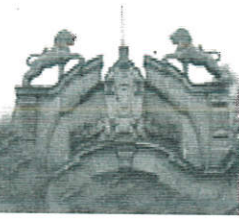


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**ADDIS ABABA UNIVERSITY SCHOOL OF GRADUATE  
STUDIES FACULTY OF LAW**

**Adopting A Human Rights-Based Approach to Counteract  
Trafficking –In- Women: The Case of Ethiopia**

**PREPARED BY: Bahar Jibriel**

**ADVISOR: Dr. Benyam Dawit Mezmur (LLB, LLM, LLD)**

**Thesis Submitted to School of Graduate Studies, Faculty of Law,  
Addis Ababa University, in Partial Fulfillment of the Requirements for  
the Degree of Masters of Law (L.L.M in Human Rights Law)**



**November, 2011**

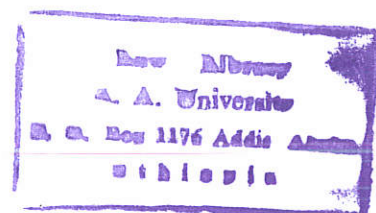
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## DECLARATION

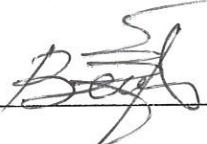
I, Bahar Jibriel, hereby declare that this thesis is original and has never been presented in any other institution. I also declare that any secondary information used has been duly acknowledged in this thesis.

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Date: Nov, 2011

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Date: Nov, 2011



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**APPROVAL SHEET SIGNED BY THE BOARD OF EXAMINERS**

**Title: Adopting A Human Rights-Based Approach to Counteract Trafficking  
-In- Women: The Case of Ethiopia**

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**December, 2011**

## **Abstract**

*Trafficking in persons which is akin to contemporary slavery is highly prevalent across the world. It is affecting thousands of persons in all corners of the globe. While men and boys can be exposed to trafficking, the women and girls constitutes a significant majority of victims of trafficking. Ethiopia is among source countries of many women and girls exposed to trafficking. Each year thousands of Ethiopian women and girls are trafficked across international border to mainly Middle East countries for labor and sexual exploitation purposes. Ethiopian women are subjected to multiple human rights abuses in destination countries. Thus, this thesis seeks to examine the sufficiency and adequacy of antitrafficking measures adopted in Ethiopia to counteract trafficking in women.*

*The study identifies that there are two dominant approaches to counteract trafficking in persons including women trafficking. These are: criminal justice approach and human rights based approach antitrafficking response. It argues that criminal justice approach which views trafficking as crime and immigration issues resolvable by prosecution of traffickers alone is losing currency. It fails mainly to address the root causes trafficking in persons in addition to lack of protection to VoT. As a result, human rights based approach that considers trafficking in women as human rights issues deeming a human rights oriented interventions is gaining ground in antitrafficking discourses. The study, further, argues that A Human Rights Based Approach Antitrafficking Response addresses not only the process and consequences of trafficking but also it seeks to dismantle the structural root causes such as poverty, lack of education, unemployment and discrimination against women that feed trafficking in women. Accordingly, a human rights based approach antitrafficking encompasses prosecution of trafficking cases, protection of VoT and prevention of trafficking in holistic manner. Thus, the purpose of this thesis is to assess whether antitrafficking adopted in Ethiopia are in line with human rights based approach standards. The thesis reveals that while there are some positive initiatives and efforts, antitrafficking measures adopted in Ethiopia fall short of Human Rights Based Approach antitrafficking standards. The lack of legislative, policy and institutional frameworks coupled with deficiencies in prosecution, protection and prevention strategies prove this assertion. Therefore, it is a high time to adopt A Human Rights Based Approach antitrafficking response in the country to see the effective and meaningful eradication of the trafficking in women.*

*Key terms: trafficking in persons, women, criminal justice approach, human rights, a human rights based approach, prosecution, protection, prevention, victims of trafficking*

## **Acknowledgement**

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## List of Abbreviations

ACHPR	The African Charter on Human and Peoples' Rights
ACRWC	The African Charter on the Rights and Welfare of Child
CAT	The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CATW	The Coalition Against Trafficking in Women
CEDAW	The International Convention on Elimination of all forms of Discrimination Against Women
CERD	The International Convention on Elimination of all forms of Racial Discrimination
CRC	The International Convention on the Rights of Child
E C	Ethiopian Calendar
EWLA	Ethiopian Women's Lawyers Association
FDRE	Federal Democratic Republic of Ethiopia
FGD	Focus Group Discussion
ICCPR	The International Covenant on Civil and Political Rights
ICESCR	The International Covenant on Economic, Social and Cultural Rights
ICL	International Criminal Law
IGOs	Inter-Governmental Organizations
IHRLG	International Human Rights Law Group

ILO	International Labour Organization
IOM	International Organization for Migration
MoFA	Ministry of Foreign Affairs
MoJ	Ministry of Justice
MoLSA	Ministry of Labour and Social Affairs
MoWCYA	Ministry of Women Children and Youth Affairs
MWC	The International Convention on Rights of All Migrants Workers and Members of Their Families
NGOs	Non-Governmental Organizations
PEAs	Private Employment Agencies
TCL	Transnational Criminal Law
UNODC	United Nation Office on Drug and Crime
VoT	Victims of Trafficking

## Chapter One: Introduction

### 1.1. Background of the Study

Human trafficking is one of the major current global problems. It is affecting hundreds of thousands of persons every year. According to the estimates of ILO, there are 12.3 million people in forced labor, bonded labor, forced child labor and sexual servitude at any given time.<sup>1</sup> The numbers of people trafficked across international borders is increasing from time to time. According to the 2005 US State Department report, 600,000 to 800,000 people are trafficked each year.<sup>2</sup>

