addis Ababa and

basically because of lack of adequate man power in the consulates that are located in the countries of employment.⁷⁶

The embassies and consulates are not so far able to extend adequate protection to Ethiopian migrant workers in the countries of employment. No labor attaché is positioned in any of the embassies and consulates.

The consulates and the embassies should be staffed with adequate man power and resource to ensure that the rights of Ethiopian migrant workers are protected. The embassies and the consulates have to be able to provide legal advice and legal representation when the rights of the migrant workers appeared to be violated.

The embassies should work with the government agencies of the countries of employment to design mechanism that will help to protect the rights of the migrant workers in a better way.

Many Ethiopians who are in irregular situation in some of the Middle East and Gulf countries failed to return home due to inability to pay penalty some nations ask for the irregular migrant workers when they want to leave the country.⁷⁷ In this regard, the Ethiopian government should extend protection through diplomatic means to negotiate with the countries to lift their penalty and assist voluntary return of irregular migrants to Ethiopia.

4.4 Towards Regularizing and benefiting from Labor Migration: a policy dilemma

Ethiopian labor migration to the Middle East is basically in low skilled areas of domestic and care services; the labor migration is also highly feminized; where more than ninety percent of Ethiopian migrants to the Middle East and the

Dessie, August 4 and September 2-8, Dessie and Addis Ababa, Ethiopia.

⁷⁶ Interview with Ato Yohanis Fenta, A/Director of Diaspora Participation and Coordination, Ministry of Foreign Affairs, November 23, 2010, Addis Ababa, Ethiopia

⁷⁷ Emebet Kebede, *supra* note 1, P. 20

Gulf are women. High irregular migration is also prevalent to the Middle East and Gulf countries. As we have discussed *supra* at section 1, Ethiopian migrant workers are vulnerable to exploitation and experience a huge violation of their human, labor and migrant rights starting from the initial stages of migration.

Since the introduction of private employment Agencies in international employment exchange service, the role of the government highly diminished. However, the number of migrant workers, both regular and irregular, dramatically increased.⁷⁸

What are the priorities in addressing issue of labor migration to the Middle East and Gulf countries?

Regularizing migration by combating irregular migration, safeguarding the rights of migrant workers, ensuring migrant's and the nation's benefit from the labor migration should be some of the possible areas of focus in dealing with the issue of labor migration to the Middle East and Gulf countries.

Despite the absence of an organized policy statement that state Ethiopia's stand towards labor migration, the practice dictates that the country tends to follow restrictive or regulative labor migration policy. The policy basically demotes labor migration and tends to regulate and control labor migration.

The Ethiopian government never promoted labor migration to Middle East and Gulf countries, rather the government media used to transmit and highlight cases of Ethiopian migrant workers who were injured, abused and even dead in the Middle East and Gulf Countries.

Ethiopian government did not sign a single labor exchange bilateral or multilateral agreement while its citizens have been engaged in labor migration for more than two decades. Ethiopia is also not a party to those major

⁷⁸ See, discussion *supra* at chapter three, section 3

international migration law instruments that tend to promote and protect the rights of migrant workers.

The task of supervising, administering the issues of labor migration and provision of public employment services is left to the Ministry of Labor and social Affairs (MoLSA) which is crammed with other ministerial functions. Absence of a separate department which supervises overseas employment under the Ministry further evidences the low attention given to the issue of overseas employment exchange.

This shows a huge neglect of the issue from national priorities. An officer from the research department of MoLSA said “we want none of our women and girls to go the Middle East and work as house maids; it is the nation’s desire to let them study, work and prosper in their own country. So we did not promote labor migration to the Middle East and Gulf countries to work as domestic workers”⁷⁹

With this backdrop, it is ideal to ask why the government did become inactive in facilitating labor migration from Ethiopia. This may be because the government did not find labor migration in areas of domestic and care services beneficiary for the migrant workers, the society and the nation. This is partly true, as many Ethiopian migrant workers failed to succeed from their migration to Middle East and Gulf countries. Less attractive and abusive work environment and patriarchal social culture in the Middle East and Gulf countries are also discouraging facts for Ethiopian government to promote low skilled labor migration to the countries.

However, many Ethiopian migrant workers are still traveling to some of the Middle East and Gulf countries. The Ethiopian government has the duty to make sure that the rights of its citizens are duly protected in all the stages of the migration. Not only protecting the rights of migrant workers but also

⁷⁹ Interview with an officer from the Research department of MoLSA, September 21, 2010, Addis Ababa, Ethiopia.

ensuring that the migrant workers duly benefited from the migration is the obligation of the government towards its citizens.

