ADDIS ABABA UNIVERSITY FACULTY OF LAW AND GOVERNANCE SCHOOL OF GRADUATE STUDIES

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ADDIS ABABA

JANUARY 2018

ADDIS ABABA UNIVERSITY FACULTY OF LAW AND GOVERNANCE SCHOOL OF GRADUATE STUDIES

COUNTERING CRIME OF TRAFFICKING IN PERSONS AND SMUGGLING OF MIGRANTS IN ETHIOPIA: THE LAW AND THE PRACTICE

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A THESIS SUBMITTED IN PARTIAL FULFILLMENT FOR THE REQUIREMENTS OF MASTERS OF DEGREE OF LAW /LL.M/

ADDIS ABABA, JANUARY 2018

ADDIS ABABA UNIVERSITY FACULTY OF LAW

AND GOVERNANCE SCHOOL OF GRADUATE STUDIES

Approval Sheet

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DECLARATION

I, the undersigned, declare that the thesis is my original work and has not been presented for a degree in any other university and that all sources of materials used in the thesis have been duly acknowledged.

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Date ______________

Acronyms

SoM --	Smuggling of Migrants
TiP --	Trafficking in Persons
UDHR --	Universal Declaration of Human Rights
ICCPR---	International Convention on Civil and Political Right
ICESCR --------------------------------------	International Convention on Economic, Social and Cultural Rights
CEDAW --------------------------------------	Convention on Elimination of Discrimination against Woman
CRC---	Convention on Rights of Children
ACHPR--	African Charter on Human and People's Rights
UNODC --------------------------------------	United Nations Office on Drug and Crime
IOM---	International Organization for Migrant
UNHCR---------------------------------------	United Nation Office of High Commissioner for Refugee
RMMS --	Regional Mixed Migration Secretariat
IGAD ---	Intergovernmental Authority on Development
ILO--	International labour Organization
FDRE ---	Federal Democratic Republic of Ethiopia
NGO --	Non-Governmental Organization
MLA --	Mutual Legal Assistance
SNNP--	Southern Nation, Nationality and People
GCC --	Gulf Cooperation Council

ACKNOWLEDGEMENT

First and for most, I would like to praise my lord Allah (SWA) for giving me all the strength and hope to accomplish my post graduate studies.

I am very thankful to my advisor Dr. Yonas Birmeta for his patience in going through the draft of this paper. His insightful comments were also fabulous assets for the paper.

I am also indebted to Com. Ketema Debalke, Henok Tesfaye, Biniam Shiferaw and Adi Dekebo for their cooperation in conducting interviews and for their politeness in responding to my questions and in reading the draft of my thesis. It is also my pleasure to express my heartfelt to and Atsbeha Hagos who provided me with court cases that are valuable for this study.

I would also like to express my deep gratitude to my father, my mother, brothers, Biniam and Seifedin and sisters and to my wife who gave my life a meaning and for their unreserved support throughout my study.

Addis Ababa, January 2010

Awel Sultan

ABSTRACT

Regular migration is important for development. For instance, European countries have developed immigration policies to encourage foreign-born individuals those who are highly skilled to enter to their country to fill the local economic and labour market need. Remittance enables the state to collect foreign currency to import goods and services. However, unlike irregular migrant, a person who migrates through the legal ways of migration will be able to ask for the entitlement of any rights provided under the international agreement for the migrant worker or permanent residents. Trafficking in person and smuggling of migrants are illegal or irregular means of migration that will take place with the illicit acts of others.

In Ethiopia, individuals and organized groups perpetrate crimes of trafficking in person and smuggling of migrants considerably and as a result, millions of people are detected as a victim. Some individuals work on procuring many Ethiopians to collect millions of dollars while the latter are vulnerable for death, physical and psychological assault etc.

To prevent and repress irregular migration, Ethiopia has ratified all the international legal instruments dealing with these crimes by Proclamation to Ratify United Nations Convention Against Transnational Organized Crimes No. 526/1999, Protocol Against the Smuggling of Migrants by Land, Sea and Air Ratification Proclamation No. 736/2004 and Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children Ratification Proclamation No. 737/2004 and also adopted the Proclamation to Provide for the Prevention and Suppression of Trafficking in Person and Smuggling of Migrant No. 909/2015. However, crimes of trafficking in person and smuggling of migrants continued to be committed in different forms. Thus, the study tries to point out the legal and practical problems related with countering mechanisms. Finally, the thesis tries to recommend the amendment of Proclamation no. 909/2015 to rectify the existing problems. In addition to this, the thesis devoted to provide some vital recommendations to counter the crime through criminal justice system.

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Chapter One

1.1. Background of the Research

Human trafficking is as old as slavery, yet it is still practically exist in the modern world.[1] The history of slavery stretches back thousands of years to many parts of the world, including the ancient kingdom of Mesopotamia (modern-day Iraq) and the empires of ancient Egypt, Greece, and Rome.[2] Even before 1500s, slave traders of that era forcibly took local peoples from Western Africa to European colonies and to settlements in the Americas and the Caribbean.[3] In case of slavery, peoples are seized from their home by force or captured due to war.[4] Nevertheless, traffickers procure victims based on false promise, abduction, deceiving and other similar acts.

There are varying estimates of the number of human trafficking victims worldwide. According to the ILO, there are 21 million victims of human trafficking, while the US Department of State estimates the number to be more than 20 million. On the other hand, the Global Slavery Index provides that there are 29.8 million victims of human trafficking.[5]

The global report on trafficking in person prepared by UNODC in 2014 shows that, between 2010 and 2012 (or more recent), victims of 152 different citizens have been identified in 124 countries across the world. The number of victims increased by 5 per cent compared to the 2007-2010 period.[6] The report has also identified the main destination areas of transnational trafficking flows. Accordingly, The Middle East, and West and Central Europe are the most preferred destination places for people from Sub-Saharan Africa.[7]

Ethiopians have taken some considerable portion of victims out of the total number indicated above. Peoples are trafficked and smuggled due to some pushing and pulling factors. Factors such as poverty, protracted conflict, unemployment, gender inequality and the lack of access

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[1] Alison Marie Behnke, Human Trafficking and Modern Slavery (2014) Twenty-First Century Books / Minneapolis p. 5
[2] Ibid
[3] Alison Marie Behnke, supra note 1, p.6.
[4] Ibid
[5] Hannah M. Martin and L. Murphy Smith, Historical Overview and Demographic Analysis of Human Trafficking in the United States (2015) p.1. see also(Global Slavery Index, Walk Free Foundation(2013)
[6] United Nations Office on Drugs and Crime (UNODC) Global Report on Trafficking in Persons, (2014) p.9.
[7]Ibid

to educational opportunities and resources are factors that may increase vulnerability to human trafficking.[8]

The 2014 Global Slavery Index found that Ethiopia is the thirteenth state to have the highest number of nationals living in modern slavery while Nigeria, Democratic Republic of Congo, Sudan and Egypt are sixth, seventh, eleventh and twelfth respectively.[9] Ethiopians use both regular and irregular means to flee.

Both human trafficking and smuggling of migrant have direct impact on human rights recognized under different international and regional human right instruments such as UDHR, ICCPR, ICESCR, CEDAW, CRC, European Convention for the Protection of Human Rights and Fundamental Freedom, the African Charter on Human and Peoples Rights (ACHPR) or the Banjul Charter and some other specific human right laws. Slavery, servitude, child sexual exploitation, forced marriage, servile forms of marriage, child marriage, enforced prostitution and the exploitation of prostitution are also trafficking-related practices prohibited under international human rights instruments.[10]

With regard to smuggling of migrants, IGAD has identified three routes of migration that smugglers used to procure the illegal entry of migrants from East Africa to different countries of destination. These routes are the Eastern, the Southern and the Northern route. For instance, the migration through Eastern route takes place through Djibouti (Obock), Somaliland, Puntland (Bosaso) and Yemen into Saudi Arabia, Gulf Countries and the Middle East. Between 2006 and 2013 more than half a million migrants mainly from Somalia and Ethiopia had been smuggled into Yemen through this route.[11]

Ethiopia is a source and, to a lesser extent, a destination and transit country for men, women, and children subjected to forced labour and sex trafficking.[12] Girls from Ethiopia's impoverished rural areas are exploited in domestic servitude and prostitution within the country, while boys are subjected to forced labour in traditional weaving, construction,

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[8] IGAD (2015) Human Trafficking and Smuggling of Migrants in the Context of Mixed Migration Flows: State of Play in the IGAD Region, October, Sixth IGAD Regional Consultative Process on Migration (IGAD RCP) p.3.k

[9] The 2014 Global Slavery Index, p.19.

[10] Office of the High Commissioner for Human Rights Human Rights and Human Trafficking, (2014)fact sheet No. 36, p.4.

[11] IGAD, Supra note 8, p.29.

[12] US Department of StatesTrafficking in Persons Report, (2017) p.168.

agriculture and street vending[13]. Ethiopian girls are vulnerable to exploitation in domestic servitude and prostitution in neighbouring African countries notably Sudan and the Middle East and Ethiopian boys are subjected to forced labour in Djibouti as shop assistants, errand boys, domestic workers, thieves, and street beggars.[14] The research conducted by US Department of States has found that child sex tourism is a growing problem in major tourist hubs, including Addis Ababa, Bahir Dar, Hawassa, and Bishoftu.[15]

To counter or repress these crimes, Ethiopia has ratified the Palermo Convention on Transnational Organised Crime and both Protocols on trafficking in person and smuggling of migrant which is adopted by UN to supplement the Convention. To implement the ratified protocols, it has also promulgated a national law that will regulate cases related to trafficking in person and smuggling of migrant with Proclamation No 909/2015. However, the ratification of international legal instrument and adoption of national law could not enable the country to control the crime. Instead, thousands of people are still moving from the country of their origin to some other countries through different means for different reasons. Some of the main challenges to this effect are lack of robust criminal justice system such as poor prevention, protection, investigation and prosecution techniques and lack of strong border management as well.

Even after the adoption of the national law regulating trafficking and smuggling, thousands of Ethiopian nationals, irregularly, migrate from Ethiopia every year, through Kenya, Tanzania, Malawi and Mozambique *en route* to South Africa.[16]Reports indicate that the brokers in Egypt were luring undocumented migrants from Sub-Saharan Africa to sale their organs for around USD 4,500.[17] RMMS's 3rd quarter report of 2016, has disclosed that 1444 people abducted before they reach the place where they wished to arrive at.[18]

The fourth quarter report of RMMS in 2016 has found that at least 19,165 persons (86 percent Ethiopian and 24 percent Somali) travelled from Obock, Djibouti and coastal towns near Bossaso, Puntland to Yemen.[19] Therefore, from this report, several Ethiopians are going to be smuggled to different destinations through the three routes. As a result, considerable

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[13] US Department of States, Office to Monitor and Combat Trafficking in Persons Diplomacy in Action (2016) Trafficking in Persons Report, (https://www.state.gov/j/tip/rls/tiprpt/countries/2016/258765.htm) last visited on April 3,2017

[14] Ibid

[15] Ibid

[16] Regional Mixed Migration Secretary (RMMS) Regional Mixed Migration in the Horn of Africa and Yémen in 2016: 3rd Quarter Trend Summary and Analysis, 2016, p.3.

[17] Id, p.6.see also 3rd quarter RMMS report of 2016

[18] Ibid

[19] RMMS,Regional Mixed Migration in the Horn of Africa and Yemenin2016: 4th Quarter,TrendSummary And Analysis, p.1.

number of the smuggled people will be vulnerable to abduction and exploitation. Finally, Ethiopia became one of the states that do not fulfil the minimum standard of measures to eliminate trafficking in person, and categorized under second tier with Kenya, India, Egypt, Morocco, Namibia and other 74 countries in 2017.[20]

1.2. Statement of Problem and Research Question

Ethiopia is one of the highest sources of migration so that several citizens of the country migrate to different destinations using the illegal or irregular migration routes. US Department of States has found that 1500 Ethiopian leave their country of origin each year. Third parties called traffickers and smugglers mostly procure the illegal movement of these people. Traffickers procure victims for exploitation either inside the country or by crossing the border whereas smugglers facilitate the illegal entry of a person in to another country. Thought the consequence of the illegal acts perpetrated by these criminals is different, victims of both crimes are in a position to be vulnerable to the violation of human rights and fundamental freedoms. The government is obliged to protect, prevent, prosecute and promote partnership with different states, NGOs, different government agencies to counter both crimes.

Ethiopia has ratified Palermo Convention and supplementing protocols such as protocols on trafficking in person and smuggling of migrant and enacted the national specific law in 2015 considering these protocols. However, violations of human rights preceded, and criminal justice sectors could not control the crime due to different reasons.

Based on the above discussion, this research answers the following questions:

Research Question

General Research Question

What are the primary challenges of the law enforcement organs in Ethiopia, to be unable to counter human trafficking and smuggling crimes?

Specific Research Question

1. Do Ethiopian national law on trafficking in person and smuggling of migrant comply with protocols ratified by Ethiopia?
2. What are the basic lacunas of Ethiopian national law to control these crimes effectively?

[20] US Department of States, supra note 11, p.54.

3. Are courts and prosecution organ in Ethiopia applying the newly promulgated human trafficking and smuggling of migrant Proclamation to prevent and respond to the crimes?
4. Are there organized mechanisms of protection to victims of trafficking in Ethiopia?
5. Does Ethiopia have robust mutual assistance and cooperation with other states to counter human trafficking and smuggling?

1.3. Objectives of the Study

The objective of this paper is to investigate the legal and practical aspects of human trafficking and smuggling crimes in Ethiopia.

The paper analyses the meaning of human trafficking or trafficking in persons and its distinction with smuggling.

One of the objectives of the thesis is investigating the loopholes of the national law and practical challenges of law enforcement organ along with the compliance of national law to international instruments. Moreover, the research assesses whether the law enforcement organ is effectively employing the national law to prevent and repress crimes of trafficking in person and smuggling of migrant or not.

In addition, this thesis analyses whether Ethiopia has established a strong relationship with the different country of destination to trafficking and smuggling process or not. This includes mutual legal assistance, joint investigation, extradition, exchanging information etc. Assessment on joint investigation, for instance, will enable states to identify how, what type of, and on whom exploitation taken place in the territory of the other state.

1.4. Scope of the Study

This research covers crimes of human trafficking and smuggling of migrants that took place everywhere in Ethiopia. With regard to determining whether Ethiopian criminal justice system is applying the newly promulgated trafficking in person and smuggling of migrant Proclamation or not, Federal First Instance Courts with special bench established to try human trafficking and Smuggling cases and regional high courts are assessed. The research is much limited to criminal justice sector so that it emphasizes to sort out means to counter such crimes identifying problems on these sectors.

The thesis also covers the time since Ethiopia has ratified the UN Protocol of Trafficking in Persons and Smuggling of Migrant supplementing the UN Convention against Transnational Organized crime.

1.5. Significance of the Study

At the end of the research, the findings of the study will expose the problems of inapplicability of trafficking in person and smuggling of migrant Proclamation and recommend measures to overcome such difficulties. The thesis will have a role to indicate rights of human being subjected to a violation in the process of trafficking in person and smuggling.

Another significance of this study is to avoid misunderstanding between actors of law enforcement organ to the concept of human trafficking and smuggling of migrants. This paper will also show the way in which the prosecution organ in cooperation with a police officer and Minister of Foreign Affair establish the mutual legal assistance and cooperation with other countries control the crime. Finally, by exposing the *lacuna* of Proclamation no. 909/2015, the researcher has given a clue for a legislator to amend the Proclamation and the recommendation to the executive organ to adopt a specific policy for trafficking in person and smuggling of migrants.

In general, the finding of this thesis will support the criminal justice system of Ethiopia to counter these crimes.

1.6. Limitation of the Study

Since the process of human trafficking and smuggling crime is very vast and allocated different part of the country, there was a serious challenge to access the representative data on all problems.

The biasness of reports, shortage of budget and time was also an obstacle to collect data that helps the researcher to reach on generalization.

1.7. Research Methodology

This research dealt with both legal-frame work analysis and observation of practical problems. Therefore, it is neither purely Doctrinal nor Non-doctrinal so that the mixed approach has been used to conduct this research.