There are certain push factors and corresponding pull factors exacerbating human trafficking. Poverty, drought, conflict, lack of security, unemployment and lack of perspective in the country of origin are the main push factors for exposing people to human trafficking.<sup>3</sup> The pull factors are a growing demand for sex and cheap labor in destination countries, specially developed countries, as well as some developing countries such as Middle East countries.<sup>4</sup> As a result, human trafficking business is thriving and has now become the third largest criminal industry behind drug trafficking and illegal weapons trading.<sup>5</sup> Traffickers are believed to have been making profit of approximately \$9.5 billion annually from trafficking in persons.<sup>6</sup> Trafficking victims are subjected to coerced prostitution, or other forms of bonded labor, to generate income for the traffickers involved in the trafficking business. The victims suffer from physical and emotional abuse, including rape, torture, starvation, imprisonment, threats and death.

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<sup>1</sup>A Global Alliance against Forced Labour: Global Report under the Follow-up to the ILO Declaration on Fundamental Principles and Rights at Work (International Labour Conference, 93rd Session 2005, Report I (B). Geneva. International Labour Office) as quoted in U.S. Department of the States Trafficking in Person Report of 2010 (hereafter U.S Trafficking Report 2010), p.7.

<sup>2</sup>U.S. Department of the States Trafficking in Persons Report of 2005 as quoted in USAID Anti-Trafficking In Persons Programs In Africa: A Review, April 2007, p.1

<sup>3</sup> GTZ, Study on Trafficking in Women in East Africa, 2003.

<sup>4</sup> Ibid.

<sup>5</sup>Trafficking In Person In Ethiopia: Controlling Traffickers and Protecting Victims Hand Book, PCI, 2009 (unpublished).

<sup>6</sup>ibid

Among the victims of human trafficking, women share a significant number. According to the US State Department report, 80% of people trafficked are women and girls.<sup>7</sup> Women are trafficked mostly for sexual exploitation and domestic labor. Amnesty International reported in 2004 that two million girls aged 5-15 have been introduced into the commercial sex market across the world each year.<sup>8</sup>

Trafficking in women is affecting virtually all states either as a source, transit or destination country. Ethiopia is among source countries highly affected by problem of women trafficking. In 2004, IOM reported that human trafficking is rising at an alarming rate in Ethiopia.<sup>9</sup> Poverty, unemployment, widening income gap between rich and poor families, lack of women's ownership (possession ) of land (other property), and women's lack of schooling opportunity coupled with ignorance of harsh consequence of human trafficking make Ethiopian women vulnerable to the trafficking business.<sup>10</sup> Accordingly, thousands of women and girls have been trafficked primarily to the Middle East countries every year mostly for domestic work and sexual exploitation. According to the recent IRIN UN News agency report, some 20,000 to 25,000 Ethiopians are trafficked to various countries annually.<sup>11</sup>

Ethiopian women in the Middle East face severe abuses, including physical and sexual assault, denial of salary, sleep deprivation, confinement, incarceration, and murder.<sup>12</sup> Many are driven to despair and mental illness, and some are reportedly commit suicide.<sup>13</sup>

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<sup>7</sup> Supra note 2.

<sup>8</sup> Yoseph Endashew et al, Assessment of Trafficking In Women and Children in and from Ethiopia, IOM (2006).

<sup>9</sup> <http://gvnet.com/humantrafficking/Ethiopia.htm> (last accessed on February, 2011).

<sup>10</sup> Yoseph, supra note 8.

<sup>11</sup> IRIN News on 16 March 2010, available at, <http://www.irinnews.org/report.aspx?reportid=88438>(last accessed on September 15, 2011).

<sup>12</sup> US Trafficking Report 2011, p.158.

<sup>13</sup> Ibid, regarding suicide case, a local newspaper has reported 67 cases of suicide of Ethiopian women working in Lebanon between 1997-1999, The Reporter, Addis Ababa, 29 September 1999 as quoted in GTZ Study supra note 3.

## 1.2.Statement of the Problem

So far anti-trafficking responses have disproportionately been focused on Criminal Justice Response Approach. This approach focuses on prosecution of traffickers.<sup>14</sup> Considering human trafficking as law and order (or crime control) issue, most countries and some regional and international intergovernmental organizations (IGOs) have paid greater attention to border and immigration control.<sup>15</sup> Consequently, enacting anti-trafficking laws which concentrate on prosecuting traffickers and condition victims' protection on cooperation with prosecution authorities in testifying against traffickers; and strengthening border control have been adopted as the best anti-trafficking response. While Criminal Justice Response would help to suppress human trafficking in deterring traffickers from engaging in business of human trafficking, it fails to address the root causes of women trafficking such as poverty, unemployment, discrimination, gender based violence, and so forth, that is, the broader socioeconomic conditions that feed the problem.<sup>16</sup> As Jordan rightly noted, unless the underlying causes such as unemployment, political instability, gender discrimination in education, employment, the family, and the political arena, and unrealistic immigration laws are addressed, trafficking of women will continue to increase.<sup>17</sup> In a similar vein Chuang has argued that Criminal Justice Response which is characterized by adopting a "law and order" approach to the problem has yielded questionable, if not disappointing, results. She further noted that the international community is coming to the growing realization that treating trafficking predominantly, if not solely, as a border and crime control issue is but to respond only to a snapshot view of a much larger problem.<sup>18</sup> Haynes also noted the caveat of Criminal Justice Response stating that

“[w]hile most countries currently have some legislation on the books that could be used to prosecute traffickers, ... these laws have had little impact on restricting traffickers or protecting trafficked persons, and are rarely, if ever, enforced.”<sup>19</sup>

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<sup>14</sup> Dina Haynes, *Used, Abused, Arrested and Deported: Extending Immigration Benefits to Protect the Victims of Trafficking and to Secure the Prosecution of Traffickers*, *Human Rights Quarterly*, Vol.26, No. 2, (2004), p.239.