In this regard, Ethiopia needs basic policy guidelines in areas of overseas employment exchange. The policy has to put into consideration the current migration trends and the future potential for migration and also social and economic conditions that will necessitate labor migration.

The government's existing stand on labor migration is uncertain. However, it is clear that neither the majority of the migrants nor the country is benefiting from the existing labor migration trends to the Middle East and Gulf countries.

The labor migration policy has to indicate measures that should be taken to regularize irregular migration. In this regard, awareness raising programs and access to free and reliable information about the employment opportunities and setting minimum age requirement for labor migration can be vital steps forward in regularizing the labor migration process.

Migration from Ethiopia is highly feminized and the migration policy has to adopt gender perspective.

Broadening the legal channels of migration will discourage irregular migration. Therefore, measures have to be taken to make the regular channels known for the migrant workers before they decide to migrate. This might require assisting and empowering private employment agencies to advertise themselves in due manner.

Shifting labor migration from low skilled domestic and care services to semi-professional and professional fields, where the migrants will benefit themselves and the country is also an issue needed to be considered.

This is for the reason that professional and semi professional labor migrants often work in sectors which better protect their rights or regulated sectors and they are often able to defend their rights by themselves.

There are some compelling factors that require a shift in a labor migration policy, these include a high population growth, increasing graduating students from Universities, vocational and technical schools and the country's ever growing need not only for trained but for skilled and experienced workers specially in industrial and technological areas. Technology transfer can also be made possible with increasing professional labor migration. These factors require the country to look for employment opportunity for young graduates to realize the development ambition of the country. However, this also has to be made without compromising the current demand of the country for professionals.

It is a development requisite for Ethiopia to work on an organized overseas employment exchange policy. There is a wider consensus that over reliance on labor exporting as a strategy for economic development generally produces disappointing results.⁸⁰ In countries where labor and or human capital are in relative surplus, however, policies that facilitate emigration, and that capture a significant share of the resulting remittances for investment, may provide a valuable supplement to, national development policy.⁸¹

⁸⁰ J. Edward Taylor, Joaquin Arango *et al*, "International migration and National Development," *Population index*, Vol.62, No. 2, 1996. p. 182

⁸¹ Ibid

Chapter Five

5. Conclusions and Recommendations

5.1 Conclusions

This research has clearly shown that Migrant workers are entitled to protections under the International Human Rights instruments and the International law instruments on Migration. These instruments, even though they develop separately, they work in a mutually re-enforceable manner towards recognizing and protecting the rights of migrant workers.

The broad nondiscrimination clause found under the international human rights instruments and the inclusion of nationality as a ground that will not justify discrimination, ascertains that all migrant workers can legitimately invoke the rights accorded under the international human rights instruments both in the countries of origin and countries of employment.

International migration law instruments also reaffirmed the application of rights found under the international Human rights instruments to all migrant workers. International migration law Instruments do not essentially create new right which does not exist under the International human Rights instruments, but they clearly and specifically extend the application of these rights to migrant workers. However, international migration law instruments also declare rights which migrants are entitled due to their unique status.

The UN and ILO instruments on rights of migrant workers declare fundamental rights of migrants and tend to protect the rights of migrants workers before leaving the country, during the journey, in the country of employment, during employment and upon return.

The international migration law instruments contain a broader definition of work and workers. Work refers to any remunerated activity, and migrant worker refers to anyone who participates in remunerated activity outside of his/ her country of origin. This is however without compromising the clear exclusion of some group of people and works from the clearly stated definitions of the instruments.

In this regard it is concluded that the international migration law instruments are applicable for domestic workers when they are employed outside of their country. The international human rights instruments are also duly applicable to migrant domestic workers either regularly admitted or irregularly entered into a state.

The international migration law does not grant irregular migrant workers with the right to work, however it protect the rights that arises from their employments, if once they engage in formal employment. The ILO instruments recognize irregular migrant worker's rights which arise from their current or past employment.

However, International Migration law instruments so far enjoy little ratification especially from receiving countries. The inclusion of rights of undocumented migrant workers, the broad nature of the rights declared to migrants and allegation that the instruments are pre-globalization documents and doubt about their importance in post-globalization period; are some of the points of that are mostly raised by receiving countries for non ratification of the International conventions on the rights of all migrant workers and members of their families and the ILO conventions on Migrant workers.

The general disinterest of Middle East and Gulf countries to ratify international human rights instruments is also reflected in their non-ratification of the international migration law instruments.