To conduct the research successfully or exhaustively, the researcher employs both primary and secondary sources of data. In doing so, the thesis, as a primary source of data, addresses different ordinary laws including the FDRE Constitution are inconformity with an international agreement or legal instrument to which Ethiopia is party. The researcher also reviewed the literature to introduce a general problem statement, a paradigmatic framework for theoretical discourse about the research problem. In addition, the research concludes with a conclusions and recommendation about the way that may help to solve the problem in practice. Therefore, commentaries, books, newspapers, electronic libraries or websites that deal with human trafficking, migration and human right instruments are employed as a source of data to review the literature.

Interview is another method used to collect Data. The purposive or decisive sampling method was more vital to get a relevant and conclusive response from concerned authority those who are working on these crimes. Accordingly, interviews conducted with regional prosecutors and prosecutors, coordinator and Directors from Federal Attorney General, an official from Federal Police Commission, Federal First Instance Courts at which such a special bench is established, an International Organisation for Migrants(IOM). These organs forwarded information about the features of the crime and details about the problem of our judicial system.

Cases in relation to Trafficking in Persons and Smuggling are assessed to identify whether the newly promulgated law is, in effect, or not and to see what the problems of application out there.

The assessment of different documents such as reports of the governmental and non-governmental bodies is another means to gather information.

Accordingly, reports of anti trafficking in person and smuggling of migrant Task force secretariat, Federal police, MOLSA, Central Statistics Agency of FDRE, UN (UNODC, IOM) and RMMS, US Department of State and other international organization working in the field of migration. The thesis assesses the Statistical data to identify the measures taken against the traffickers and smugglers and to get a numerical data. The data gathered from governmental and non-governmental organizations analyzed through cross checking by collecting the data of same concern from different entities to identify its authenticity, including reports' bias.

1.8. Structure of the Study

This paper is classified into five chapters. The first chapter provides backgrounds of the study, statement of the problem and objective of the study, the significance of the study, research methodology and limitation of the study. The second chapter assesses the trafficking in persons and smuggling of migrants under international instruments. This chapter focuses on exploring the meaning of the said crimes and their human right perspective. Moreover, the chapter has devoted to assess international instruments adopted to prevent and repress these crimes. The third chapter investigates the crime of trafficking in person and smuggling of migrants in Ethiopia. Under this chapter, the paper assesses the root causes of crimes and the general overview of crimes at the national level. Primarily, it has devoted to assess domestic laws adopted to repress the crime. The fourth chapter is devoted to assessing the intervention of countering trafficking in Persons and Smuggling of Migrants under the Ethiopian legal system. This chapter assesses the practical intervention of the government to counter the crime based on four categories such as prevention, protection, prosecution and promoting partnership. Finally, the paper finalizes by drawing conclusions and recommendations.

Chapter Two

Trafficking in Persons and Smuggling of Migrants under International Instruments

2.1. Prevalence of TiP and SoM at the Global and Regional Level

As provided in the previous chapter, researches conducted by different organs estimates the number of trafficking victims around the world to be 20 to 29 million as of. The 2016 report prepared by UNODC on human trafficking depicts that 63,251 victims detected in 106 countries and territories between 2012 and 2014.[21] This report also indicates that out of 17,752 victims detected in 2014, women and girls cover 70 percent of the total numbers. Detected male victims (men and boys) are mainly trafficked for forced labour. To a limited extent, male victims are a target for sexual exploitation or for other forms of exploitation, such as begging and the commission of a crime.[22]

With regard to countering the crime, the number of countries with a statute that criminalizes most forms of trafficking in persons in line with the definition used by the UN Trafficking in Persons Protocol increased from 33 in 2003 (18 per cent) to 158 in 2016 (88 per cent). [23] It sounds to conclude that most states have complied with one of the minimum requirements of countering these crimes. This requirement is criminalizing all forms of trafficking in person and smuggling with a severe penalty through the adoption of the national law.

In 2016,while the prosecution organ of states in the world has prosecuted 14,897 and convicted 9,071, the number of the identified victim in this year was 66,520.[24] The efficiency of the justice system in the world, in relation to prosecuting traffickers and smugglers measured in comparison with the estimated number of victims in the world. Therefore, it is quite easy to observe the far-reaching distance between 29 million people estimated to be a victim in the world and 66,520 people identified as a victim by the prosecution. US Department of State in its report for 2017 on trafficking in person has found that African states, in 2016, have prosecuted 1,251 wrong doers and 1,119 people were convicted. As a result, the number of victims identified reached 18,296.[25]On the other hand, the report indicates that there is progress in the prosecution in Africa when compared with the earlier outcome recorded. For instance, in 2013, the number of suspected persons prosecuted was 572 while only 341 people convicted.[26]

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[21] UNODC, Global Report on Trafficking in Persons 2016, p.19
[22] Ibid.
[23] Id. p. 11
[24] US Departement of State, supra note 11, p.34.
[25]Ibid
[26] Ibid.

One of the major sources of migration in the world is East Africa. There are three main destinations for migrants from Eastern Africa, which are Europe, the Middle East and Southern Africa. Smuggling to Europe via Sudan to Libya or Egypt where they access Europe from West Balkans via Former Yugoslav Republic of Macedonia and the Central Mediterranean route to Italy. Most of the migrants are Somalis, Eritrean, Sudanese and Ethiopians. The other is the Middle East to Yemen via the Somali regions' cities of Hargeisa and Bossaso. The last route is via southern part of the Horn of Africa. The journey begins from Kenya and then to Malawi, Mozambique and the United Republic of Tanzania, to South Africa where the majority of the irregular migrants are destined. [27]

Regional mixed migration secretariat (RMMS) classifies irregular movement from the Horn of Africa into four exit routes. These routes are Northward (through Egypt into Israel), Eastward (towards Yemen), Southward (through Kenya towards South Africa) and Westward (also known as the 'Central Mediterranean route' towards Europe).[28] The report indicates that most migrants from sub-Saharan countries illegally entered into Israeli through Egypt. Migrants from Western African countries also use the fourth route to go to Italy. For instance, EBC, referring Algezira, has reported on October 23/2017 that 300 migrants from Nigeria have been arrested at the prison at Libya while they are travelling to Italy through Mediterranean Sea and some migrants were thrown to sea.

In 2016, at least 19,165 persons (86 percent Ethiopian and 24 percent Somali) travelled from Obock, Djibouti and coastal towns near Bossaso, Puntland to Yemen[29] while through westward route 7,244 migrants and refugees from the region arrived in Italy between October and December 2016.[30]

2.2. Meaning of Trafficking in Person and Smuggling of Migrants

Human trafficking or trafficking in persons and smuggling of migrants are interrelated concepts. Before the adoption of Palermo protocols, definitions of human smuggling and trafficking were vague and overlapped considerably.[31]For instance, Salt and Stein's early definition of Trafficking comprises four essential elements. These elements are:

> *it requires a trafficker or intermediary who undertakes to facilitate the migration; it involves payment to the trafficker by the migrant or on his behalf;*

[27] Id, p.58.
[28] RMMS, supra note 15, p.4.
[29] Ibid
[30] Ibid
[31] Theodore Baird, Defining Human Smuggling in Migration Research: An Appraisal and Critique (2016) Italy, p.3.

the migration itself is illegal and has to be supported by various illegal acts and; the migrant who was party to the transaction is making a voluntary choice.[32]

However, elements provided for the definition were inapt, and new definitions have granted these elements to smuggling of migrants. This is the definition of 'trafficking' for what is now considered 'smuggling. Salt and Stein do not see the need for a distinction between trafficking and smuggling based on whether a migrant is coerced into the movement against victim's will.[33]Due to this controversy, the term trafficking, and smuggling used interchangeably to name any procurement of people to the illegal movement. Unlike salt and Stein's position, other scholars have developed the meaning to these concepts by clarifying the basic distinctions between them. Accordingly, they suggested that the smuggling should be understood as 'unlawful entry' and trafficking as 'exploitation'. [34]

2.2.1. **Trafficking in Persons (TiP)**

Hughes defines trafficking as 'any practice that involves moving people within and across local and national borders for sexual exploitation.' [35]Kristiina Kangaspunta has criticised this definition in her article *collecting data on human trafficking.* She has stated that the definition both limits and stretches the concept of trafficking. It excludes trafficking for purposes other than sexual exploitation and conflates it with prostitution.[36] Nonetheless, human trafficking is not limited to the kind of exploitation stated in the definition rather it must incorporate all other kinds of exploitation such as labour trafficking, non-economic trafficking, including forced marriage.

The Cambridge dictionary defined the word trafficking in Persons as 'a crime of buying and selling people, or making money from work they are forced to do, such as sex work'.[37] The term can also be defined as the sale or transportation of people through the use of force, abduction, fraud, deception, exploiting people for purposes such as forced labour or services, slavery or practices similar to slavery or servitude.[38] This definition embodied or comprised all three elements to establish the crime of trafficking in persons.

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[32] Ibid

[33] Paolo Campana and Federico Varese, Exploitation in Human Trafficking and Smuggling (2015) Springer Science + Business Media Dordrecht, p.2.

[34] Theodore Baird, supra note 31, p.4.

[35] Paolo & Federico, supra note 33, p.3.

[36] Ibid.

[37] Cambridge Dictionary, (http://dictionary.cambridge.org/dictionary/english/human-trafficking) Last visited on Sep. 1o, 2017

[38] Duhaime Legal Dictionary (http://www.duhaime.org/ Legal Dictionary /H/ Human Trafficking. aspx) last visited on Sep. 1o, 2017

The current working definition of trafficking in person (TiP) provided by Protocol on trafficking in persons states that;

> *''The recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of 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 labour or services, slavery or practices similar to slavery, servitude or the removal of organs.''*[39]

Based on the preceding definition, trafficking in person is a crime that is alleged to be committed if three elements are cumulatively fulfilled. These constituent elements are Act, Means and Purpose. The recruitment of a child (i.e., a person under the age of eighteen) for the purpose of sexual exploitation or participation in armed conflict also falls under the ambit of trafficking in persons.[40]

Regarding on the definition provided by the Protocol on trafficking in person, the European court of human right has found that trafficking in human beings, by its very nature and aim of exploitation, is based on the exercise of powers attaching to the right of ownership. It treats human beings as commodities to be bought, sold, and put to forced labour, often for little or no payment, usually in the sex industry but elsewhere.[41] It has a similar characteristic with the oldest form of slavery though the latter was considered as a legitimate act.

The phrase for the purpose of exploitation provided in the definition indicates that exploitation should not necessarily be materialized rather the purpose of recruiting or transporting through deceitful or coercive acts should be found aimed at exploiting individuals. Unlike most scholars, Theodore Baird, in his article on defining human smuggling in migration research: an appraisal and critique, concludes that exploitation is essential to the legal characterization of trafficking,[42]

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[39] Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (2000) Entry into force: 25 December 2000, Art 3

[40] Susan W. Tiefenbrun, Child Soldiers, Slavery, and the Trafficking of Children (2007) p.2.

[41] *Case Of Rantsev V. Cyprus And Russia*, European court of human right, (Application no. 25965/04) Judgment Strasbourg 7 January 2010 Final 10/05/2010 paragraph 281

[42] Theodore Baird, supra note 31 p.1. (2016),

Elements of Trafficking in Persons

From the above discussion, crime of Trafficking in Persons is alleged to be committed when three elements are cumulatively fulfilled**.** These elements are:

A. Act (what is done)

Act as an element of the crime of TiP comprises recruitment, transportation, transfer, harbouring or receipt of persons. Traffickers deploy these acts to control victims and to facilitate them for exploitation. However, these acts are not necessarily required to take place across the border of two states.

B. Means (how it is done)

Threat or use of force, coercion, abduction, fraud, deception, abuse of power or vulnerability, or giving payments or benefits to a person in control of the victim are means to be employed to obtain the consent of the victim. Furthermore, the consent of the victim alleged to be vitiated if the trafficker failed to disclose the actual scenario that the victims potentially face on arrival or destinations. Unlike the case of an adult, Means is irrelevant in a case where the victim is a minor.[43] Minor do not have a capacity of giving their consent because they are unable to recognize the consequence of their action.

C. Purpose (why it is done)

The purpose of trafficking is exploitation.[44] Exploitation includes exploiting the prostitution of others, sexual exploitation, forced labour, slavery or similar practices and the removal of organs and other types of exploitation. UNODC handbook for parliamentary has divided the concept of exploitative acts into four major categories such as sex trafficking, trafficking for non-commercial sex purposes (e.g. forced marriage), Labour trafficking and other forms of exploitation that includes the removal of organs and use of the trafficked person in criminal activities or begging. The 2017 report prepared by US Department of state on trafficking in person identified sex trafficking, child sex trafficking, forced labour, bonded labour or debt bondage, domestic servitude, forced child labour and unlawful recruitment and use of child soldiers as the main form of exploitation in relation to trafficking in person.

However, exploitation is not necessarily required to be materialized rather it is sufficient if the purpose or the end of the crime is proven to be exploitation.

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[43] Protocol Against TiP, supra note 39 Art 3 (b)

[44] United Nations Office on Drug and Crime (UNODC) (2008) Toolkit to Combat Trafficking in Person Global Programme against Trafficking in Human Beings,Vienna, p.2.

2.2.2. Smuggling of Migrants (SoM)

Smuggling of migrants is the provision of services to a migrant to enable them to cross a border illegally.[45] Crossing the border illegally takes place both in order to depart or to enter into a given country. The Cambridge dictionary has defined, precisely, the term smuggling of migrants as the crime of taking people into or out of a country illegally.[46] The meaning of human smuggling can also be stated asthe importation of people into a country via the deliberate evasion of immigration laws. This includes bringing illegal aliens into a country, as well as the unlawful transportation and harboring of aliens already in a country illegally.[47]

The working definition of Smuggling of Migrants is provided under Article 3 of Palermo Protocol on Smuggling of Migrants. The Protocol has defined the term 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 party of which the person is not a national or a permanent resident."[48] Though the crime is named as smuggling of migrant, it includes all victims of smuggling. It did not exclusively focus on migrants because it says the illegal entry of a *person* but not entry of a *migrant*.

This definition consists of three major elements. These elements are; procuring the illegal entry[49] of another person, into another State by another person and the procuring must be for the purpose of financial or material gain. The third element shows that transferring or assisting migrants to enter into another state illegally, neither for financial nor material gain, shall not be considered as a crime of smuggling. The illegal entrance of migrant is directly relates with an immigration law of States. This law furnishes legal requirements that shall be fulfilled in order to depart or enter into the territory of the country. However, smugglers imports or takes the migrants from the place of their origin to destinations illegally; violating or breaching the immigration law of either the country of origin or destination or both.

Unlike trafficking in person, a smuggler in case of human smuggling leaves migrants free after the departure because his ultimate goal is to enable them to cross boarder but not for exploitation.

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[45] International Organisation for Migrant (IOM), Counter Trafficking Training Manual (2014) p.12.

[46] Cambridge Dictionary, supra note 37

[47] Department of Homeland Security (DHS) U.S. Immigration and Customs Enforcement (ICE), (http://www.ice.gov/human-smuggling/) last visited on Sep. 12, 2017

[48] Protocol against the Smuggling of Migrants By Land, Sea and Air Supplementing the United Nations Convention against Transnational Organized Crime (Palermo Protocol on Smuggling), 2000, Entry In to Force : 28 January 2004, Art 3

[49] "Illegal entry" shall mean crossing borders without complying with the necessary requirements for legal Entry into the receiving State.

2.3. Difference Between Trafficking in Persons and Smuggling of Migrants

Trafficking in persons and smuggling of migrants are different but interrelated. There are instances where the terms overlap or where a 'grey area' emerges between voluntary migration and rights-violating coercion and exploitation. Thus, the distinction is not as clear as we should expect.[50]

Smuggler/s may change their mind and begins to act as a trafficker/s through the process of the crime. On the other hand, a trafficker may approach the victim as a smuggler. Thus, the migrant realizes that he is under the control of a trafficker when he arrives at a particular place of exploitation. For instance, smuggled migrant will be requested to pay the cost of accommodation along the way. However, if he is unable or unwilling to pay, the smuggler will force him to work under his control and collect benefits from his work. This illegal practice is legally known as forced labour[51] and debt bondage[52], which is one of the exploitation in trafficking in person. Smuggled migrants are highly vulnerable to falling as a victim to trafficking or go through other forms of exploitation during their journey, or once they arrive in the country of destination.[53] There are also cases that smuggled migrants may become victims of trafficking.[54] In addition to that, smugglers may commence to procure victims to illegal entry to another state. However, meanwhile, they may change their mind and decide to proceed to exert control over smuggled people and may seek additional profit through ongoing exploitation.