<sup>15</sup> Janie Chuang, *Beyond a Snapshot: Preventing Human Trafficking in the Global Economy*, *Indiana Journal of Global Legal Studies*, Vol. 13, Issue 1, (2006), p. 138.

<sup>16</sup> *Ibid.*

<sup>17</sup> Ann D. Jordan, *Human Rights or Wrongs? The Struggle for a Rights-Based Response to Trafficking in Human Beings*, *Gender and Development*, Vol. 10, No. 1, (2002), p. 30.

<sup>18</sup> Chuang, *supra* note 15, p.163.

<sup>19</sup> Haynes, *supra* note14, p.245.

As a result, Human Rights Based Approach (a Victim-Centered Approach) is considered as more appropriate strategy to effectively counteract human trafficking including women trafficking.<sup>20</sup> This approach views human trafficking as human rights issue and calls for addressing not only the process and consequence of trafficking, but also the broader socioeconomic causes of human trafficking.<sup>21</sup> It starts from a human rights perspective and makes protection of the victim as its primary aim.<sup>22</sup> Furthermore, a Human Rights Based Approach Response takes a holistic approach to prevent and suppress human trafficking. Thus, a Human rights based approach can be held as effective and viable intervention response to eradicate women trafficking.

This thesis tries to assess anti-trafficking responses adopted in Ethiopia in light of a human right based approach response. Accordingly, it tries to scrutinize whether anti-trafficking responses adopted in Ethiopia are in line with a Human Rights Based Approach response or not.

### **1.3.Objective of the Study**

The main objective of this thesis is to explore the prospect of a Human Rights Based Approach anti-trafficking response to reduce and ultimately eradicate women trafficking in Ethiopia. In addition the thesis has got the following specific objectives. These are:

- a) To elaborate the definition of human trafficking and related issues as developed in international legal rules and policy documents;
- b) To show the interplay of human rights and human trafficking, in other words, to indicate the place of human trafficking in human rights law system;
- c) To identify the rationale for adopting human rights-based approach to combat women trafficking by comparing and contrasting with criminal justice approach response;
- d) To examine the human rights based approach standards imposed under international law including human rights law;
- e) To examine whether anti-trafficking initiatives in place in Ethiopia are in line with human rights based approach standards or not? If not why so?; and

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<sup>20</sup> Ibid, pp.221-272; Chuang, supra note 15, pp.137-163; Jordan, supra note 17, pp. 28-37; Tom Obokata, Trafficking of Human Beings From a Human Rights Perspective: Towards a Holistic Approach (Leiden: Martinus Nijhoff Publishers, 2006) p.35.

<sup>21</sup> Obokata, ibid.

<sup>22</sup> Haynes, supra note 14, p.247.



- f) To suggest the optimum solution to overcome the hindering factors in implementing human rights-based approach anti-trafficking model in Ethiopia to combat women trafficking.

#### **1.4. Research Questions**

In order to achieve the objective of the study the following research questions are addressed:

- a) What is human trafficking? How it could be distinguished from smuggling of human beings? What are the interplay of human rights and human trafficking?
- b) What is the scale and magnitude of women trafficking in Ethiopia? What are the causes and consequences of women trafficking?
- c) What is a human right based approach anti-trafficking response to women trafficking? What are the advantages it has over the criminal justice approach response?
- d) What are the essences and contents of human rights based approach standards response?
- e) Have anti-trafficking initiatives in Ethiopia adopted a human rights based approach? If not, what are the problems hindering the adoption of such approach? And how can those problems be addressed?

#### **1.5. Literature Review**

Literatures on human trafficking leave alone women trafficking in Ethiopia are very scant. Those few researches have concentrated on situational analysis that is the magnitude and character of the problem.<sup>23</sup> Regarding antitrafficking efforts the studies focus on law enforcement or criminal justice approach. The specific interest has been on the prosecution of traffickers.<sup>24</sup> But none of them have discussed anti-trafficking framework in human rights law perspective. The exception can be Anchinesh's LLM Thesis which is of course narrowed in

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<sup>23</sup>Yoseph Endashew et al, Assessment of Trafficking In Women and Children in and from Ethiopia, IOM (2006); ILO Trafficking in Persons Overseas for Labour Purposes: The Case of Ethiopian Domestic Workers, ILO CO Addis Ababa (2011).

<sup>24</sup> Yoseph, p.56.

scope by only focusing on protection aspect.<sup>25</sup> Thus, this study seeks to fill the gaps in literatures by discussing Human Rights Based Approach antitrafficking response in prosecution, protection and prevention of trafficking in women in Ethiopia.

## **1.6. Methodology**

Methodologically, the study employs a qualitative research method in data collection and analysis. Accordingly, the research largely relies on survey of literature to solicit conceptual and theoretical discourses. The researcher also employs qualitative content analysis approach in gathering information from legal instruments, policy documents and official (governmental) and IGOs and NGOs reports. In addition, interviews are conducted with different key informants to get first hand information; and to corroborate information gathered from secondary sources.