Ethiopia and the major receiving countries of the Middle East and the Gulf are not parties to the UN and ILO instruments on migrant workers. Even though Ethiopia and the receiving countries of the Middle East and the Gulf have generally not accepted specific standards safeguarding the rights of migrant workers, such as ILO conventions No. 97 and 143 or the UN convention on the Rights of All Migrant workers and Members of their Families, many relevant provisions in the more widely accepted ILO fundamental rights' conventions and the general as well as subject and group specific Universal human rights instruments are not limited in personal scope to nationals or those possessing regular residence status within a particular country.

Labor migration from Ethiopia is a recent phenomenon. Ethiopian migrants started to travel to Middle East and Gulf countries in search of jobs since late 1980's. Ethiopian labor migration to the Middle East and Gulf countries is highly feminized, with eighty five to ninety five percent of them women. The migration is in those fields of domestic and care services. These fields are highly unregulated by domestic labor laws. Therefore, the international human rights and migration law instruments are the valuable tools in defining and protecting the rights of migrant domestic workers.

Ethiopians Migrate to the Middle East and Gulf countries both through regular and irregular channels. Regular Migration is to be made by licensed private employment agencies with an approval from the Ministry of Labor and social affairs (MoLSA). However, irregular migration is highly prevalent. Irregular migration usually takes place through trafficking and smuggling and often with an assistance of illegal brokers, family members and relatives residing and working in the destination countries.

Ethiopian migrants often face numerous challenges in all stages of their migration process to the Middle East and Gulf countries. Ethiopian migrant workers are highly vulnerable to irregular migration mainly due to lack of awareness and false promises of the facilitators and traffickers. Many who

travel through land and sea en route Yemen and Gulf countries have been reported to be abused and victimized by the smugglers and traffickers and bandits.

The major problems which resulted in absence of an effective protection of the rights of Ethiopian migrant workers are those related with prevalence of high irregular migration, absence of a national policy on labor migration which resulted in a fragmented effort to address the challenges, absence of a well organized institution that handles the issue of overseas employment exchange, absence of sufficient diplomatic or consular protection by the Ethiopian embassies and consulates in Middle East and Gulf countries, absence of effective policing and prosecution of people involved in trafficking and smuggling of migrants, non-ratification of the international law instruments on migrant workers by Ethiopia and the receiving countries which in turn create a legal lacuna, a huge reliance on the unilateral effort and absence of bilateral and multilateral efforts on the side of the Ethiopian government.

5.2 Recommendations

The Ethiopian government needs to take measure that will enhance protection of the rights of migrant workers, help to regularize migration and increase the benefits of labor migration to the migrants and the nation in general. The researcher believes that the following recommendations will help to achieve the above objectives.

- A comprehensive national labor migration policy is needed. The labor migration policy will help to guide measures that will be taken by the government agencies and other stake holders. The labor migration policy should have a gender perspective in addressing those issues that are typical for women migrant workers and those engaged in domestic and care services.

- Bilateral agreements have to be signed with the major receiving countries of the Middle East and the Gulf. Bilateral agreements will help to extend better protection for the rights of migrant workers in the countries of employment and will help to discourage irregular migration by facilitating information exchange on the side of Ethiopian and the receiving countries. However, care has to be taken not to agree on terms that will give migrant workers lesser rights than those protected by the international human rights and international migration law instruments. The bilateral agreements have to be able to create a joint forum to handle the issue of labor migration in a mutually beneficial manner.
- The Ethiopian government has to take measures to communicate the plight of Ethiopian migrant workers in some of the Middle East and Gulf countries to the governments of the receiving countries and find solution to the existing problems. This has to include facilitating voluntary return of irregular migrant workers.
- Awareness creation about the legal channels of labor migration and its benefits to migrants before they made decision to migrate is a decisive measure towards controlling irregular migration. Mobilizing the community to help the effort in prosecuting persons and institutions involved in trafficking and illegal sending of people abroad is also needed.
- Ethiopia has to accede to the ILO and UN conventions on migrant workers. Ratifying instruments will help to better protect the rights of Ethiopian migrant workers. It will also help to exert pressure on the receiving states using the multilateral framework.
- Deploying labor attachés in embassies and consulates which will provide and facilitate legal assistance for migrant workers in the countries of

employment is sought under the employment exchange proclamation of 2009 and this has to be done sooner.

- The Ministry of Labor and Social Affairs needs to restructure its institutional arrangement in order to discharge the obligations of public employment services as required under the 2009 Employment proclamation. This might be either a creation of a separate department under the ministry that handles the issue of public employment services or Creating an independent institution that will totally take away the functions of foreign employment exchange service from the ministry. The establishment of this institution will consolidate the fragmented efforts taken by different government organs to tackle irregular migration.

-The government should help private employment agencies to promote regular migration and a strong supervision and measure has to be taken on those agencies which work in violation of the employment exchange service proclamation.

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