Both Traffickers and smugglers use the same routes[55] so that the victims get confused to identify whether they are trafficked or smuggled. The crime of human trafficking can be countered if the countering activities included crimes of smuggling. This conclusion pushed the researcher to bring these two concepts together.

Further away than their commonality in characteristics, trafficking in person and smuggling of migrants do have concrete differences. These differences can be mainly, but not limited to, assessed or investigated in relying on some basic point of views such as; consent, transnationality, exploitation and knowledge of a victims and target of the crime.

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[50] Theodore Baird, supra note 29, p 2 See also Kristiina Kangaspunta, Collecting Data on Human Trafficking:Availability, Reliability and Comparability of Trafficking Data, MeasuringHuman Trafficking; Complexities and Pitfalls, (2007) p.27.

[51] Ibid

[52] IOM, supra note 44, p.15.

[53] IGAD supra note 8, p.4.

[54] United Nation Office on Drug and Crime UNODC, supra note 43, p.4.

[55] Ibid

a. Consent of the Victim

Consent is not required to establish the crime of trafficking in person whereas the smuggled people should give their consent to smugglers to be smuggled. Traffickers employ one of the acts mentioned above as an element against the will of the victim using different means to put the latter under his control. No person can consent to be exploited[56] and as a result, consent of the victim is assumed irrelevant for trafficking in person. Council of European Union framework decision of 19 July 2002 on combating trafficking in human beings has also stated that the consent of a victim of trafficking in human beings to the exploitation, intended or actual, shall be irrelevant.

A child is not capable of consenting to such conduct, regardless of whether it is obtained improperly because the law affords them special status due to their unique position as vulnerable persons.[57]Therefore, traffickers cannot invoke the consent of victim child as a defence.

b. Transnationality of Crimes

Smuggling involves illegal border crossing and entry to another country whereas trafficking does not necessarily have to cross a border and where it does the legality or illegality of the border crossing is irrelevant[58]. Thus, trafficking in person can be perpetrated inside the country without crossing the territory of another state. For instance, traffickers may exploit any individual by procuring and transporting him from provinces or rural area of the country to a given city of the same country. However, trafficking may include crossing in to the territory of one or more states illegally. Illegal entry to a country is not a constitutive element of trafficking but rather an ancillary one.[59] Trafficking does not require illegal movement of a person as it can take place within the borders of one country or even when borders crossed legally.

c. Exploitation

The ultimate goal of a smuggler in relation to smuggling of migrants is collecting financial or material benefit from his procuring illegal entry of people into or out of a country while trafficking involves the ongoing exploitation[60] of the victims in some manner that generates

[56] United Nation Office on Drug and Crime (UNODC) Anti-Human Trafficking Manual for Criminal Justice Practitioners, Module 1 Definitions of Trafficking in Persons and Smuggling of Migrants, (2010) p.8.

[57] Ibid, see also Palermo Protocol on Trafficking in Person

[58] UNODC, Supra note 43, p.4.

[59] Paolo Campana & Federico Varese, supra note 33, p.5.

[60] Marxian tradition interprets exploitation in terms of disparity of value that is, the person is unfairly used, with this unfairness typically consisting in the fact that her position of vulnerability is taken advantage of in order to under-reward her role within a given transaction. See also Paolo Campana & Federico Varese 17

profit to the traffickers. In general, traffickers intends to exploit human beings whereas there will not be exploitation in case of smuggling of the migrant. However, this does not mean that it is always true to say that there is no exploitation in smuggling rather smuggler may coerce victims to work for bondage when the latter failed to pay the promised payment for his procurement.

d. Knowledge of the Victim

A smuggled person always knows they are being smuggled. A victim of trafficking will most probably be unaware of their fate until they arrive at the destination.[61] Therefore, the latter never know where they are going, why they are travelling and what will the traffickers uses to do after the arrival. This depicts that psychological trauma of victims in case of trafficking is more severe than the case of victim of smuggling.

e. Target of the Crime

There are also other differences between these two concepts relying on the fact that on whom the crime may be committed. In this regard, individuals or person is a target in case of trafficking whereas crime of smuggling is a crime against state's immigration law.

With regard to the source of profit, smugglers generate their income from fees to move people. The trafficker, in contrast, continues to exert control over the trafficked victim to achieve additional profits through the ongoing exploitation.[62]

2.4. The Human Right Perspective of TiP and SoM

Most criminal acts of trafficker and smuggler violate human rights of the victims that are recognized under international, regional and national human rights instruments.

Different international, regional and national human right instruments have recognized the right to life as a basic human right. For instance, Article 3 of Universal Declaration on Human Rights (UDHR) envisages that everyone has the right to life, liberty, and security of a person.[63] International Covenant on Civil and Political Rights of 1966 (ICCPR) has also stated that every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life[64] and Article 4 of the African Charter states that human beings are inviolable. Every human being shall be entitled to respect for his

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[61] International Organisation on Migration (IOM), supra note 44, p.14.

[62] Gabriel Temesgen, Root Causes and Solutions to Human Trafficking in Ethiopia, AdigratUniversity (2015) p.13.

[63] Universal Declaration of Human Right (UDHR) (1948) Adopted by UN General Assembly Resolution 217, Art. 3

[64] International Covenant on Civil and Political Right (ICCPR) (1966) Adopted by UN General Assembly Resolution 2200 A (XXI), Entry into force 23 March 1976, Art.6(1)

life and the integrity of his person. No one may be arbitrarily deprived of this right[65]. The constitution of Federal Democratic Republic of Ethiopia (FDRE) has also envisaged under its Article 15 that every person has the right to life. No person may be deprived of his life except as a punishment for a serious criminal offense determined by law.

However, this right is one of the rights subjected to violation in the process of human trafficking and smuggling of migrants. According to UNHCR, for instance, since the beginning of January 2015, over 58,000 people arrived along the Arabian and the Red Sea coasts of Yemen, *with 88 deaths* at sea.[66]

Article 3 of UDHR, article 9 (1) of ICCPR, article 6 of African charter, article 16 and 17 of FDRE constitution have recognized right to liberty and security of person. For example, article 9(1) of ICCPR has stated that everyone has the right to liberty and security of a person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.[67]

Thus, any act of depriving the liberty of any individual against the exceptionally permitted circumstances alleged to be a violation of the right mentioned above. Both legal and dictionary meanings and definition of trafficking in person depict that, they will be forced to stay within the control of the trafficker, and the latter will exploit them either sexually or in labour.

Liberty of movement is an indispensable condition for the free development of a person.[68] This right is recognized under Article 12 (1) of ICCPR, Article 13 (1) of UDHR, Article 12 of African charter and Article 32 of FDRE constitution. For instance, art 12 (1) of ICCPR states that everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence. Abduction is one of the means to be used by traffickers to control and transport victims. The victim cannot move from place to place, to which they wish to go to and forced to be confined under a roof of traffickers. As a result, General comment No. 27 imposes an obligation on the states. Accordingly, it provides a recommendation that the State party must ensure that the rights

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[65] African Charter on Human and Peoples' Rights (Banjul Charter) Adopted on 27 June 1981, Entry into force :21 October 1986, Art. 4

[66] IGAD, supra note 8, p.4

[67] ICCPR, supra note 63, Art. 9(1)

[68] UN General Comment No. 27 (1999) Freedom of Movement (Article 12) Adopted by the Human Rights Committee, UN Document CCPR/C/21/Rev.1/Add.9 Para. 1

guaranteed in article 12 (ICCPR) are protected not only from public but also from private interference[69].

The International Covenant on Economic, Social and Cultural Rights (ICESCR) Article 7states that the State Party shall recognize the right of everyone to the enjoyment ofjust and favourable conditions of work. Fair wages and equal remuneration for work of equal value without distinction of any kind...equal pay for equal work.'[70] Article 41 (1) and (2) of FDRE constitution has envisaged that every Ethiopian has the right to engage freely in economic activity and to pursue a livelihood of his choice anywhere within the national territory. Every Ethiopian has the right to choose his or her means of livelihood, occupation and profession. Thus, any contrary acts of traffickers and smugglers are deemed be a violation of human right. Trafficking in person is an illegal act to be perpetrated for the purpose of exploitation. Forced labour, like exploitation, potentially violates the right to choose his or her means of livelihood, occupation.

In relation to the age limitation to employment, ILO Convention (No. 138) Concerning Minimum Age for Admission to Employment stated that;

> *The minimum age for admission to any type of employment or work, which by its nature or the circumstance in which it is carried out, is likely to jeopardize the health, safety or morals of young person shall not be less than 18 years.*[71]

In addition to the rights discussed above, international and national human rights instruments recognise some other rights though they are subjected to violation.

- The right not to be submitted to slavery, servitude, forced labour or bondedlabour,
- The right to be free from gendered violence;
- The right to the highest attainable standard of physical and mental health,
- The right to just and favourable condition of work;
- The right to an adequate standard of living;
- The right to social security;
- The right to children to special protection, and
- the right to be protected from forced labour

[69] Ibid, Para 6
[70] International Covenant on Economic, Social and Cultural Rights (ICESCR), (1966) adopted by the UN General Assembly, New York, entered into force 1976, art 7
[71] ILO Convention (No. 138) Concerning Minimum Age for Admission to Employment (1973) art. 3

Therefore, the human rights of trafficked persons must be the centre of all efforts to combat trafficking. The human rights of trafficked persons must be protected at everystages of the trafficking spectrum.[72] UN recommendation in this regard states that in combating trafficking through law enforcement, it is essential not to criminalize trafficked persons, but instead to address their special concerns while being diligent to hold perpetrators accountable.

2.5. International Legal Framework for Countering TiP and SoM

Introduction

In history, international treaty bodies have adopted different international laws to prevent and repress human trafficking. These laws are;

- The 1904 International Agreement for the Suppression of the White Slave Traffic;
- The 1910 International Convention for the Suppression of the White Slave Traffic;
- The 1949 Protocol Amending the International Agreement for the Suppression of the White Slave Traffic, and Amending the International Convention for the Suppression of the White Slave Traffic;
- The 1921 International Convention for the Suppression of Traffic in Women and Children;
- The 1933 International Convention for the Suppression of Traffic in Women of Full Age;
- The 1947 Protocol Amending the International Convention for the Suppression of Traffic in Women and Children and the International Convention for the Suppression of Traffic in Women of Full Age.

However, these instruments expressly consolidated by the 1949 Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of others.[73]

The consolidated instruments have targeted specific group of people such as white people, women and children though contemporary trafficking involves people of all colours, ethnicities and religions.[74]

The 1949 Convention was not widely ratified and has been criticized for its lack of definition of trafficking, lack of enforcement mechanisms and for addressing trafficking as solely the

[72] Economic and Social Commission for Asia and the Pacific, Combating Human Trafficking in Asia : A Resource Guide to International and Regional Legal Instruments, PoliticalCommitments and Recommended Practices, 2003, Newyork, p.28.

[73] Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of others Approved by UN General Assembly Resolution 317 (IV) of 2 December 1949 Entry into force : 25 July 1951, Preamble.

[74] Economic and Social Commission for Asia and the Pacific, Combating Human Trafficking In Asia : A Resource Guide to International and Regional Legal Instruments, Political Commitments and Recommended Practices (2003), p.95.

cross-border movement of persons into prostitution.[75]Human trafficking should contain three elements mentioned in the definition given under Article 3 of trafficking protocol. The 1949 Convention and the earlier treaties are also criticised for the fact that they fail to distinguish between voluntary and forced prostitution and fail to recognize other forms of labour exploitation besides forced prostitution.[76] Forced prostitution is one of the purposes, but not limited to, for which traffickers perpetrate one of the acts such as recruitment, transportation, transfer, harbouring or receipt of persons through different means.

As a result, two basic Protocols are adopted aimed at consolidating every law dealing with human trafficking and smuggling and to supplement the Palermo Convention of 2000. These Protocols are Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime of 15 November 2000 (Palermo Protocol on Trafficking) and Protocol against the Smuggling of Migrants by Land, Sea and Air supplementing the United Nations Convention against Transnational Organized Crime of 15 November 2000 (Palermo Protocol on Smuggling).

Global Law Enforcement Data prepared by US department of State depicts that State Parties to Palermo Convention have also adopted both Protocols supplementing the Convention and enacted their specific national law. For instance, 26 laws were adopted in 2008, 33 in 2009, 58 in 2013 and 30 new laws or amended laws on human trafficking and smuggling of migrants were also promulgated in 2015.[77]The 2016 global report prepared by UNODC shows that since the end of 2003, 124 of the 179 countries have adopted legislation that criminalizes all aspects of trafficking in persons.[78] Adopting domestic law is one of the measures recommended by the protocols to be taken to prevent and repress human trafficking and smuggling.

2.5.1. UN Convention against Transnational Organized Crime (Palermo Convention)

Some crimes are transnational in their nature. The Convention is essentially an instrument of international cooperation—its purpose being to promote interstate cooperation in order to combat transnational organized crime more effectively.[79] Therefore, countering these crimes requires the interstate cooperation of two or more states. Article, 4 of Palermo Convention

[75] Ibid
[76] Ibid
[77] US, Department of State, Trafficking in Persons Report, June 2016, p.40.
[78] UNODC, the 2016 Global Report on Trafficking in Persons, p48,
[79] Anne Gallagher, Human Rights and the New UN Protocols on Trafficking and Migrant Smuggling: A Preliminary Analysis, Human Rights Quarterly (http://ssrn.com/abstract=140983) p 978 /see also Palermo Convention, Art 2

states that State Parties shall carry out their obligations under this Convention in a manner consistent with the principles of sovereign equality and territorial integrity of States and that of non-intervention in the domestic affairs of other States.[80] The practical application of these provisions is likely to be enhanced by the inclusion of a detailed legal framework on mutual legal assistance in investigations, prosecutions, and judicial proceedings in relation to applicable offenses. [81]

However, this Convention does not incorporate human trafficking and smuggling crimesby name, though these crimes have the character to share with other crimes provided in the Convention, such as money laundering and corruption. Trafficking in person and smuggling of migrants are recognized by Protocols adopted to supplement this Convention as a transnational organized crime.[82] Thus, most provisions enshrined under Palermo Convention are applicable to these Protocols too. As has been seen in the previous section, human trafficking and smuggling can be perpetrated by the organized criminal group[83] across the border of other states.

Therefore, a State Party to the Convention is sought to work together to counter transnational organized crimes, including human trafficking and smuggling of migrant. The initiation of supplementary protocols was brought on to the table to decide whether these two concepts be adopted as an independent or two separate Protocol or to be consolidated. On the question of whether specific offenses should be included in the draft Convention, the group[84] concluded that the negotiating process would be simplified if such offenses were dealt with separately[85]. As a result, UN has adopted a Protocol on trafficking in person and smuggling of migrant in two documents.

Common Article 1(2) of supplementing protocols states that the provisions of the Convention shall apply, mutatis mutandis, to this Protocol unless otherwise provided therein. Therefore, common provisions provided by the Convention are applicable in case of trafficking and smuggling as well.

2.5.2. Palermo Protocol on Trafficking in Persons

[80] United Nations Convention against Transnational Organized Crime (Palermo Convention) (2000) Entry into force : 2003, Art 4(1)

[81] Anne Gallagher, supra note 78, p.979.

[82] Palermo Convention, supra note 79, Art 3(1) and (2)

[83] "Organized criminal group" shall mean a structured group of three or more persons, existing for a period of time and acting in concert with the aim of committing one or more serious crimes or offences established in accordance with this Convention, in order to obtain, directly or indirectly, a financial or other material benefit;

[84] Group of experts is intergovernmental group of experts established by the General Assembly to develop a preliminary draft of the proposed Convention against transnational organized crime.

[85] Anne Gallagher, supra note 78 p.982.

The protocol, under its preamble part, states that there is no other comprehensive international legal instrument having rules and practical measures to combat human trafficking. Thus, UN has found that supplementing the United Nations Convention against Transnational Organized Crime with an international instrument for the prevention, suppression, and punishment of trafficking in persons, especially women and children, is essential in prevent and combat the crime.[86] As a result, UN adopted this Protocol by its General Assembly Resolution 55/25 of 15 November 2000 so that the interpretation should be in line with the Palermo Convention. Most of the trafficking provisions are contained in the Trafficking Protocol. However, certain important general provisions are also found in the Transnational Crime Convention.[87] Therefore, the provisions of the Transnational Crime Convention apply to the Protocol on Trafficking, and the Protocol on Trafficking must be interpreted together with the Transnational Crime Convention.[88]

This Protocol has three objectives. These objectives are preventing and combating trafficking in persons, protecting and assisting the victims of such trafficking, with full respect for their human rights; and promoting cooperation among the State Parties in order to meet those objectives.[89] Thus, State Party to the Protocol is obliged to comply with rules enshrined under this law to take any measure to suppress the crime giving a primacy for prevention. For criminalizing acts of trafficking, the Protocol obliges the State Party to adopt such legislative and other measures as may be necessary to establish as criminal offences the conduct set forth in Article 3 of this Protocol.[90] The said Article has provided comprehensive definition for the term. This definition is discussed under the previous chapter.