## **1.7. Significance of the Study**

The study will be significant to all stake holders engaged in anti trafficking initiatives such as: Government institutions, NGOs and UN Agencies in drawing attention towards the relevance of adopting human rights based approach anti-trafficking response. It is also significant to researchers and policy makers who are interested in dealing with the subject matter of women trafficking and related issues as a motivating (inspiring) input and/or source of reference.

## **1.8. Scope of the Study**

### **1.8.1. Delimitation of the Study**

The study is limited to the cases of external women trafficking from Ethiopia to the Middle East Countries. Accordingly, it does not deal with internal women trafficking cases as a central issues. Any reference made in this regards will be tangential. It is also limited to the assessment of anti-trafficking response adopted by Federal Government of Ethiopia. Hence, the study will not deal with anti-trafficking responses undertaken by the Regional Governments. Accordingly, the data will be collected from Federal Government Institutions alone.

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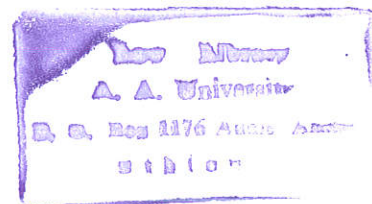
<sup>25</sup>Anchinesh Shiferaw, Legal Protections to Victims of Transnational Trafficking: The Case of Ethiopia and Mozambique (LLM Thesis, Faculty of Law, University of Pretoria, 2009, unpublished).

### **1.8.2. Limitation of the Study**

The lack of data regarding measures taken in counter trafficking activities, numbers of victims; and the clandestine nature of trafficking business have had impact on the finding of the research. Limiting the scope of the study to the case of federal government activities also impact the effort to capture a full picture of the problem. Besides, Interview intended to be conducted with experts at IOM that could provide insights to the study is not succeeded due to busy schedule of the experts. Further, the attempt to conduct FGD with some returnees of victims of trafficking was constrained due to time and resources considerations which would have been significantly enriched the study.

### **1.9. Outline of the Study**

The thesis is divided into five chapters. The first chapter deals with introductory remarks such as: background of the study, statement of the problem, objective of the study, methodology and scope of the study. The second chapter tries to explain the concept of human trafficking, the acts, means and purposes of trafficking. It also tries to differentiate between “human trafficking” and ‘human smuggling’. This chapter additionally tries to elaborate the interplay of human rights and human trafficking. The next chapter dwells on anti-trafficking responses. It tries to explain the two common anti-trafficking models, i.e., criminal justice response and human rights based approach. It tries to compare and contrast the pros and cons of the two models. It also provides some standards of human rights based approach response derived from international human rights law regime. The fourth chapter is devoted to the study of the case of Ethiopia. Accordingly, it tries to provide the scale and magnitude of women trafficking, and causes and consequences of problem of women trafficking in Ethiopia. It also tries to scrutinize anti-trafficking responses adopted in Ethiopia in lens of human rights based approach standards in detail. Further, it seeks to find out the factors inhibiting the adoption of human rights based approach model to combat women trafficking. The last chapter tries to provide some conclusions and recommendations.



## **Chapter Two: Understanding Human Trafficking**

### **2.1. Introduction**

Before embarking up on a detailed discussion of the main theme of the thesis, i.e., dwelling with a human rights based approach to combat women trafficking, it is imperative to lay down introductory notes as a background. Accordingly, this chapter tries to expound the concept of human trafficking and related issues. It provides the definition of trafficking from the perspective of Protocol to Prevent, Suppress and Punish Trafficking In Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime.<sup>1</sup> Additionally issues such as consent of the victims of trafficking , prostitution and women trafficking which are deemed relevant to shed light on the subject matter of trafficking will be dealt with.

Since human trafficking has been often confused with smuggling in persons, the distinguishing features of the two criminal activities will be identified. In connection to this, the point will also be made that the distinction between victims of trafficking and smuggling is not an easy task.

Furthermore, the interplay of human trafficking and human rights regime will be discussed briefly. Consequently, the fact that human rights violation is both a cause and consequence of trafficking will be noted. Besides, the human rights framework solution to combat human trafficking and the value added in characterizing human trafficking in human rights terms will be scrutinized before some concluding remarks are made.

### **2.2. Definition of Human Trafficking**

Human Trafficking<sup>2</sup> is defined for the first time in international legal instrument in the Trafficking Protocol in 2000.<sup>3</sup> Article 3(a) of the Trafficking Protocol provides that

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<sup>1</sup> Protocol to Prevent, Suppress and Punish Trafficking In Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime, adopted in 2000 and entered into effect in 2003(hereafter Trafficking Protocol ).

<sup>2</sup>The terms Human Trafficking, Trafficking –In- Persons and Trafficking of Human Beings are used interchangeably in this piece.

<sup>3</sup>UN Protocol to Prevent, Suppress and Punish Trafficking –In- Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime, (2000). (Hereafter Trafficking Protocol.) For excellent commentary on the Trafficking Protocol, See Anne Gallagher, Human Rights

“[t]rafficking in person shall mean 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 a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs;<sup>4</sup>

The definition contains three constituent elements. These are:

1. Action (what is done), consisting of : recruitment, transportation, transfer, harbouring or receipt of persons;<sup>5</sup>
2. The Means (how it is done), consisting of : threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation;<sup>6</sup> and
3. Purpose (why it is done), consisting of : Exploitation which includes, 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;<sup>7</sup>

All three elements must be present to establish the commission of crime of trafficking in persons.<sup>8</sup> However, the requirement of means is waived to constitute child trafficking.<sup>9</sup>

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and the New UN Protocols on Trafficking and Migrant Smuggling: A Preliminary Analysis, Human Rights Quarterly, Vol.23, No.4 (2001), pp.975-1004 . See also Janice G. Raymond, The New UN Trafficking Protocol, Women’s Studies International Forum, Vol. 25, No. 5, (2002), pp. 491 – 502.

<sup>4</sup> Art.3 (a) of Trafficking Protocol.

<sup>5</sup> Ibid.

<sup>6</sup> Ibid.

<sup>7</sup> Ibid.

<sup>8</sup> Gallagher, supra note 2, p.987.

<sup>9</sup> Art.3(c) of Trafficking Protocol states that ‘[t]he recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered “trafficking in persons” even if this does not involve any of the means set forth in subparagraph (a) of this article.’

The adoption of this broad and comprehensive definition is hailed as an important development because it provides a general guidance to different actors, such as scholars, governments, NGOs and IGOs to examine and respond to trafficking.<sup>10</sup> In other words, it creates a global language and legislation to define human trafficking.<sup>11</sup> Thus, the Trafficking Protocol becomes a global standard setting instrument which is regarded as a minimum bench mark for national governments to define the crime of trafficking in their domestic laws and policies.

### **2.3. Consent in Human Trafficking**

During the negotiation over Trafficking Protocol the issue of consent has been hotly contested among the participants.<sup>12</sup> The debate was whether trafficking could occur irrespective of consent of the person. On one side it was argued that inclusion of the phrase: “irrespective of the consent of the person” would ensure that traffickers could not escape conviction by using the victim’s consent as a defense.<sup>13</sup> Whereas those contesting this claim pointed out that issues of consent should not arise because trafficking necessarily involves the presence of some kind of consent-nullifying behavior (i.e., use of force, abduction, fraud, deception, etc.).<sup>14</sup>

Eventually, the Ad-Hoc Committee decided against the inclusion of irrespective of the consent.<sup>15</sup> Thus the final version contains the phrase which states: The consent of a victim of trafficking in persons to the intended exploitation is irrelevant where any of the stated elements which actually define trafficking (coercion, fraud, abuse of power, etc.) have been used.<sup>16</sup> Therefore, by now it is known that the consent of the victim of trafficking cannot be used as a defense to exonerate a person from criminal responsibility.<sup>17</sup>

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<sup>10</sup> Tom Obokata, *Trafficking of Human Beings From a Human Rights Perspective: Towards a Holistic Approach* (Leiden: Martinus Nijhoff Publishers, 2006), p.3; Susan Kneebone, *The Refugee–Trafficking Nexus: Making Good (The) Connections*, *Refugee Survey Quarterly*, Vol. 29, No. 1 (2010), p.152.

<sup>11</sup> Raymond, *supra* note 2, p.491.

<sup>12</sup> Gallagher, *supra* note 2, p. 985.

<sup>13</sup> *Ibid.*

<sup>14</sup> *Ibid.*

<sup>15</sup> Gallagher, *supra* note 2, p.986.

<sup>16</sup> Trafficking Protocol art.3 (b); Gallagher, *supra* note 2, p.986.

<sup>17</sup> Inter-Parliamentary Union and UNODC, *Combating Trafficking In Persons: A Handbook for Parliamentarians*, (A Handbook for Parliamentarians, No.16, 2009), p.14.

## 2.4. Women Trafficking: Beyond Prostitution and Sex Industry

The issue of women trafficking (to a certain extent human trafficking) has been often time linked to prostitution and sex industry.<sup>18</sup> Thus, the discussion on trafficking had been overtime revolving around trafficking for prostitution, sexual trafficking, trafficking for sexual exploitation, etc, to emphasis the inherent theoretical and conceptual link between (women) trafficking and prostitution and /or sex industry.<sup>19</sup> This disproportionate gender focus and linking of trafficking with forced prostitution distracted attention from other potential victims of trafficking.<sup>20</sup> Consequently, the scope of trafficking had been limited to women and girls on one hand; and the exploitation purpose to prostitution and sexual exploitation alone on the other hand.<sup>21</sup>

Without a surprise the negotiation over trafficking definition in Trafficking Protocol is also mired by a heated debate on prostitution.<sup>22</sup> The battle line was drawn between those who want to consider prostitution as a legitimate labor for consensual adult women and those who consider prostitution as a violation of women's human rights hence to be proscribed as trafficking crime.<sup>23</sup> The former group formed the Human Rights Caucus, led by International Human Rights Law Group (IHRLG) saw prostitution as legitimate labour and argued that the trafficking definition should be confined to forced prostitution.<sup>24</sup> Whereas the latter group spearheaded by the Coalition Against Trafficking in Women (CATW), saw all prostitution as a violation of women's human rights, and argued for proscribing prostitution *per se* as a trafficking crime regardless of consent of the women.<sup>25</sup>

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<sup>18</sup> Conny Rijken and Dagmar Koster, A Human Rights Based Approach to Trafficking in Human Beings in Theory and Practice, pp.6-7; Ann D. Jordan, Human Rights or Wrongs? The Struggle for a Rights Based Response to Trafficking in Human Beings, Gender and Development, Vol. 10, No. 1, (2002), pp.28-37, p.30.

<sup>19</sup> It is worth to note that even the earlier draft of Trafficking Protocol was also limited to trafficking in women and children, but soon the objection was raised over the restriction of the scope and amendment was made, see Gallagher supra note 2, p.983.

<sup>20</sup> Jordan, supra note 17, p.31.

<sup>21</sup> Obokata, supra note 9, p.27.

<sup>22</sup> Gallagher, supra note 2, p.984-986.