In relation to assistance to and protection of victims of trafficking in persons, the Protocol has provided some kinds of assistance such as; appropriate housing, counselling and information, medical, psychological and material assistance; and employment, educational and training opportunities.[91]

Article nine (4) of the Protocol enshrined that States Parties shall take or strengthen measures, including through bilateral or multilateral cooperation. Measures on which states are required to cooperate are enumerated exhaustively under article 18 of the Palermo Convention.

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[86] Palermo protocol against TiP, supra note 39, preamble, para 5.
[87] Economic and Social Commission for Asia and the Pacific, supra note 73,p.95.
[88] Id, p.100.
[89] Protocol onTrafficking in Persons, supra note 85, Art 2
[90] Id, Art. 5
[91] Id, Art. 6

2.5.3. Palermo Protocol on Smuggling of Migrants

This Protocol is adopted aiming to supplement Palermo Convention.[92]Alike the Protocol on trafficking in person, this Protocol should also be interpreted together with the Convention.

The purpose of the protocol, as expressly enshrined under Article 2, is to prevent and combat the smuggling of migrants, as well as to promote cooperation among State Parties to that end, while protecting the rights of smuggled migrants.[93]

The Protocol has provided universally accepted definition for Smuggling of Migrants. This definition is discussed under the previous chapter. Moreover, the definition aimed at protecting every individual but not limited to migrants in the source countries. However, the instrument does not provide the definition for the term migrant.

The other essential concept provided in the Protocol is the exclusion of person subjected for smuggling from criminal liability. Article five of Protocol on smuggling states that migrants shall not become liable to criminal prosecution under this Protocol for the fact of having been the object of conduct set forth in Article 6 of this Protocol.[94]

Even though every individual has the right to movement including leaving his country of origin and returning to it, entering to other sovereign countries needs the fulfilment of a certain legal requirements. Entering to these states illegally, may be followed by punishment under crime of unlawful departure, entry or residence.

Smuggling of migrant is transnational crime. Therefore, Smuggler perpetrates crime of smuggling using the adjacent or common border of two states. This depicts that border security shall be found in better position to prevent any illegal entry and departure of people. Accordingly, Article 11 of the Protocol talks about border measure to be taken by state party to prevent and combat smuggling of migrants. The said Article provides that without prejudice to international commitments in relation to the free movement of people, State Parties shall strengthen, to the extent possible, such border controls as may be necessary to prevent and detect the smuggling of migrants.[95]

Akin to Protocol on trafficking in persons, this Protocol obliges States Parties to cooperate to the fullest extent possible to prevent and suppress the smuggling of migrant.

[92] UN General Assembly, Protocol Against the Smuggling of Migrants by Land, Sea and Air supplementing The United Nations Convention Against Transnational Organized Crime (Palermo Protocol on Smuggling) (2000), Resolution 55/25, Entry into force 2004 art. 1(1)

[93] Id, Art. 2

[94] Id, art. 5

[95] Id, art. 11

2.6. Countering Crimes of TiP and SoM under UN System

The general obligations of States extend beyond negative obligations of non-interference to include positive obligations such as legislative reform, the provision of remedies and protection from non-State interference.[96]

UN Recommended Principles and Guidelines on Human Rights and Human Trafficking provide that one of the basic measures to be taken is adopting specific and comprehensive national laws. However, the mere adoption and ratification of international and regional instruments do not assure the implementation of the law at the national level. It is noteworthy to emphasize that some obligations created by treaties require enabling laws for them to be realized at the national level.[97] However, if a legal framework is already in place, the guideline envisages that the call is usually for the strengthening of the implementation and enforcement of these laws. In order to implement laws at the national level, US Department of State recommends that there shall be strong implementing mechanism including strong investigating and judicial system.

While it is vital that the law enforcement response investigate charges, prosecutes and punishes the most serious offenses, where it is impossible to obtain a conviction of such serious offenses, prosecution of lower level offenses or enforcement of non-criminal violations should also be pursued.[98] This depicts that though prosecuting and punishing individual who have committed the principal crime prescribed under Article 3 of each Palermo Protocol be given priority, lesser crimes with accomplice character should also be punishable.

An effective law enforcement response to trafficking considers the entire multidimensional framework of trafficking including legislation and other measures, identification of trafficked persons and traffickers, victim protection and support, special protection for child victims of trafficking, remedies, corruption and complicity, international cooperation, attitudes, customs and practices that perpetuate violence against women.[99]

The other recommendation provided by UN Economic and Social Commission for Asia and the Pacific is every national law should be framed or defined in a manner that human trafficking and smuggling of migrants are different. As a result, smuggling of migrant, unlike

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[96] UN Recommended Principles and Guidelines on Human Rights and Human Trafficking, Commentary New York and Geneva, 2010, p.82.
[97] Id, p.35.
[98] Ibid
[99] Ibid

trafficking in person, should be defined in the same manner with Article 3 of the Protocol on smuggling of migrant. Most states have fully complied with the definition. For instance, Philippine has ratified Palermo Protocol on trafficking in persons and the national law has placed the definition provided by the protocol, as it is, under Section 3(a) of Republic Act No. 9208.

An effective law enforcement response requires skilled, diligent investigation of trafficking and its component offenses. Because of the hidden nature of trafficking, trafficked persons cannot be set free, and traffickers cannot be punished unless law enforcement conducts a thorough and proactive investigation[100] of cases of trafficking.[101] Investigation shall not be limited to the reactive investigation rather the latter is expected to gather evidence and conduct investigation without waiting for the whistle-blower.

The crime of Trafficking in Persons is often, but not necessarily, transnational. It is also one of the crimes that create multiple jurisdictional issues in their enforcement, simply because trafficking is often a transnational crime. [102] This depicts that the crime may be committed between two states. States may need to collect evidence and rescue their nationals from other states. However, since there is the principle of sovereign equality, it is impossible, to states, to take any measure beyond the territorial scope. Cooperation between states should include permitting the other state to enter in to their territory. For instance, Italy and Slovenia agreed on cross-border police cooperation. The agreement allows police officers to track suspects up to 30 kilometres into the other country and allows joint patrols to operate up to 10 kilometres beyond the border on both sides.[103]

Judicial cooperation between States in investigations and judicial processes relating to trafficking and related offenses, in particular through common prosecution methodologies and joint investigations is very vital.[104] It is indispensable to assure the will of host state to rescue victims, gather evidence and arrest suspects from abroad. Akin to that, exploitation in case of transnational human trafficking crimes will take place at destinations. Thus, it is

[100] ``Proactive investigations`` are those started by the investigators on their own initiative, often as a result of information and intelligence gathered. Proactive investigations often use specialist techniques (such as the use of informants and various forms of surveillance) to build evidence before moving to actions such as the arrest of suspects and victim rescue. See also UNODC, Anti-human trafficking manual for criminal justice practitioners, (2010), Module 5, Forms of investigation in trafficking in persons cases, p.1.

[101] Id, p.32.

[102] UNODC, Anti-Human Trafficking Manual for Criminal Justice Practitioners, Module 8, Joint Investigation Techniques in Trafficking in Persons Cases p.1.

[103] Italy and Slovenia, on www.ukom.gov.si/eng/slovenia/publications/slovenia- news/5300/530, last visited on July 30/2017 on 3 :00 pm.

[104] Burak Şakir Şeker, Dimitrios Dalaklis, Contemporary Maritime Security Challenges: Human Trafficking and Migrant Smuggling at Sea, p.44.

important to show the relationship between the act and means and exploitation perpetrated abroad.

In the case of Rantsev vs. Cyprus and Russia, the European Court of Human Rights identified an obligation on State parties to the European Convention on Human Rights to investigate cases of trafficking. Accordingly, The Court affirmed that States are required to "take such steps as are necessary and available to secure relevant evidence, whether or not it is located in the territory of the investigating State".[105] This affirmation stands with the fact that every state has territorial dignity and jurisdictional limitation. Thus, it is impossible to investigate, effectively, the cross-border trafficking cases without cooperation of states. [106]

With regard to the protection of victims of TiP as a witness, Article 6(5) of Palermo Protocol on TiP states that each State Party shall endeavour to provide for the physical safety of victims of trafficking in persons while they are within its territory.[107] Effective protection of witnesses is crucial for the legal system to function properly. Thus, public authorities must protect witnesses and their close relatives against interference and threats, prior, during and after the trial.[108] This will potentially enable the victim to give his statement to authority. Statement of the victim is essential as oral evidence before the court of law to prosecute and convict wrongdoers. If not, victims will never develop trust on investigators and refrain from giving information about the crime and criminal networks. Likewise, protection shall take, the extended family of the victim living abroad, in to consideration. For instance, a defence attorney in the United State of America has found that use of obtainment of a visa or receiving social services as a means of protection does not give confidence to victims to give testimony. [109]

The other provision incorporated in the Protocol is about implementing measures to provide for the physical, psychological and social recovery of victims of trafficking in persons. Article 6 (3) a-d has envisaged that there shall be provision of appropriate housing, counselling and information, in particular as regards their legal rights, in a language that the victims of trafficking in persons can understand, voluntarily repatriation medical,

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[105] Case of Rantsev V. Cyprus and Russia, supra note 41, para 282

[106] United Nation Human Right, Office of the High Commissioner, Human Rights and Human Trafficking Fact Sheet No. 36 United Nations New York and Geneva, 2014, p.36.

[107] Palermo Protocol on TIP, supra note 85, art. 6(5)

[108] Organization for Security and Co-operation in Europe ; The Department of Human Rights, Decentralization, And Communities Legal System Monitoring Section፣ A Legal Analysis of Trafficking in Persons Cases in Kosovo (2007) p 25.

[109] Heather J. Clawson, Nicole Dutch, Susan Lopez, Suzanna Tiapula (2008) Prosecuting Human Trafficking Cases :Lessons Learned and Promising Practices Executive Summary,Washington DC, p 8

psychological and material assistance and employment, educational and training opportunities.[110]

[110] Id, art 6(3)

Chapter Three

Trafficking in Person and Smuggling of Migrants under Ethiopian Legal System

3.1. General Overview of Trafficking in Persons and Smuggling of Migrants in Ethiopia

Ethiopia is a source and, to a lesser extent, destination and transit country for men, women, and children subjected to forced labour and sex trafficking.[111] Girls from Ethiopia's impoverished rural areas are exploited in domestic servitude and prostitution within the country, while boys are subjected to forced labour in traditional weaving, construction, agriculture, and street vending[112]. Ethiopian girls are exploited in domestic servitude and prostitution in neighbouring African countries, particularly Sudan and the Middle East and Ethiopian boys are subjected to forced labour in Djibouti as shop assistants, errand boys, domestic workers, thieves, and street beggars. [113]

Human trafficking is characterized as a crime that will be potentially committed inside the country. The research conducted by US, Department of states, office to monitor and combat trafficking in person diplomacy in action has found that child sex tourism is a growing problem in major tourist hubs, including Addis Ababa, Bahir Dar, Hawassa, and Bishoftu; reports identify both foreign and domestic perpetrators, with links to local hotels, brokers, and taxi drivers.[114]

With regard to smuggling of migrant, every year, thousands of Ethiopian nationals irregularly migrate from Ethiopia, through Kenya, Tanzania, Malawi and Mozambique *en route* to South Africa.[115] The report by RMMS suggests that, through the southern route, 17,000 to 20,000 Somali and Ethiopian were smuggled. The report estimates that two third of the smuggled people are Ethiopians. British journey of criminology has also found that among the people who are smuggled to other places through Egypt, are exposed to forced sale of an internal organ.[116] The study says that the brokers in Egypt were luring undocumented migrants from sub-Saharan Africa to sell their organs for around USD 4,500.[117]

In addition, since migrants travel by sea, it is difficult to reach to the destination safely. The smuggler loads several migrants over the capacity of the boat. Thus, notably, many boats are detected to sink in the sea. Accordingly, on the 3rd quarter report of the RMMS in 2015, 1444

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[111] US Department of States, supra note 12, p. 168
[112] Ibid
[113] Ibid
[114] Ibid
[115] Regional Mixed Migration Secretary(RMMS) Regional Mixed Migration in the Horn of Africa and Yemenin2016 : 3rd Quarter Trend Summary and Analysis, 2016, p.3.
[116] Ibid p. 6, see also 3rd Quarter RMMS report of 2016
[117] Ibid

people were abducted before they reach the place where they wished to arrive at, and monthly summaries indicate that an estimated 6,093 migrants, mostly Ethiopian nationals, were abducted upon arrival in Yemen in 2015 alone.[118]

Through the western route, an estimated 50-100 Ethiopian migrants or refugees cross into Sudan every day and may reside in transit countries for longer periods before travelling to Europe. [119] Commander Ketema Debalke, Director of Transnational and Organized Crime Investigation Directorate, has told to researcher that Ethiopian migrants use Metema as an exit point to Sudan. The director also added that most migrants come from different part of the country at the pretext of a daily work in the agricultural field of cotton and sesame. However, they resume moving and use this route to migrate to Sudan.

Illegal or irregular migrant uses the Mediterranean Sea to migrate to European countries with the assistance of smugglers. As a result, several migrants are exposed to death and missing. The IOM updates for 2017, as has been provided above, depicts that 2360 migrants have been died and missed within seven months.[120]

The fourth quarter report of RMMS in 2016 has found that at least 19,165 persons (86 percent Ethiopian and 24 percent Somali) travelled from Obock, Djibouti and coastal towns near Bossaso, Puntland to Yemen then to Saudi Arabia and other Gulf countries. [121] Therefore, from this report it can be understood unequivocally that several Ethiopians are prevalently going smuggled to different destination through three routes. Thousands of people using this route to migrate have found to be with a high risk of abduction. 2,228 instances of abduction were reported in the fourth quarter, significantly higher than reports made in any of the preceding quarters in 2016 (Q3 – 1,444, Q2 – 327, Q1 – 551).[122] Thus, the condition in which abducted migrant stays in will be changed from state of smuggling to trafficking so that victims will be seriously exposed to exploitation, including debt bondage.

The RMMS annual report of 2016 also shows that Ethiopia is also a major transit hub out of the Horn of Africa. Refugees and migrants from Somalia, Somaliland and Eritrea cross into Ethiopia and move on to Sudan and Libya in an attempt to reach Europe. As a result, Ethiopia become a source for Ethiopians; transit for migrants who are coming from Djibouti, Eritrea, and Somalia and the destination for South Sudanese and Eritreans.

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118 Regional Mixed Migration Secretary (RMMS) Regional Mixed Migration in the Horn of Africa and Yemen in 2015 : 3rd Quarter Trend Summary and Analysis, 2015, p.3.

119 Regional Mixed Migration Secretariat, Horn of Africa and Yemen, Ethiopia Country Profile, Updated 2016

120 International Organization for Migrants, Portal (2017). Accessed from http://www.iom.int/portallast visited on 20 Deceber, 2017

121 RMMS, supra note, 19 p.1.

122 Ibid, p.5.

With regard to prosecuting suspected traffickers and smugglers, in 2016, federal prosecutor has charged 182 defendants. Out of these people, only 60 defendants were convicted while 108 cases remained pending.[123] However, almost all defendants were prosecuted under art 598 of the criminal code of Ethiopia. Other measures taken by the Ethiopian government to counter these crimes is discussed in the following chapters.

US Department of State, Office to monitor and combat trafficking in person, in its report of 2017 on Trafficking in Persons takes these tasks in to consideration to assess the commitment of each state to comply with minimum standards to counter trafficking in person. Accordingly, as per the 2017 annual report, Ethiopia is one of the countries in the second tier

3.2. Causes of Human Trafficking and Smuggling of Migrant

There are several researches conducted on the causes of human trafficking and smuggling. Some of the causes identified by these researches are discussed under the next sub section. Most of reasons are alleged to be capable enough to insist or instigate people to migrate. For this topic, the researcher discussed the causes by splitting in to pushing/ pulling factors in one hand and ban of oversee employment as a single factor on the other hand. All pushing and pulling factors relates to a primary condition of the prospective migrant. They are a concrete reason that played a pivotal role to let the migrant flee. Ban of oversee employment, on the other hand, is not a primary reason for migration but a factor to resort to irregular migration.