<sup>23</sup> Raymond, supra note 2; Gallagher, supra note 2, p.1002; Jo Doezema, Who gets to choose? Coercion, consent and the UN Trafficking Protocol.

<sup>24</sup> Raymond, supra note 2, p.494; Doezema, supra note 22.

<sup>25</sup> Gallagher, supra note 2, p.985; Doezema, supra note 22.

Although both camps had forwarded their own justification and interpretation as regards adult women prostitution, the Ad-Hoc Committee left the matter open for states parties to deal with it in their domestic legislations.<sup>26</sup> It did so not by a default but rather by a design as a means to end a yearlong debate over whether or not voluntary adult prostitution should be defined as trafficking.<sup>27</sup>

As mentioned above the Trafficking Protocol is credited for defining trafficking broadly to encompass all persons: children, men and women. In this regard, it has made departure from previous international legal instruments which were exclusively limited to women and prostitution.<sup>28</sup> Moreover, it contains a wide array of exploitative purposes which includes but is not limited to, 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. In so doing it emphasizes that exploitation may take a variety of forms which indeed goes beyond traditional end purpose, i.e., prostitution. Thus, the Protocol has widened the scope of trafficking to encompass cases beyond trafficking in women and girls; and prostitution and sexual exploitation purposes.

Having said this, one should not lose sight of the fact that the majority of victims of trafficking crime are still women.<sup>29</sup> Some studies show that 80% of victims of trafficking are women.<sup>30</sup> In a similar vein, the majority of trafficked women are engaged in sexual exploitation and prostitution. Hence, the focus of this study on women trafficking is not purported to limit the scope of the definition of human trafficking but to draw attention to the largest victims of human trafficking.<sup>31</sup>

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<sup>26</sup> The Travaux Préparatoires should indicate that the protocol addresses the issue of prostitution only in the context of trafficking, which is therefore without prejudice to how States Parties address prostitution in their respective domestic laws, Interpretative Notes for the official records (Travaux Préparatoires) of the negotiation of the United Nations Convention against Transnational Organized Crime and the protocols thereto, U.N. Doc. A/55/383/Add.1, at para. 64 as quoted in Gallagher supra note 2, p.986.

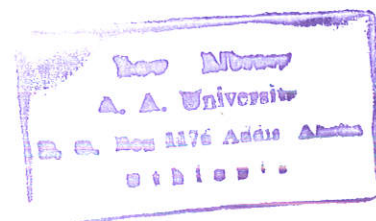
<sup>27</sup> Jordan, supra note 17, p.32.

<sup>28</sup> International Convention for the Suppression of the White Slave Traffic (1910); International Convention for the Suppression of the Traffic in Women and Children (1921); and Convention for the Suppression of the Traffic in Persons and the Exploitation of the Prostitution of Others (1949) are cases in point.

<sup>29</sup> Joanna Apap et al, Counteracting Human Trafficking: Protecting the Victims of Trafficking, Summary, Centre for European Studies (CEPS), 2002, p.13.

<sup>30</sup> USAID Anti-Trafficking In Persons Programs in Africa: A Review (April 2007).

<sup>31</sup> Even though the trafficking problem affects all persons regardless of sex and age; evidences reveals that the women and children constitutes the largest portion of victims. According to the 2005 US Trafficking Report



## 2.5. Human Trafficking V Human Smuggling

The terms human trafficking and human smuggling are sometimes used interchangeably in the press and academic literatures, without a clear distinction. This suggests that these acts are regarded as more or less the same, and that there is no major difference in the way in which trafficked and smuggled people are treated.<sup>32</sup> Nonetheless, the terms have got certain distinctive features as pointed out in UN Protocols and reiterated in literatures.

Human Trafficking is defined in Trafficking Protocol as

“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 a person having control over another person, for the purpose of exploitation.”<sup>33</sup>

Whereas smuggling is defined in Smuggling Protocol<sup>34</sup> as

“Smuggling of migrants” shall mean 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.”

The key differences spelt out as distinguishing features are summarized as follows:

### 2.5.1. Consent

Trafficking is carried out with the use of coercion and/or deception, whereas smuggling is not, indicating that it can be a voluntary act on the part of those smuggled.<sup>35</sup> Which means the intending migrant is complicit in smuggling, while not in trafficking.<sup>36</sup>

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80% of people trafficked annually are women, *ibid.* Also in Ethiopia the anecdotal evidences show that the majority of victims of trafficking are women.

<sup>32</sup> Tom Obokata, *Smuggling of Human Beings from a Human Rights Perspective: Obligations of Non-State and State Actors under International Human Rights Law*, IJRL, (2005), p.396.

<sup>33</sup> Trafficking Protocol art.3 (a).

<sup>34</sup> Protocol Against The Smuggling of Migrants By Land, Sea And Air, Supplementing The United Nations Convention Against Transnational Organized Crime, 2000, art. 3(a). (Hereafter Smuggling Protocol).

<sup>35</sup> Obokata, *supra* note 31.

### **2.5.2. The Role of Violence**

Traffickers employ violence to subdue and force the victims into compliance and keep them controlled.<sup>37</sup> Hence trafficking is considered as a violent crime entailing deprivation of liberty.<sup>38</sup> On the contrary, people smugglers have little if any need to use violence.<sup>39</sup> Since they have already made their profit from being paid to facilitate the movement, there is no need for a smuggler to harm his 'cargo'. Hence, smuggling in persons is not classed as a violent crime, and does not involve deprivation of liberty.<sup>40</sup>

### **2.5.3. Transnationality**

Smuggling necessary involves crossing of borders. However, trafficking does not necessarily require the crossing of international borders; it can be domestic, for example rural to urban, north to south etc.<sup>41</sup> but for the purpose of this thesis, as outlined in its scope, trafficking of women who cross international borders are addressed.