3.2.1. Pushing and Pulling Factors of Trafficking and Smuggling

There are different factors or driving reasons for human trafficking and smuggling. These factors are pushing and pulling factors.

These factors relate to phenomena taking place in the country of origin that forces individuals to flee to the other country. One of pushing factors is poverty. Poverty is the driving force of illegal as well as legal migration. It leaves people vulnerable and criminal syndicates take advantage of this vulnerability to coerce, exploit and deceive migrants seeking better opportunity across the borders.[124] One of the means that traffickers employ to control victims of trafficking in person is fraud. The latter will promise to the former that they will enjoy a better life at the destination. Thus, since they are living in poverty, poor people will be easily deceived and vulnerable to trafficking.

Transnational crime, including human trafficking is facilitated by economic globalization with poor and desperate migrants becoming victims of syndicates who deceive them with

[123] Federal Attorney Genaral, Anti trafficking in person and Smuggling of Migrants Task Force Secretariat, the 2016 Report of TiP and SoM, p.32.

[124] Burak Şakir Şeker, Dimitrios Dalaklis, supra note 101, p.138.

promises of lucrative jobs abroad[125]because they need to migrate for employment to obtain better payment. This directly relates to unemployment. In Ethiopia, Central Statistics Agency of Federal Democratic Republic of Ethiopia's statistical report on the 2012 urban employment, unemployment survey indicates that between the age of 15-49, there were un employment rate of 1,094,490 in urban (male 353,414 and female 741,076).[126] The two third of the total unemployed people at the town are women. Thus, the woman is more disadvantaged.

The other factor is socio-cultural causes. The oppression of women and children within the patriarchal family and social structures, in which women are subordinated to men, is of the main reasons why they fall prey to traffickers.[127] As a result, women and girls will never enjoy the same opportunity equal to men. They will not go to school so that they will be unable to be employed. This gender-based discrimination can make women and girls more vulnerable to trafficking by compelling females to seek alternative opportunities in the un-regulated 'black' economy.[128]Sex trafficking is one of the major reasons why women are demanded for trafficking.

Unlike pushing, pulling factors depends on the attractive situation of another country. Other pushing and pulling factors are the following;

Push Factors:	Pull Factors
• Lack of opportunities or alternatives • Low or no education • Unemployment/ low wage employment • Gender-based discrimination, including domestic violence • All forms of discrimination and marginalization • Life within dysfunctional families	• Expectation of employment and (higher) financial reward • Improved social position and treatment Access to material benefits associated with "the West" • Demand for: ✓ Cheap labour and services ✓ Provision of sexual services ✓ Organs and tissues

125 Id, p.141.

126 Central Statistics Agency of Federal Democratic Republic of Ethiopia's Statistical Report on the 2012 Urban Employment, Unemployment Survey

127 Gabriel Temesgen, supra note 59, p.6.

128 Counter-Trafficking Training Manual (2014), Catholic Bishops' Conference of England & Wales and IOM, London, p.10

• Economic imbalance between impoverished and wealthy countries • Impact of political instability and corruption, conflict or transition of countries, war • Culture of migration Despite numerous reports of abuse of Ethiopian migrants in Yemen and Saudi Arabia	

In addition to driving factors listed above oppression, violation of human rights, lack of social or economic opportunity, dangers from conflict or instability and similar conditions, civil unrest, and natural disasters may result in an increase in trafficking.[129]

3.2.2. Ban of Oversee Employment as a Cause

Migration offers great potential to promote economic growth and social development through the skills, dynamism, and innovation that migrants bring.[130] The Nepalese Government, for instance, has recognized the significance of labour migration and remittances to the national economy. [131] The contribution of labour migration to employment, economic growth, development and the alleviation of poverty should be recognized and maximized for the benefit of both origin and destination countries. However, migration should take place through the regular path. Irregular migration is an unhealthy way of peoples' movement, which endangers the life of migrants. Undocumented migrants are vulnerable to harm, because they cannot entitle to claim for protection from the government of hosting country. As a result, most countries in the Gulf Cooperation Council (GCC) region are subject to criticism for their treatment of foreign workers, mainly female migrant domestic workers. Furthermore, Stories of mistreatment, abuse, sexual harassment, and even killing are routine news through the media.[132] Nonetheless, the irregular migration, trafficking and smuggling of

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[129] UNODC, Toolkit to Combat Trafficking in Persons, Tool 9.2, Addressing the Root Causes of Trafficking, p.451.

[130] International Organisation for Migration, Global Compact Thematic Paper | Border Management, 2017, p.1.

[131] Mr. Ganesh Gurung for International Labour Office in Nepal, An Overview Paper Overseas Employment in Nepal, Decent Work for all Women and Men in Nepal, 2004, p.1.

[132] International Labour Organization (ILO), Country Office for Ethiopia, Djibouti, Somalia, Sudan and South Sudan, The Ethiopian Overseas Employment Proclamation No. 923/2016:a Comprehensive Analysis (2017) Addis Ababa, p.6.

migrants have increased over time. This phenomenon has caused grave violations of human rights and suffering of citizens.[133] The Government may take action to ban the oversee employment temporarily. However, the ban discourages people those who are willing to migrate through regular migration. Thus, these people will be pushed to choose the irregular way of migration. For instance, in Ethiopia, irregular labour migration mainly to the Gulf States has reportedly increased following a temporary ban on labour migration by the government between October 2013 and mid-2017. In addition, in 2015, approximately 92,446 persons arrived in Yemen from the Horn of Africa of which 89% were Ethiopian nationals.[134]Annual reports prepared by all IOM, RMMS, IGAD, US Department of State and Ethiopian taskforce on TiP and SoM have also found that the migration to these destinations has continued through illegal ways.

3.3. National Policy Framework on TiP and SoM

The fundamental role of a national policy framework on trafficking in person and smuggling of migrants is providing for a clear and conducive political and legal context for the coordination of intervention measures to be taken by different actors.[135] Thus, any measure without having national policy can, easily, be influenced by administrative organs. The policy is also important to identify stakeholders and their respective role in combating and eradicating the problem, strategies, structures, and processes for intervention, coordination and participation.[136] Therefore, the need to have human trafficking policy is not questionable. However, Ethiopia did not adopt a specific national policy to prevent and combat these crimes. Because of this, it is difficult to determine the position of the country.

The policy brief prepared by Africa Institute of South Africa (AISA), in 2011 with briefing No. 37 concludes that anti-trafficking policy and measures should reflect human rights and victim-centred approach, and be gender-responsive. Similarly, European Union plan of 2005 on best practices, standards and procedures for combating and preventing trafficking in human beings has indicated that member states shall ensure that human rights of victims of trafficking are protected fully at all stages in the process.

Proclamation to Provide for the Prevention and Suppression of Trafficking in Persons and Smuggling of Migrants No. 909/2015 has provided some provisions that deal with protection of victims. For instance, Article 30 of Proclamation No 909/2015 states that any person

[133] Id, p.26.
[134] US Department of states, supra note 11, p.25.
[135] Yoseph Endeshaw, Mebratu Gebeyehu, Belete Reta (IOM), Assesment of Trafficking in Women and Children in and from Ethiopia, Addis Ababa, (2014), P.65.
[136] Ibid

victim of trafficking in persons or smuggling of migrants shall not be legally prosecuted on the facts of being a victim of the crime. Thus, it can be understood that the Ethiopian Government has stood with the human rights and victim-centred approach. Lack of comprehensive policy played a negative role to weaken the combating activities of certain stakeholders. The concerned organ of the government did not give priority to prevention, protection, and prosecution of these crimes. For instance, police officers did not employ the proactive investigation ; prosecutors could not prosecute individuals under article 3 and 5 of Proclamation No 909/2015; a judge gives a final verdict as per Art 598 of the criminal code.

3.4. National Legal Framework on TiP and SoM

Ethiopia is among states that ratified the Palermo Convention, the Protocol on trafficking in person and Protocol on smuggling of migrants with proc. No. 526/1999, 736/2004 and 737/2004 respectively. In order to enhance the implementation of these international instruments, the law-making body of the federal government has also promulgated domestic law consolidating both human trafficking and smuggling with Proclamation No. 909/2015 with severe penalty including capital punishment. Before the enactment of Proclamation No. 909/2015, people those who have been suspected of committing crimes similar to trafficking and smuggling had been prosecuted under Art 243, 596, 597, 598, 599 and 635 of Criminal Code of Ethiopia. The punishment provided under these provisions was not as severe as the new law.

3.4.1. FDRE Constitution

With regard to the hierarchy of laws in Ethiopia, the Constitution will take the supremacy over any other national laws. Article 9(4) of FDRE Constitution has stated that the Constitution is the supreme law of the land. Any law, customary practice or a decision of an organ of state or a public official that contravenes this Constitution shall be of no effect.[137] Thus, every act of government should comply with constitutional provisions. Legislative organ of the state cannot enact any law that contradicts the provisions of the constitution.

In line with trafficking in person, Article 18 (2) of the constitution states, that no one shall be held in slavery or servitude. Trafficking in human beings for whatever purpose is prohibited.[138] Though there was no comprehensive definition given to the term human trafficking in any of national law, Ethiopia has prohibited such an illegal act of individual by

[137] Constitution of the Federal Democratic Republic of Ethiopia Proclamation no1/1995 Federal Negarit Gezeta, yr 1, no 1, a/a August 1995, Art.9(1)

[138] Id, Art 18(2)

proclamation No, 909/2015 even before the adoption of Palermo protocols. The provision has also enshrined that no one shall be required to perform forced or compulsory labour.

In order to prevent the violation of these rights, the legislative organ of the state has incorporated a number of provisions containing the concept of human trafficking and smuggling under the 2004 Criminal Code of Ethiopia.

3.4.2. Criminal Code of Ethiopia

Provisions dealing with TiP and SoM are categorized under Book five; title two; chapter one of the criminal code of Ethiopia. Article 596, 597 and 635 deals with trafficking in person and Art 598 is about smuggling. These provisions are not sufficient. The first problem is, these provisions focus on a certain group of people. They focus on children and women. However, the crime indiscriminately affects the well-being of every human being under any age and sex.

For instance, Article 596 of criminal code of Ethiopia states that;

> *"Whoever forcibly enslaves another, sales, alienates, pledges or buys him, or trades or traffics in or exploits him in any manner or keeps or maintains another in a condition of slavery, even in a disguised form, is punishable with rigorous imprisonment from five years to twenty years, and fine not exceeding fifty thousand Birr."*[139]

The aim this provision is to deal with human trafficking. However, the crime of human trafficking should contain three elements such as act, means and purpose. Furthermore, the act shall not be limited to transporting a person by land or sea.

The exploitative acts of trafficking in person shall not also be limited to what the provision enumerated above rather it should contain all types of exploitation listed by the protocol. In addition, in case of trafficking in person, exploitation need not necessarily being materialized instead, it is sufficient to show that there is intention to exploit others in any manner. On the other hand, punishment for the crime of TiP shall be most severe as recommended by the protocol. The minimum punishment prescribed for this crime under Article 596 is five years whereas 15 years rigorous imprisonment is provided under Article three of Proclamation no 909/2015.

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[139] The Criminal Code of the Federal Democratic Republic of Ethiopia Proclamation no 414/2014, Federal Negarit Gazeta, yr 10, no 59, A/A, May 9/ 2004 Addis Ababa, Art.596.

The availability of the services of; local brokers who facilitate irregular migration is a reason to consider migrating irregularly. Thus, brokers should be discouraged. One of the means to interrupt them is punishing the smuggler with a severe penalty. However, penalty enshrined under the criminal code provision is not as severe as punishment provided by the Proclamation.

Another example of provision articulated to suppress human trafficking is Article 597 of the Criminal Code; Trafficking in Women and Children. Sub article 1 of the provision envisages that;

> *"Whoever by violence, threat, deceit, fraud, kidnapping or by the giving of money or other advantage to the person having control over a woman or a child, recruits, receives, hides, transports, exports or imports a woman or a minor for the purpose of forced labour, is punishable with rigorous imprisonment from five years to twenty years, and fine not exceeding fifty thousand Birr."*[140]

Unlike Article 596, this provision incorporated most elements of the crime in a better manner. However, on the one hand, this provision excluded adult (male) individuals and protected only two classes of people. It is limited to woman and children or minors though international legal instruments recognize the crime as a crime that will, potentially perpetrated on a person found under any of age and sex.

On the other hand, the purpose of committing other elements of the crime shall not be limited to forced labour as exploitation. Exploitation in human trafficking should include all forms of exploitation illustrated under the Protocol on TiP.

The penalty provided under this provision was also not compatible with its consequence. The commentary of the Proclamation No 909/2015 says the penalty provided under Criminal Code of Ethiopia is not compatible with widespread nature of the crime.[141]

Article 598 (Unlawful Sending of Ethiopians for Work Abroad) is another provision that deals with smuggling. The provision states that whoever, without having obtained a license or by any other unlawful means, sends an Ethiopian woman for work abroad...[142]. The criminalizing provision failed to consider the definition given by the Protocol on smuggling of migrants. It did not incorporate two main elements. These elements are the purpose of the crime that is to obtain financial and other material benefits and limiting the purpose of assisting the entry only

[140] Id, Art 597.
[141] Commentary on a Proclamation to Provide for the Prevention and Suppression of Trafficking in Persons and Smuggling of Migrants (2015)
[142] Criminal Code, supra note 138, Art 598.

for work. The crime of smuggling should be found committed for the benefit and sending the migrant may be for any other reason other than for work.

However, Article 48 of Proclamation No 909/2015 states that under this Proclamation Article 243, 596, 597, 598, 599 and 635 of the Criminal Code of the Federal Democratic Republic of Ethiopia are inapplicable. There are two positions on the fact that whether these six provisions are repealed or not. The preamble part of the said Proclamation under the third paragraph states that *Criminal Code* and the provisions stipulated in other laws are not adequately tuned with the depth of the problem, and it has become necessary to promulgate law containing severe punishment, which enables to pass proportional sentence against criminals.[143] Thus, some argue that since the law aims to tune the content of the law with the current problem, the newly promulgated law automatically replaces all existing laws listed under Article 48.

On the other hand, some other argues that these pre-existing provisions of the criminal code are still active. Thus, provisions incorporated under the criminal code of Ethiopia are applicable where Proclamation No. 909.2015 does not govern the crimes committed. This depicts that the legislative organ failed to consolidate all elements of the crime envisaged in the Criminal Code into the Proclamation. The finding of the researcher, in this respect is, the provisions of the Criminal Code enumerated under Article 48 of Proclamation No. 909/2015, including Article 598, are not repealed. The essence of Article 48 of the proclamation is to provide the inapplicability of the said provisions only under the TiP and SoM proclamation. For instance, Article 598 of the Criminal Code does not incorporate the whole elements provided under Article 5 of the proclamation. The provision does not enquire the obtainment of financial or material benefits. Thus, if there is a crime of sending people to abroad for work without getting the benefit, the defendant should be prosecuted under Article 598 of the criminal code.

3.4.3. Prevention and Suppression of Trafficking in Persons and Smuggling of Migrants Proclamation No. 909/2015

The development of an appropriate legal framework that is consistent with relevant international instruments and standards will also play an important role in the prevention of trafficking and related exploitation.[144] Ethiopia has also ratified the Palermo Convention and its supplementary protocols. As a result, the House of People Representative has enacted prevention and suppression of trafficking in persons and smuggling of migrants Proclamation

[143] Id, Preamble

[144] Report of the United Nations High Commissioner for Human Rights, Recommended Principles and Guidelines on Human Rights and Human Trafficking (E/2002/68/Add.1) ; Guideline 4 :Ensuring an adequate legal framework (also see Tool 3.6)

No. 909/2015 on the 17th day of August 2015. The preamble of the law provides the objectives of the proclamation. One of the objectives is the fact that the criminal code and the provisions stipulated in other laws are not adequately tuned with the depth of the problem.[145] It also becomes necessary to promulgate a law having the comprehensive articulation for each objective.