### **2.5.4. Exploitation**

Trafficking entails subsequent exploitation of people, while the services of smugglers end when people reach their destination. While the former has an exploitative purpose the latter has a facilitative purpose.<sup>42</sup>

### **2.5.5. The Means of Entering Destination Country**

While the means of entry into a destination country can both be legal and illegal in the case of trafficking, smuggling in persons is characterized by illegal entry.<sup>43</sup> As the sole purpose is the

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<sup>36</sup> Brian Iselin and Melanie Adams, *Distinguishing Between Human Trafficking and People Smuggling*, UN Office on Drugs and Crime, Regional Centre for East Asia and The Pacific, Bangkok (2003), p.3 similarly, trafficking is considered as a crime against the person, while smuggling is viewed as a crime against the state, *ibid.*

<sup>37</sup> *Ibid.*, p.7

<sup>38</sup> *Ibid.*

<sup>39</sup> *Ibid.*

<sup>40</sup> *Ibid.*

<sup>41</sup> *Ibid.*, p.4.

<sup>42</sup> *Ibid.*, p.4.

<sup>43</sup> Obokata, *supra* note 31, p.397.

illegal entry of an intending migrant into a state in which that person has no lawful right of abode, smuggling necessarily involves illegal entry of destination country.<sup>44</sup>

While in theory seemingly there are identifiable differences between trafficking and smuggling scenarios, practically it is difficult to distinguish the victims of trafficking from those smuggled. To begin with, the traffickers use the same routes, and means such as forged documentation and organizational networks as the smugglers.<sup>45</sup> In terms of causal factors there are close resemblances between these two criminal activities. Generally, extreme poverty, lack of economic opportunities, civil unrest, and political uncertainty, are factors that all contribute to an environment that encourages human smuggling and human trafficking.<sup>46</sup> In addition, as Skeldon rightly observes, violence, coercion and exploitation are as much an integral part of smuggling as they are of trafficking.<sup>47</sup> Perhaps at times what is initially started as purely smuggling could quickly end up as trafficking.<sup>48</sup> It seems appropriate to view smuggling and trafficking as part of a continuum as Adam Graycar has indicated.<sup>49</sup> He suggests that smuggling is clearly concerned with the manner in which a person enters a country, and with the involvement of third parties who assist them to achieve entry. Trafficking is a more complicated concept, in that it requires consideration not only of the manner in which a migrant entered the country but also their working conditions and treatment after entry and whether the migrant consented to the irregular entry and/or these working conditions.<sup>50</sup> It is frequently difficult to establish whether there were elements of deception and/or coercion, and whether these were sufficient to elevate the situation from one of voluntary undocumented migration to trafficking.<sup>51</sup> Thus, it is commendable to treat illegal migrants as a victim of trafficking unless and until the contrary is conclusively proved by

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<sup>44</sup> Iselin and Adams, *supra* note 35, p.4.

<sup>45</sup> Apap et al *supra* note 28, p.17.

<sup>46</sup> For a valuable study on causes of smuggling, see Obokata, *supra* note, 31, pp.399-400; The Human Smuggling and Trafficking Center, Fact Sheet: Distinctions between Human Smuggling and Human Trafficking (April, 2006) (hereafter, The Human Smuggling and Trafficking Center), p.1.

<sup>47</sup> Ronald Skeldon, Trafficking: A perspective from Asia, *International Migration*, Vol. 38 (1), SI 1/2000, pp. 7-30, as quoted in Apap et al, *supra* note 28, p.17. Obokata notes that many people experience coercion during the process of smuggling. He further points out that many of them are placed under conditions and are subjected to torture and other inhumane or degrading treatment during their journey, see Obokata, *supra* note 9, p.26.

<sup>48</sup> Gallagher, *supra* note 2, p.1001; The Human Smuggling and Trafficking Center, *supra* note, 45, p.2.

<sup>49</sup> A. Graycar, Human Smuggling, Paper presented at the Centre for Criminology, The University of Hong Kong, 2000, p.8, as quoted in Apap et al, *supra* note 28, p. 18.

<sup>50</sup> *Ibid.*

<sup>51</sup> *Ibid.*

a thorough competent investigation.<sup>52</sup> Put it differently, it suffices to note that it would be better to err on the side of caution and develop the presumption of victim status unless the contrary is proved.<sup>53</sup>

## 2.6. Human Trafficking and Human Rights<sup>54</sup>

There is a growing consensus to consider human trafficking as a human rights issue as articulated by several authors and reports.<sup>55</sup> It has been widely acknowledged that violations of human rights are both a cause and a consequence of human trafficking.<sup>56</sup> As Special Rapporteur notes that “ in a significant number of situations, the root causes of migration and trafficking can be attributed to the failure of States to guarantee the fundamental human rights of all individuals within their jurisdiction.”<sup>57</sup> The root causes of trafficking, i.e., poverty, discrimination, violence and general insecurity are emanated from deprivation of human rights.<sup>58</sup> Furthermore, the phenomenon of trafficking itself also entails a serious violation of human rights and human

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<sup>52</sup> Iselin and Adams, supra note 35, p.9. Unfortunately often time the law enforcement officials treat any illegal immigrant as smuggled criminal for some reasons. One is because it is easy to prove smuggling than trafficking and two to deny protection benefits contemplated under trafficking protocol, Gallagher supra note 2, p.1000. Regarding the importance of investigation the United Nations High Commissioner for Human Rights Principles and Guidelines on Human Rights and Trafficking, E/2002/68/Add.1 (2002) (hereafter OHCHR Principles and Guidelines) noted that a failure to identify a trafficked person correctly is likely to result in a further denial of that person’s rights and States are therefore under an obligation to ensure that such identification can and does take place, *ibid*, guideline 2.