Article 3 and 5 of the Proclamation criminalizes acts of trafficking in person and smuggling of migrants separately. Accordingly, Article 5 envisages that any person, either directly or indirectly with the intention to procure financial or other material benefit, which causes ***migrants*** to cross the border, attempts to cross or prepare to cross into or out from the territory of Ethiopia illegally.[146] This provision complies with international standards as has been discussed above. However, the main problem with this provision is the word *`migrant`*. The word 'migrants' represent a certain group of people than a word 'person'. Likewise, the law does not aim at protecting only individuals who are identified as migrant according to international laws. Even though, there is no universally accepted definition for "migrant", migration is defined as the movement of a person or a group of persons, either across an international border or within a State. It is a population movement, encompassing movement of people, whatever its length, composition, and causes; it includes migration of refugees, displaced persons, economic migrants, and persons moving for other purposes, including family reunification.[147]

Though the practical aspects of this controversy had been dealt in chapter four of this paper, it is better to show the significant problem out there. Moreover, the primary objective of the law is not to protect foreign citizens or migrants who come to Ethiopia for the transit purpose. Instead, the preamble part of the law depicts that the law is aimed at protecting every Ethiopians. This kind of legislative fault challenges the implementation of laws. Otherwise, in order to prosecute wrong doers, prosecutors will be responsible to prove whether victims are identified as migrant or not, so that the prosecutor will decide not to prosecute or prosecute them under another law. The Federal Attorney General, in order to fill the lacuna of the law, has also issued a binding order (circular).[148]The order or circular of the Federal Attorney General on TiP and SoM Proclamation has stated that the provisions of the criminal

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[145]Prevention and Suppression of Trafficking in Persons and Smuggling of Migrants Proclamation No 909/2015Federal Negarit Gazeta, yr. 21, no 77, a/a, August 17/ 20015, Preamble part

[146] Id, art 5

[147] Richard Perruchoud and Jillyanne Redpath-Cross, eds. IOM, International Migration Law, Glossary on Migration Law, 2nded, No 25

[148] Federal Attorney General, Circular or Orderissued on October 15/2015 with No 01/ዶጠ-1135/2015.

code of Ethiopia enumerated under Article 48 of the Proclamation are not repealed. This has opened the room for applying Article 598 of the criminal code for the crime of smuggling. The concern of federal attorney general is to avoid the impunity of smugglers.

Moreover, the question that must be responded concerning this order is, do circular or official orders of the executive organ have binding effect in criminal proceeding of Ethiopian legal system?

In Ethiopian legal system where there are gaps between laws, the legislative organ will amend the existing laws with a law that has a similar status. Therefore, circulars do not have legal effect to fill the gaps existing in the law. Thus, prosecutors are not duty bound to refer these circulars and it is unambiguous that the circular or order of the executive organ cannot have the binding effect on judicial organs.[149]

The Proclamation has defined the term refugee under Article 2 (10). However, there is no provision in the Proclamation, which has incorporated the word refugee but migration. The Amharic word `ስደተኛ` is used interchangeably to replace the English words migrant and refugee. These two concepts are different though there are some elements that they share in common. From the Proclamation's objective, the aim of the law is not to protecting refugee. Refugee is defined expressly by article 1 A(2) of the 1951 Convention relating to the status of refugees and refugee Proclamation No 409/2004 article 4(1) and (2) as;

> *" Owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable, or owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it."*[150]

As per the above discussion, Protocol on smuggling aimed at dealing with migrants but refugees. Therefore, it is confusing to incorporate the definition part discussed above in the Proclamation. Because it allows prosecutors to conclude that the Amharic word, `ስደተኛ ` shall be referred to refugee than migrant.

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[149] An Interview with Addis Getnet, Coordinator of Legal Drafting, under Federal Attorney General, on 10, July 2017

[150] UN Convention Relating to the Status of Refugees, Adopted on 28 July 1951, Entry into force : 22 April 1954, United Nations, Treaty Series, No. 2545, vol. 189, Art. 1(A) 2

With regard to prosecution, the Proclamation has provided some special techniques of investigation. These techniques are; infiltrating the suspected criminals, criminal groups or organizations, conduct surveillance against the suspects, intercept the private communication of the suspects by court order, creating a simulated legal relationship. [151] Conducting surveillance is highly important both to collect evidence and to interrupt the process of the crime before victims could be vulnerable to further exploitation. Intercepting the communication is also allowed to be conducted by the order of the court unless there is a compelling condition and otherwise than intercepting the communication of the suspects. In this case, the law permits the police to conduct such kind of investigation by the order of the Minister of Justice (Federal attorney general as per Proc. No. 943/2016).[152]

There are two problems on this provision. The first one is that there is the difference between the Amharic and English version on factors that gives power Federal Attorney General to give order as per Article 18 (2). The Amharic version says ``አስቸኳይ ሁኔታ`` whereas the English version uses the word ``compelling condition``. The Compelling condition is general factor whereas the latter is limited to time.

The other is empowering exclusively the minister (Federal Attorney General). However, most of the TiP and SoM crimes are supposed to be committed in regions. Thus, it is not accessible for regional investigators to request the latter for order. Therefore, higher officials of regional justice bureau should be empowered by law to do so or they shall be delegated.

Article 21 of the Proclamation deals with the burden of proof and it envisages that upon proof of fundamental facts of the cases, for crimes stipulated under Article 3, 4, 5, 6, 10 and 11 by the public prosecutor, the court, when necessary, may shift the burden of proving to the defendant.[153] The commentary of the Proclamation says that there is an experience of shifting the burden of proof to the defendant on serious crimes such as terrorism, conspiracy, corruption, etc (for instance, Proc No 434/1997(as amended)). [154] Moreover, shifting of burden of prove to the defendants affects the right to be presumed innocent. In relation to ordinary crimes, the defendant is responsible to rebut the fact proven by prosecutor if the latter has proven the existence of the fact in issue. However, crimes of TiP and SoM are more complex so that it is difficult to gather evidences that can prove the fact in a sufficient level. Thus, the judicial organ shall interpret the provision of fundamental fact in the strict manner and it is important to eliminate the impunity.

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[151] Proclamation no. 909/2015, supra note 144, Art.18(1)
[152] Id, Art 18(1)
[153] Id, Art 21(2)
[154] Commentary of Proclamation No. 909/2015, supra note, 140

The fund is another concern of this law. Thus, the law has established a fund to prevent, control and rehabilitate victims of the crime of trafficking in human and smuggling of migrants under Article 32-38. However, the Government did not put to work for the last three years since 2015. Anti-TiP and SoM proclamation established the national committee and Anti Human Trafficking and Smuggling of Migrants Task Force to enhance the management of the fund. The establishment of these organs is for better coordination of activities designed for victims' protection, assistance and rehabilitation.

3.5. National Committee and Anti Human Trafficking and Smuggling of Migrants Task Forceof Ethiopia

Proclamation No 909/2015 establishes both the National committee and the Task Force. The purpose of establishing the committee is for advising in policy, plans and implementation framework formulations process; to accommodate the interest of victims and for combating the crime of human trafficking and smuggling of migrants. [155] The Task force is also empowered and mandated to support efforts intended to rehabilitation of victims, prevention and control of a crimes of human trafficking and migrant smuggling under the supervision of the committee.[156]Fehtya Seid, Prosecutor for The Task Force said to the researcher that;

> *Both the committee and the Task force contain stakeholders, from governmental and non-governmental organisations. There are four working groups under the Task force. These groups are working on tasks Such as Group for Prevention, Controlling/ law enforcement, Assistance/ rehabilitation and Research. Federal Attorney General, Federal and Addis Ababa Police and Regional justice bureau are members in the first and the second group. Thus, the mandated of the Task Force Secretariat is to coordinate the overall activities of the group and to send the report to the National Committee.*[157]

The 2017 report of the Task force provided the lists of works done in a year. However, the report failed to indicate the activities carried out on enforcing the law and controlling the crime. For instance, there is no research conducted on applicability of the law. Likewise, there

155 Proclamation no. 909/2015, supra note 144, Art 39(1)
156 Id, Art 40(1)
157 Informal Discussion with Fehtya Seid, Prosecutor for the Task Force under Federal Attorney General, Addis Ababa, on September 30/2017

is a failure to establish the referral mechanism to assist victims of trafficking and to create an access to evidence.

The National Committee also failed to give a room for the issue of policy framework. The above discussion on the national policy is an implication of this failure.

Chapter Four

Intervention on Countering Trafficking in Persons and Smuggling of Migrants under the Ethiopian Legal System

Introduction

The states that do not fully comply with the TVPA's minimum standards, but are making significant efforts to bring themselves into compliance with those standards are supposed to be categorized under the second tier.[158] Ethiopia is endeavouring to implement the minimum standards of countering human trafficking. For instance, it has promulgated a national law with severe penalty defining both crimes in line with the protocol. Due to this, Ethiopia is ranked under the second tier with other 74 countries. Tier is supposed to be determined based on efforts of the country to counter the crime. The four tasks such as prevention, protection, prosecution, and promoting partnership are pillars to measure the achievement of States with regard to countering both crimes. The analysis on the practical aspects of countering the crime of human trafficking and smuggling in Ethiopia, under this chapter, will be made based on these tasks.

4.1. **Prevention of TiP and SoM**

Criminal Justice Policy of Ethiopia provided that one of the main tasks to take place to maintain good governance, democracy and sustainable peace and development of the country is crime prevention.[159] The policy also recommends that crime prevention strategy shall be adopted in a manner that includes the issue of risk and vulnerability to crime. Though seven years have gone since the policy adopted, Ethiopia did not establish the strategy to prevent crime. “Federal Attorney General has begun preparing the strategy in 2016. However, it is not completed.”[160] The government can prevent trafficking in person and smuggling of migrants in different manner such as, but not limited to, raising public awareness, training, integrated border management and legal migration or oversee employment.

4.1.1. Public awareness

Public awareness is important to prevent crimes. Thus, the measure to be taken in the first place to counter TiP and SoM is upraising public awareness and practitioners’ knowledge and skill. IGAD’s policy framework has recommended state parties to Increase the awareness of

[158] US Office to Monitor and Combat Trafficking in Persons, Trafficking in Persons Report (2015) accessed from https://www.state.gov/j/tip/rls/tiprpt/2015/243366.htm last visited on September/2017

[159] Criminal Justice Policy of Ethiopia (2010) p.4.

[160] Interview with Ato BelayhunYirga, At Federal Attorney General, Director for Legal Study, Drafting and Dissemination Directorate, on July 25/2017

people on the dangers inherent in irregular migration.[161] Therefore, all state parties to IGAD are responsible for working on creating a common understanding among people through different means of communications. Protocol on trafficking in person has also enshrined that state parties to the Protocol on trafficking in person shall endeavour to undertake measures such as research, information and mass media campaigns...[162].

The government has an experience of the campaign on countering or eliminating maternal death and Ebola virus. Akin to these occurrences, countering TiP and SoM need well-organised campaign to raise public awareness. The 2017 report prepared by the Federal Attorney General on trafficking in person and smuggling of migrant has envisaged that the government has tried to raise the awareness of its citizens. For instance, in this reporting year, Amhara regional government has given a lesson for 2,361,333 people while more than four million people were addressed by SNNPE. Addis Ababa city administration has also organized workshops on the same topic at all sub-cities. As a result, 98,015 peoples attended the event. In relation to these crimes, messages were also reported through electronic Medias and websites. For instance, public communication affair secretariat has reported to the task force that it has produced and disseminated six programs to the public through television and radio in 2017. The report states also that Amhara regional government has posted 88 news, future films, TV programs and interviews on its websites. Thus, as far as the raising of the public awareness concerned, the Ethiopian government has shown considerable progress in this year. Therefore, the problem is not about accessibility rather it is about the approach and the content of lesson and information forwarded. The instructor should be instructed first. Unfortunately, since this concept is new, most governmental officials usually inform people not to promote illegal migration to their children. Moreover, they should be aware of the new Proclamation and its provisions that held the people liable. Failure to Disclose Criminal Acts, permitting his house or building to be used for human trafficking knowingly or ought to have known, publishing, storing, dissemination, importing or exporting any publication, knowingly arranging transportation, transport or facilitate the transportation of victim by land, sea or air are some of the crimes provided under the Proclamation.

4.1.2. **Training**

The researcher has attended more than ten workshops and training in which more than 400 judges, prosecutors, police and immigration officers attended the event. As per the data gathered from the pre-test that was distributed to the participant, most trainees did not take

[161] IGAD, Supra note 8, p.23.
[162] Protocol on Trafficking in Person, supra note 85, Art. 9(2)

training. As per the 2017 report on TiP and SoM, only 153 justice sector professionals were trained. Trafficking in person and smuggling of migrants are new concept to Ethiopia. While the researches are revealing that trafficking in person still exists in Ethiopia, federal prosecution organ failed to prosecute criminals under the relevant provision of the new Proclamation. In contrast, in Philippine, the Interagency Council against Trafficking (IACAT) conducted 36 pieces of training in 2015, reaching more than 1,000 government officials, including new investigators and prosecutors. IACAT also led and co-coordinated 280 anti-trafficking pieces of training, which reached 7,300 government personnel.[163] Due to lack of special training about the TiP and SoM, practitioners of the law enforcement organ are misinterpreting the provisions of Proclamation. Instances of this conclusion will be discussed under the following topics.

4.1.3. Border Management

Crimes of TiP and SoM are transnational in their nature so that traffickers and smugglers use border of states to transport migrants to countries of destination. Therefore, states are recommended by the Protocol on TiP to strengthen, to the extent possible, such border controls as may be necessary to prevent and detect trafficking in persons.[164] However, in each year, thousands of Ethiopians are frequently smuggled. For instance, 1464 Ethiopian arrived at Italy through the Mediterranean Sea in the third quarter of 2016.[165] Regional Mixed Migration Secretariat, in its research series on mixed migration in 2014, between 300,000-350,000 Ethiopians are either trafficked or smuggled to Saudi Arabia with the facilitation of illegal brokers.[166] This is due to lack of strong border management. Thus, it is unequivocally important to have Good border management. The management serves a dual purpose, helping to balance States' interests in both facilitating cross-border movements and maintaining security.[167] Ethiopia, in order to facilitate cross-border movements, has legislated Proclamation no. 354/2003 and regulation no. 114/2004. These laws have enshrined requirements for entrance and departure. Therefore, the problems are believed to occur due to mismanagement on all Ethiopian Ports of entry and exit. Ports by air are Addis Ababa and Diredawa whereas port by land includes Moyale, Dewole, Galafi, Metemma, Humera,

[163] United State of American, Départment of States, Trafficking in Persons Report, 2016, p.307.
[164] Id, Art. 11(1)
[165] Regional Mixed Migration secretariat, Regional Mixed Migration in the Horn of Africa and Yemen in 2016: 4th Quarter trend summary and analysis, 2016, p.4.
[166] RMMS, the Letter of the Law :Regular and Irregular Migration in Saudi Arabia in a Context of Rapid Change, 2014, p.17.
[167] International Organisation for Migration, Global Compact Thematic Paper | Border Management, 2017, p.2.

Omorate, Togochale and Dolo odo.[168]Alemakef Tafesse, an immigration officer at Humera, told the researcher that, practically, their power to board any conveyance carrying passengers, inspect travel documents and detain is limited to some distances from the port. Unfortunately, most migrants do not use the port to go through. She added that there is no cooperation with immigration officers of the country of destination. Border management needs to include promoting partnership with other state to work together. Police officers and defence forces who are working on border are not supporting the prevention activities like that of the crime of terrorism.

4.1.4. Oversee Employment

In order to prevent and combat crime, The Ethiopian government has promulgated the domestic law on oversee employment in 2009 with Proclamation no. 632/2009. However, mistreating Ethiopian citizens living in the GCC regions had been prolonged. For instance, there appears to be a growing number of incidents of Ethiopian migrant workers being subjected to degrading, cruel and inhumane treatment in Saudi Arabia and the United Arab Emirates (UAE) until 2013.[169] Thus, in 2013, The Ethiopian government has officially declared the ban on oversee employment at the national level. Six years later, the Ethiopian overseas employment Proclamation no. 923/2016 is enacted to replace Proclamation no. 632/2009. The law aimed at promoting the regular migration by reducing the expense of the worker, entering in to bilateral agreements with countries of destination and through assigning labour attaché.[170] For instance, it envisages that employer shall cover entry visa fee to the country of destination, round-trip transport cost, work permit fee, residence permit fee, insurance coverage, costs associated with visa and document authentication paid to the embassy of country of destination which hosts in Ethiopia, employment contract approval service fee. On the other hand, worker is responsible for passport issuance fee, medical examination fee, vaccination fee, birth certificate issuance fee, expenses for certificate of occupational competence.

In Ethiopia, the newly promulgated law remained inapplicable so that the ban remained active for the last five years since it was declared. As a result, irregular labour migration to the Gulf has increased and Saudi Arabia remains the primary destination for irregular migrants; reportedly, over 400,000 Ethiopians reside there, including some trafficking

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[168] Imigration Regulation no114/2004 Federal Negarit Gezeta, yr 11, no 4, A/A, September 11/ 1995, Art.34 (1)

[169] The Regional Mixed Migration Secretariat (RMMS) (2014) The Letter of the Law :regular and irregular migration in Saudi Arabia in a context of rapid change,

[170] See Art. 10, 12 and 14 of Oversee Employment Proclamation no. 923/2016

victims.[171] This shows that migrants who prefer to flee to GCC regions through regular migration are forced to consider the irregular migration. The 2017 (2009 E.C) report on TiP and SoM prepared by the Task Force has stated that Ethiopia could not finalize the preparation of bilateral agreements, regulation and directives.[172] As a result, the country failed to withdraw the ban on oversee employment.

The other challenge is, even though Ethiopia has legislated Registration of Vital Events and National Identity Card Proclamation, there is no a provision of national ID card to citizens. As a result, smugglers are falsifying the official documents of the government to facilitate the illegal migration of migrants. The national ID will help the border officer to identify victims of trafficking in person.

4.2. Protection of Victim

Protection of victims is one of the main objectives of the law on TiP and SoM. Individuals should be identified as the victim of trafficking in person in order to access for protection enshrined by Protocol and national law. Primarily, returnees or victims of TiP are entitled to medical treatment and compensation.

Protection of Witnesses and Whistle-blowers of Criminal Offences Proclamation No. 699/2010 has provided some protection measures to be employed for a protected person separately or in combination. Victims are also witness in his case so that protections will be extended to him. Article 29 of Proc. No. 909/2015 has also referred the issue of protection to this law.

Traffickers and smugglers do need to evade criminal liability and they will intimidate or coerce victims not to disclose any fact to police. Therefore, the victim will never inform or give a statement to police until the government guarantees him. However, in practice witness are not entitled for neither of protections enshrined by the law.[173] Therefore, they are discouraged from assisting the law enforcement organ and investigators could not collect an evidence to prosecute traffickers and smugglers. The 2017 report prepared by the task force reported that only 76 wrong doers had been found guilty though the federal police arrested 138 suspected people within a year.

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[171] US, department of state, Office To Monitor and Combat Trafficking in Persons, Trafficking in Persons Report(2016) (https://www.state.gov/j/tip/rls/tiprpt/countries/2016/258765.htm) last visit on Aug 10/ 2017 9:50

[172] Federal Attorney Genaral, Anti Trafficking in Person and Smuggling of Migrants Task Force Secretariat, the 2017Report of TiP and SoM, P. 34

[173] Interview with Commander Ketema Debalke, Director of Transnational and Organised Crimes Investigation Directorat on July/2017, 9:00 pm

Article. 26 (4) of the proc. No. 909/2015 states that victims while staying at temporary shelter shall, in no case, be kept in police stations, detention centres or prisons.[174] However, victims as a witness are forced to stay under custody in the police station. They are also being brought to the court with other suspects of ordinary crimes from custody. Police officers justify this breach with the fact that the witness may not come back and give his/her statement before the court if he is released from custody. Commander Ketema objects and concludes that there is no such a practice in their investigation directorate.

In Ethiopia, there are only two camps for shelter formally built in Ethiopia in collaboration with IOM. These camps are established at Amhara & Afar Regional states; Metema and Galafi respectively.[175] They are not accessible to all victims. This is a main reason to police officers not to release victims from custody. Unlike Ethiopia, the government of Philippine in partnership with NGOs, provided victims with shelter, psycho-social support, medical services, legal assistance, and vocational training. It sustained an allocation of approximately 23 million pesos ($490,000) to implement this program. It operated 44 residential care facilities [176] while Slovenia and Spain have allocated 350,700 and 5.6 million USD respectively to protect victims of trafficking. Ethiopia has established a fund to prevent, control and rehabilitate victims of crime of trafficking in human and smuggling of migrants by law. However, the government failed to implement the fund. Due to the failure to implement the fund on the one hand, victims are exposed for traffickers and to be recruited again. The latter will also reappraise victims if they disclosed information. On the other hand, police officers lack an opportunity to investigate the victim as a witness. Thus, traffickers will be released free due to lack of evidence. Alemakef Tafesse has told to the researcher that;

> *I have identified individuals who are recruited either for trafficking or for smuggling at the exit point of Humera. I have sent them to police station for investigation. However, police officer returned these potential victims to my office and told me that they do not have place and budget to facilitate their stay. Finally, these people are released and traffickers found them again and took them to Saudi Arabia.* [177]

4.3. **Prosecution**

Prosecution is one of the basic measures to be taken to counter TiP and SoM. It begins with investigation of crimes. The essence of both protocols and Ethiopian national law on these

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[174] Proclamation no 909/2015, supra note 144, art 26 (4)
[175] Interview with Dr Tefera,Coordinator for Labour and Social Affair of North Gonder zone, on June 10/2017
[176] United States of American, Départment of States, Trafficking in Persons Report, 2016, p.308.
[177] Informal discussion with Alemeakef tafesse, Immigration Officer at Humera, on September 12/2017

crimes show that it is difficult to counter them with traditional methods of investigation. Therefore, special techniques of investigation are introduced to be deployed in countering these crimes. These techniques are infiltrate the suspected criminals, criminal groups or organizations; conduct surveillance against the suspects; intercept private communication of the suspects by court order & create simulated legal relationship.[178] However, investigating team does not apply any of them. Commander Ketema says our investigations mainly focus on oral evidence; depending on information gathered from whistleblower.

This has two negative impacts on the criminal justice system. The first one is lack of sufficient evidence to convict individual, and the other relates with the protection of victims from further harm. Therefore, if the victim denied giving a statement, the case will be closed. Most of the denial to give witness statement emanates from fear. In this regard, the inapplicability of witness protection Proclamation contributed to the denial of cooperation with police. Nonetheless, investigators did not experience proactive investigation, [179] especially through surveillance. The proactive investigation is important to collect evidence even before the completion of the crime. However, one of the challenges to conduct an investigation, as has been observed from discussion with 16 police officers from Arsi and Jimma zone, is lack of cooperation with Ethio-telecom. They together agreed on the fact that Ethio-telecom denies to give them the conversation between suspected peoples.

The 2016 Report prepared by the task force of countering these crimes indicates that 1294 defendants are prosecuted and 532 had been found guilty and sentenced in Ethiopia at the national level. Out of this, federal prosecutor prosecuted 182 defendants but only 60 people were convicted. The task force has also reported for 2017 that 98 people were prosecuted and 76 was found guilty and sentenced 2 to 20 years imprisonment. This report also narrated that in the Oromia regional government, 70 people were found guilty and sentenced to 1 to 25-year imprisonment. SNNP regional government recorded the same to that of Oromia though the number of people sentenced was 65. An essential fact to be investigated in this regard is the fact that which law was used to prosecute these criminals. Primarily, both protocols recommend states to adopt national laws with a severe penalty. Even though Ethiopia has achieved to adopt such a law accordingly, there was a failure to implement the law due to the drafting fault of lawmakers. One of the legislative defaults is discussed under chapter three of this paper. Due to this, all criminal charges had been framed under Article 598 of criminal

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[178] Proclamation No 909/2015 supra note 144, Art 18(1) a-d

[179] ``Proactive investigations`` are those started by the investigators on their own initiative, often as a result of information and intelligence gathered such as the use of informants and various forms of surveillance to build evidence. See also Anti-human trafficking manual for criminal justice practitioners by UNODC, 2010

code as has been discussed in the previous chapter. However, US Department of State in its 2017 report referring to the national report declared that all defendants are prosecuted as per the new Proclamation.[180]

Unlike the federal justice administration, at the regional level, smugglers are prosecuted under the new Proclamation. For instance, in 2016 high courts of Tigray Regional government have sentenced 37 criminals for 11-18 years and three persons for 19-25 years of rigorous imprisonment.[181] This indicates that there is no uniform or similar application of the law from federal to regional and between regions.

Since the FDRE constitution has recognized the Right to Equality (Article. 25) as inalienable right, smugglers who had been prosecuted for the same crime should be punished equally. However, the practice contravenes the above principle. Accordingly, there are some convicted person who are favoured and some other disfavoured. In general, the consequence of this difference has produced inequality between people and convicted person could be relieved from a severe penalty. However, a year after prosecutors at the regional level ceased to prosecute individuals under Proclamation No. 909/2015. For instance, prosecutors in Tigri region prosecute defendants as per Article five of the Proclamation only if the offence is committed against Eritrean migrants whereas article three will be referred if the victim is Ethiopian.[182] For instance, the case between prosecutors vs. Miliete G/Meskel, the latter has recruited two Eritrean migrants to send them to Italy. However, the police had caught him at Shire and charged under Article 5 of the Proclamation. The court finally found him guilty and sentenced to 7 years rigorous imprisonment.[183] Unlike the previous case, in the case of Prosecutor vs. Umer Ahimed, the latter has received benefit from Ethiopian migrant to send him to Saudi Arabia through Sudan and Yemen though the police had caught him. Even though the prosecutor has framed the charge as per Article 5 of the Proclamation, the court ordered the latter to amend the charge under Article 3 and then convicted and sentenced him for 14 years imprisonment without evidence that proves the existence of exploitation.[184] However, according to the prior discussion, Article 3 of the proclamation deals with trafficking in person. Therefore, the purpose for which a person recruited the victim shall be

[180] US Department of States, supra note 11, p.167.

[181] Report (2016) Federal Attorney General Task Force Secretariat, report on Human Trafficking and Smuggling of Migrants.

[182] Interview with AtoAtsebaha Hagos, Prosecuter of zone, at Tigray eregional state, on August 28/2017

[183] Case, Prosecutors vs. Mili'ete G/meskel, North West high court, Tigay reginal governmrnt, file No. 22024, (2016)

[184] Case, Prosecutors vs. Umer Ahimed, North West high court, Tigay reginal governmrnt, pros. File No. 553/2008, (2016)

to exploit. Even though, Article 5 of the proclamation wrongly inserted the word migrant in the criminalizing provision, the case provided above contains the whole elements of smuggling of migrant. Thus, the defendant cannot be convicted under Article 3 of the Proclamation without evidences that can prove the purpose of the act done. In this case, prosecutor resorts to Article 598 of the criminal code.

Though several reports have found that there is trafficking in person in Ethiopia, there are no trafficking cases which had been brought to the court at the federal level. Neither of prosecutors has prosecuted defendants as per the new Proclamation. Federal Attorney General has sent 30 cases to Federal High Court on migration related crimes from December to August 2017.[185]Birhanu Wondimagegn, Director for organized, transnational crimes affair directorate says since the exploitation in case of human trafficking mostly occurs at the country of destination, it was difficult to prove the purpose; whether it is aimed at exploiting or not. Thus, prosecutors are obliged to prosecute traffickers only for his transporting victims. Due to this problem, there is no criminal charge framed as per Article 3 of the new Proclamation.[186] The new proclamation does not state that the actual exploitation must be materialized. Instead, the purpose should be found to exploit others. Thus, the reason raised by Mr Birhanu contradicts the law. The purpose for which traffickers recruited the victim can be derived from circumstantial evidences.

The fundamental finding in this regard is that there is lack of trained prosecutor and investigator who will build the case with evidence that depicts the fact that why traffickers are recruiting and transporting individuals.

The same is true about cases of Smuggling of migrants. There is no a person who was prosecuted under Article 5 of the Proclamation. Senait Eniyew says that the crime primarily requests the illegal entry of a person on to the border of a country. Thus, since there is no border at Addis Ababa, it is impossible to prosecute an individual under Article 5 of the Proclamation. However, all 30 criminal cases framed as per Article 598 of the criminal code hold all the elements of the smuggling crime inside of it. Because the new Proclamation has provided that act of preparation is punishable. Therefore, if the smuggler has transported migrants to Addis but caught by police at Bole airport, the issue of the border does not affect. For instance, in the case of Federal prosecutor vs. Bekele Sime Demise, the latter has dealt with a victim and brought her from Ejere to Addis to send her to Dubai illegally. However,

[185] Interview with W/o Senait Eniyew, prosecutor and coordinator for human trafficking and smuggling team Under Miscellaneous crimes directorate (FAG), on Augest 12, 2017.

[186] An interview with BirhanuWendimagegn, Director for Crimes of Organised, Transnational and Crimes Affairs Directorate

Bekele was caught at Bole airport on January 21/2016. Then federal prosecutor framed the charge referred Article 27(1) and 598 of the criminal code and as a result, the federal first instance court, Arada special bench has sentenced him for four years and five months with fine birr 2000.[187] However, the minimum penalty provided for a similar crime under the new law is 15 years of imprisonment and fine of 150,000 birr. On the other hand, the word *migrant* inserted under the said Article of the Proclamation is another reason not to prosecute persons for smuggling of migrants. This was discussed in detail in chapter three of this paper.

The other issue to be discussed here is the jurisdiction of courts to try cases. Jurisdiction toentertain the case is granted for Federal First Instance Court as per Article 24 of Proclamation no. 909/2015. Thus, high courts of regions have the jurisdiction over these crimes through delegation. The explanatory note on Prevention and Suppression of Trafficking in Persons and Smuggling of Migrants Proclamation omitted to provide the rationale behind to give jurisdiction to this court. It is to leave a room for appeal at the regional level. However, the nature of the crimes seeks skilled and experienced judges. Judges assigned at the high court level are more skilled in examining the evidence than the latter. Therefore, since the amendment of criminal procedure code allows the regional courts to determine the jurisdiction to try the case depending on the extent of penalty, there is no need to include the provision of jurisdiction in the Proclamation. Crimes provided under Article 3 and 5 of the Proclamation, when they are aggravated due to the aggravating circumstances provided under Article 6, the convicted person may be sentenced to death.

4.4. Cooperation to Counter the Crime

Since trafficking in person and Smuggling of migrants are transnational, countering these crimes, unequivocally, needs the cooperation between two or more states, regional governments in a given country and stakeholders.

At the national level, Ethiopia has established the task force secretariat to coordinate members in it. Establishment of the said task force aimed at supporting efforts intended to the rehabilitation of victims, prevention, and control of crimes of human trafficking and migrant smuggling.[188] However, the researcher has participated in a workshop organized at Adama in which police officers, prosecutors and immigration officers from Oromia, Amhara, Tigray, SNNP, and Afar regions have participated. As a result, he observed that regions do not cooperate on prevention and combating crimes. There is no permanent information sharing between them and conducting proactive investigation together. They also agreed, after

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[187] Prosecutor vs. Bekele Sime Demise, Federal First Instance Court, Criminal Case No. 0358/20016(2016)

[188] Proclamation No. 909/2015, supra note 144, Art 40(1)

discussion, on the fact that there is no organized referral mechanism through which people those who are identified as a victim of TiP get to be handled.

Previous chapters of this paper reviewed the fact that Ethiopian citizens are illegally migrating to several countries for transit or destination. Some of these countries are Yemen, Saudi Arabia, Egypt, Kenya, Tanzania, South Africa, Sudan Mozambique, Somalia, Qatar, Lebanon, Libya, Djibouti, Italy, etc. Out of these countries, six states are party to IGAD. The latter, to enhance the cooperation between state parties, has developed and adopted instrument on mutual legal assistance though only Ethiopia and Djibouti have signed it. As a result, this instrument is not entered into force.

Ethiopia did not also sign bilateral agreement, on countering trafficking and Smuggling, with any of the states to which most Ethiopian uses to move. [189] However, it has ratified IGAD convention on Extradition with Proclamation No 733/2012. Even though extradition agreement is very important to execute arrest as per the warrant obtained from court, the failure of Ethiopia to have a bilateral and regional agreement to cooperate on joint investigation, identifying, freezing, and tracing proceeds of crime, recovering of assets, preserving communications data, Intercepting of telecommunications, conducting covert surveillance by the use of surveillance device, examining witness, effecting service of judicial documents, executing searches and seizure, Examining objects and sites etc, affected the countering activities. Commander Ketema Debalke has confirmed that there is no a case that was investigated jointly with other state. The government only requests hosting countries to transfer suspected person living abroad to Ethiopia. Meseret Tadesse, Prosecutor for International relation on legal matters under Federal Attorney General and Birhanu Wondimagegn agreed to Commander Ketema's reaction. Therefore, from the above discussion the researcher finally realized that, in practice, one of the challenges to counter the crime is a lack of cooperation between states.

[189] Interview with Ato Meseret Tadesse, Prosecutor of International Relation for Legal Matters, at the Federal Attorny General, October 21, 2017

Chapter Five

Conclusion and Recommendation

Conclusion

In chapter one, the researcher has highlighted the background of the thesis. This chapter has discussed the social and political disaster that could be occurred both at the national and international level, due to the crime of trafficking in person and smuggling of migrants. Ethiopia is identified as one of the countries in which these crimes are alleged to be committed in large scale. As a result, thousands of Ethiopians migrated to different receiving states through three main routes. Unlike the transnational trafficking crimes, under aged woman are subjected to sex trafficking in some cities of the country.

In chapter two, the researcher devoted to showing the meaning of trafficking in person and smuggling of migrants. Since these concepts are new to Ethiopian legal system, most individual including lawyers uses these words interchangeably though they are different. Trafficking in person is transporting individuals aiming at taking advantage of someone by coercive or deceptive means whereas, smuggling of migrants is an act of taking people into or out of a country illegally. Individuals are vulnerable to human trafficking and smuggling due to several driving factors such as economic, social and political. On the other hand, ban on regular migration or oversee employment has also played a negative role to increase irregular migration.

Chapter three considers both the international and domestic legal regimes that govern irregular migrations sponsored by traffickers and smugglers and the limitations. UN adopted Palermo Convention and two supplementary protocols known as a Protocol on TiP and Protocol on SoM. Ethiopia has also ratified these instruments and adopted a specific national law in line with these protocols. However, the discussion of this chapter realized that the national law has significant problem and *lacuna*. Ethiopia has also failed to adopt a comprehensive national policy to counter both crimes.

Major problems of the field are discussed under chapter four of this thesis. The chapter investigated practical aspects of countering activities based on four pillars such as prevention, protection, prosecution and promoting the partnership. As a result, the main provisions of the Proclamation are found inapplicable and some of them are applied in a manner that discriminate defendants.

Recommendation

The writer recommends that:

- The government shall adopt a specific national policy to repress and combat the crime of trafficking in person and smuggling of migrants. The policy shall be organised in a manner that furnishes the government direction towards mechanisms and measures to be taken to counter both crimes and it shall be constructed relied on right based approach. The policy should specify the obligation of stakeholders and their role.
- National intelligence and security service together with the task force, should conduct research and Strengthen border management on all exit routes determined by the research; unilaterally and jointly with other states. For instance, conducting permanent patrol and preventing the illegal exit of migrants on the border.
- Ethiopian government shall withdraw the temporary ban on labour migration to GCC countries and allow regular migration by fulfilling the precondition provided under Proclamation No. 923/2016.
- House of People representative shall amend Proclamation No. 909/2015. The amendment shall especially include;
    - Replacing the word 'migrant' by the word 'person' or any individual under Article 5 of the Proclamation; amendment shall fully cover the whole essence of Article 598 of criminal code.
    - Article 2 (10) shall be cancelled or replaced by the definition of the migrant.
    - Article 48 (1) of the Proclamation shall be replaced by the following new sub-Article (1): Article 243 (2), 596, 597, 598, 599 and 635 of the Criminal Code of the Federal Democratic Republic of Ethiopia is repealed
    - Provisions which deal with border management should also be included complying with the Protocol on smuggling.
    - The provision that deals with the jurisdiction of the court to try the case shall also be deleted so that high courts will have jurisdiction both at federal and regional level.
- The government shall establish a fund for witness and whistle-blower protection as per Proclamation No. 699/2010.
- The government, cooperating with NGOs and UN agencies, shall also build camps around all exit points and at least in capital cities of all regional governments. There

shall also be organized referral mechanism; from the place where the victim rescued to these camps.

- The federal government, through Federal Attorney General and Federal Police in collaboration with Minister of Foreign Affair shall establish bilateral agreement with neighbouring and receiving states. Some of states are Djibouti, Somalia, Kenya, Sudan, Tanzania, Egypt, Mozambique, South Africa, Libya, Yemen, Saudi Arabia, Qatar, Lebanon, Italy, to work together on prevention, protection and prosecution in relation to trafficking and smuggling crimes. The agreements shall include strengthening border security, collecting evidence, extradition, joint investigation, Identifying, freezing and tracing proceeds of crime, recovering of assets, intercepting of telecommunications, examining witnesses, effecting service of judicial documents, executing searches and seizures, examining objects and sites, exchanging information about migration in their region etc.
- The Ethiopian government shall build the capacity of Judges, Prosecutor, investigation and crime prevention police officers, Immigration officers and all other stakeholders working on migration, through training and experience sharing.

Bibliography

1. Alison Marie Behnke, Human Traffickingand Modern Slavery, 2014, Twenty-First Century Books / Minneapolis
2. Hannah M. Martin and L. Murphy Smith, Historical Overview and Demographic Analysis of Human Trafficking in the United States, (2015)
3. Theodore Baird, (2016) European University Institute- Robert Schuman Centre for Advanced Studies, Defining Human Smuggling in Migration Research: An Appraisal and Critique,Italy
4. Leslie Holmes, Introduction;The Issue of Human Trafficking, Trafficking and Human Rights European and Asia-Pacific Perspective, Edward Elgar Publishing Limited
5. Paolo Campana & Federico Varese, Exploitation in Human Trafficking and Smuggling, Springer ScienceBusiness Media Dordrecht, 2015,
6. Susan W. Tiefenbrun, Child Soldiers, Slavery, and the Trafficking of Children, 2007,
7. Dr.Sc. Xhevdet Halili, Smuggling of Human Beings and Connection With Organized Crime, Academicus - international scientific Journal, University of Prishtina, Kosov, http://ssrn.com/abstract=2789541
8. Gabriel Temesgen, Root Causes and Solutions to Human Trafficking in Ethiopia, Adigrat University
9. KristiinaKangaspunta, Collecting Data on Human Trafficking: Availability, Reliability and Comparability of Trafficking Data, 2007, Measuring Human Trafficking; Complexities and Pitfalls
10. Yoseph Endeshaw, Mebratu Gebeyehu, Belete Reta, (IOM), Assesment Of Trafficking in Women and Children in And fromEthiopia, Addis Ababa, (2014),
11. Anne Gallagher, Human Rights and the New UN Protocols on Trafficking and Migrant Smuggling: A Preliminary Analysis, Human Rights Quarterly http://ssrn.com/abstract=140983
12. Richard Perruchoud and Jillyanne Redpath-Cross, eds. IOM, International Migration Law, Glossary on Migration Law, 2nded, No 25
13. Heather J. Clawson, Nicole Dutch, Susan Lopez, Suzanna Tiapula, Prosecuting Human Trafficking Cases: Lessons Learned and Promising Practices Executive Summary, (2008) Washington DC)

14. Mr. Ganesh Gurung for International Labour Office in Nepal, An Overview Paper Overseas Employment in Nepal, Decent Work for all Women and Men in Nepal, 2004
15. Office of the High Commissioner for Human Rights, Human Rights and Human Trafficking, fact sheet No. 36, (2014)
16. United Nations Office on Drugs and Crime, 2008, Vienna, toolkit to Combat Trafficking in Person Global Programme Against Trafficking In Human Beings,
17. UNODC, Anti-Human Trafficking Manual for Criminal Justice Practitioners, Module 1 Definitions of Trafficking in Persons and Smuggling of Migrants, 2010
18. IGAD(2015) Human Trafficking and Smuggling of Migrants in the Context of Mixed Migration Flows: State of Play in the IGAD Region
19. Economic and Social Commission for Asia and the Pacific (2003)Combating Human Trafficking in Asia: A Resource Guide to International and Regional Legal Instruments, Political Commitments and Recommended Practices, Newyork,
20. Catholic Bishops' Conference of England & Walesand IOM (2014), Counter-Trafficking Training Manual, London
21. UN Recommended Principles and Guidelines on Human Rights and Human Trafficking, Commentary New York and Geneva, 2010,
22. UNODC, Anti-human trafficking manual for criminal justice practitioners, (2010), Module 5, Forms of Investigation in Trafficking in Persons Cases,
23. Office of the High Commissioner for Human Rights (2010)Recommended principles and guidelines on human rights and human trafficking, New York and Geneva
24. UNODC, Anti-human trafficking manual for criminal justice practitioners, Module 8, Joint Investigation Techniques in Trafficking in Persons Cases
25. Italy and Slovenia, on www.ukom.gov.si/eng/slovenia/publications/slovenia-news/5300/530, visited on July/2017.
26. UNODC, Toolkit to Combat Trafficking in Persons, Tool 9.2, Addressing the Root Causes of Trafficking
27. Global Slavery Index. (2013), Walk Free Foundation

28. RMMS, (2016), Regional Mixed Migration in the Horn of Africa and Yemen in 2016:4th Quarter trend summary and analysis Regional mixed migration secretariat, Horn of Africa and Yemen, Ethiopia Country Profile, Updated 2016
29. International Organisation for Migrant (IOM), Counter Trafficking Training Manual, 2014
30. International Organisation for Migration, Global Compact Thematic Paper| Border Management, 2017,
31. International Labour Organization (ILO), Country Office for Ethiopia, Djibouti, Somalia, Sudan and South Sudan, The Ethiopian Overseas Employment Proclamation No. 923/2016:a Comprehensive Analysis (2017) Addis Ababa,
32. Burak Şakir Şeker, Dimitrios Dalaklis, Contemporary Maritime Security Challenges: Human Traffickingand Migrant Smuggling at Sea,

Laws

1. United Nations Convention Against Transnational Organized Crime (PalermoConvention) (2000) Entry in to force : 2003,
2. Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (2000) Entry into force: 25 December 2000, preamble
3. UN General Assembly, Protocol against the Smuggling of Migrants by Land, Sea and Air supplementing the United Nations Convention against Transnational Organized Crime (Palermo Protocol on Smuggling) (2000), Resolution 55/25, Entry into force 2004
4. UN Convention Relating to the Status of Refugees, Adopted on 28 July 1951, Entry intoforce : 22 April 1954, United Nations, TreatySeries, No. 2545, vol. 189, art. 1(A) 2
5. Universal Declaration of Human Rights (UDHR) (1948), Adopted by UN General Assembly Resolution 217
6. African Charter on Human and Peoples' Rights (Banjul Charter) Adopted on 27 June 1981 Entry into force, 21 October 1986,
7. The ILO Convention no 29 (1930)
8. International Covenant on Civil and Political Rights (ICCPR) (1966) Adopted by UN General Assembly Resolution 2200 A (XXI), Entry into force 23 March 1976,

9. International Covenant on Economic, Social and Cultural Rights (ICESCR), (1966) adopted by the UN General Assembly, New York, entered into force 1976,
10. ILO Convention (No. 138) Concerning Minimum Age For Admission To Employment (1973)
11. Conventionfor the Suppression of the Trafficking in Persons and of the Exploitation of The Prostitution of Others Approved by UN General Assembly Resolution 317 (IV) of 2 December 1949 Entry intoforce : 25 July 1951
12. Prevention and Suppression of Trafficking in Persons and Smuggling of Migrants Proclamation, 2015, Proc. No 909 Neg Gaz year 21 No 67
13. Constitution of The Federal Democratic Republic of Ethiopia Proclamation no1/1995 Federal Negariz Gezeta,yr 1,no 1, a/a August 1995,
14. The Criminal Code of the Federal Democratic Republic Of Ethiopia no 414/2014, 9th of May, 2005, Addis Ababa
15. Imigration Regulation no114/2004 Federal Negariz Gezeta, yr 11, no 4, A/A September 11/ 1995, art.34 (1)

Reports

1. United Nations Office on Drugs and Crime (UNODC), Global Report on Trafficking in Persons ,2014
2. US Department of states, Office to Monitor and Combat Trafficking in Persons Diplomacy in Action, Trafficking in Persons Report 2016,
3. https://www.state.gov/j/tip/rls/tiprpt/countries/2016/258765.htm
4. Regional Mixed Migration Secretary (RMMS), Regional Mixed Migration in the Horn of Africa and Yemen in 2016: 3rd Quarter trend summary and analysis, 2016,
5. 3rd quarter RMMS report of 2016
6. UNODC, Global Report on Traffickingin Persons 2016,
7. Us Department of State, the 2017 report on trafficking in person,
8. US Department of states, Office to Monitor and Combat Trafficking in Persons Diplomacy in action, Trafficking in Persons Report 2016, https://www.state.gov/j/tip/rls/tiprpt/countries/2016/258765.htm
9. Regional Mixed Migration Secretary (RMMS), Regional Mixed Migration in the Horn of Africa and Yemenin2016 : 3rd Quarter trend summary and analysis, 2016,
10. US Office to Monitor and Combat Trafficking in Persons, (Country narratives) Trafficking in Persons Report (2015) https://www.state.gov/j/tip/rls/tiprpt/2015/243366.htm,

11. Report of the United Nations High Commissioner for Human Rights, Recommended Principles and Guidelines on Human Rights and Human Trafficking (E/2002/68/Add.1) ; Guideline 4 :Ensuring an adequate legal framework
12. Report on Human Trafficking and Smuggling of Migrant, (2016) Federal Attorney General Taskforce Secretariat
13. Report On Human Trafficking And Smuggling Of Migrant, (2017) Federal Attorney General Taskforce Secretariat
14. Central Statistics Agency of Federal Democratic Republic of Ethiopia's Statistical Report on the 2012 Urban Employment, Unemployment Survey

Interviews

1. An interview with Birhanu Wendimagegn, director for crimes of organised, transnational and crimes against public intereset affairs directorate.
2. Interview withAtoTekalign Bekele, Prosecutor for Transnational Organised Crimes Directorate, June 27/2017 ;
3. An Interview with Addis Getnet, Coordinator of Legal Drafting Team, underFederal Attorney General, on 10, July 2017
4. Interview with Meseret Tadese, Prosecutor for International Relation on Legal Affairs under Federal Attorney General, on August 13/2017
5. Interview with Ato BelayhunYirga, at Federal Attorney General, Director for Legal Study, Drafting and DisseminationDirectorate, on July 25/2017
6. Interview with Commander Ketema Debalke, Director of Transnational and Organised Crimes Investigation Directorat on July/2017, 9 :00 pm
7. Interview with Dr Tefera, Coordinator for Labour and Social Affair of North Gonder Zone, on June 10/2017
8. Interview with Ato Atsebaha Hagos,Prosecuter of Zone, at Tigray Regional State, on August 28/2017
9. Interview with W/o Senait Eniyew, Prosecutor and Coordinator for Human Trafficking and Smuggling Team Under Miscellaneous Crimes Directorate (FAG), on Augest 12, 2017.

Others

1. Un General Comment No. 27 (1999), Freedom of Movement (Article 12) Adopted by the Human Rights Committee, UN Document CCPR/C/21/Rev.1/Add.9
2. Commentary on a Proclamation to Provide for the Prevention and Suppression of Trafficking In Person and Smuggling of Migrant (2015), Minister of Justice,

3. Federal Attorney General, circular or order issued on October 15/2015 with No 01/ደጠ-1135/2015.
4. FDRE, Criminal Justice Policy (2010)
5. Cambridge Dictionary, (http://dictionary.cambridge.org/dictionary/english/Smuggling) last visited on Sep. 12, 2017
6. DuhaimeLegal Dictionary (http://www.duhaime.org/ Legal Dictionary /H/Human Trafficking. aspx) last visited on Sep. 1o, 2017

Cases

1. Prosecutor vs. Bekele Sime Demise, Federal First Instance Court (2016), Criminal Case No. 0358/20016
2. Prosecutors vs. Mili'ete G/meskel, North West high court, Tigay Reginal Governmrnt, file No. 22024, (2016)
3. Prosecutors vs. Umer Ahimed, North West High Court, Tigray Reginal Governmrnt, pros. File No. 553/2008, (2016)
4. CASE OF RANTSEV v. CYPRUS AND RUSSIA, European Court of Human Right, (Application no. 25965/04) Judgment Strasbourg 7 January 2010 Final 10/05/2010