<sup>53</sup> As some authors correctly note , “ [t]o err on the side of a guilty presumption is not only a deprivation of natural justice, but if it is a trafficked victim we have discovered then we may be continuing the victimization of someone who has already suffered too much”, see Iselin and Adams, supra note 35, p.9.

<sup>54</sup> This matter will be dealt with in depth in the succeeding chapter; here a modest attempt is made to shed light on the intersection of human trafficking and human rights.

<sup>55</sup> Obokata, supra note 9, p.3; GTZ, Programme Promoting Gender Equality and Women’s Rights, Trafficking in Persons as a Human Rights Issue, 2008 (hereafter GTZ 2008), available at <http://www.gtz.de/gender> [last accessed on June 5, 2011]; Marie Segrave, Human Trafficking and Human Rights, Australian Journal of Human Rights, Vol.14 No.2 (2009), pp.71-94; Patience Elabor-Idemudia, Migration, Trafficking and the African Woman, Agenda, No. 58, African Feminisms Three (2003), pp. 101-116; Elaine Pearson, Human Traffic, Human Rights: Redefining Victim Protection, Anti-Slavery International 2002; Jennifer S. Nam, The Case of the Missing Case: Examining the Civil Right of Action for Human Trafficking Victims, Columbia Law Review, Vol. 107, No. 7 (2007), pp. 1655-1703; Anne Gallagher , Trafficking, Smuggling and Human rights: Tricks and Treaties, FMR 12; Promotion and Protection of All Human Rights, Civil, Political, Economic, Social And Cultural Rights, Including The Right To Development, Report submitted by the Special Rapporteur on Trafficking In Persons, Especially Women and Children, Joy Ngozi Ezeilo, A/HRC/14/32 (4 May 2010); Anne T. Gallagher, Human Rights and Human Trafficking: Quagmire or Firm Ground? A Response to James Hathaway Virginia Journal of International Law Vol. 49 No. 4(2009) pp.847-848; OHCHR Principles and Guidelines, supra note 51.

<sup>56</sup> OHCHR Principles and Guidelines, supra note 51, Guideline 1.

<sup>57</sup> Para.21;

<sup>58</sup> GTZ 2008, supra note 54.

dignity.<sup>59</sup> The most common rights at stake are: the right to personal autonomy, the right not to be held in slavery or servitude, the right to liberty and security of person, the right to be free from cruel or inhumane treatment, the right to safe and healthy working conditions and the freedom of movement and the right to life.<sup>60</sup>

Since human trafficking is a human rights issue, a human rights framework offers a helping hand to supplement and/or complement ongoing anti-trafficking initiatives.<sup>61</sup> Obokata in his book, *Trafficking of Human Beings from a Human Rights Perspective: Towards a Holistic Approach* has identified two dimensions of human rights framework to combat trafficking.<sup>62</sup> The first one is framework of analysis which explores and identifies relevant human rights norms and principles in relation to human trafficking. The second dimension is a framework of action which tries to articulate legal obligations imposed up on states, such as obligations to prohibit trafficking, prosecute traffickers, protect victims, and address the causes and consequences of trafficking.

In terms of normative framework, there are a plethora of international and regional human rights instruments which are relevant to human trafficking.<sup>63</sup> For instance, art. 6 of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), urges states to suppress all forms of traffic in women and exploitation of prostitution of women.<sup>64</sup> Art.35 of the Convention on the Rights of the Child (CRC), calls for the prevention of the abduction of, sale of or traffic in children for any purpose or in any form.<sup>65</sup> The provision of CRC is further strengthened by the adoption of the Optional Protocol to the Convention on the Rights of the

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<sup>59</sup>Obokata, supra note 9, p.4; Nam, supra note 54. Sadly even trafficked persons who escape their situation are subject to serious human rights violations at the hands of governments. Most governments' traditional policies give priority to detention, prosecution and expulsion of trafficked persons for offences related to their status, including violation of immigration laws, prostitution or begging. Often victims are treated as "disposable witnesses" whose sole value is their ability to assist in trafficking prosecutions, GTZ 2008, supra note 54.

<sup>60</sup> GTZ 2008, supra note 54; Viviana Waisman, *Human Trafficking: State Obligations to Protect Victims' Rights, The Current Framework and A New Due Diligence Standard*, *Hastings Int'l and Comp.L.Rev.*, vol.33, No.2(2010), pp.385-386; Rijken and Koster, supra note 17, p.8.

<sup>61</sup> Pearson, supra note 54, p.4; Segrave, supra note 54; Obokata supra note 9, p.35; the Joy Ngozi Ezeilo's report, supra note 54; Rijken and Koster, supra note 17, p.8.

<sup>62</sup> Obokata, supra note 9, p.35.

<sup>63</sup> A detailed discussion of contents of these instruments will be provided in the next chapter. Here it suffices to hint the overview of instruments which are in one way or the other dealt with trafficking and some components of trafficking as well.

<sup>64</sup> The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), adopted in 1979.

<sup>65</sup> The Convention on the Rights of the Child (CRC), adopted in 1989.

Child on the Sales of Children, and Child Pornography (OP CRC on Sale of Child).<sup>66</sup> At regional level: the African Charter on Human and Peoples' Rights (ACHPR), states that all forms of exploitation and degradation of man particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment shall be prohibited art.5;<sup>67</sup> and the African Charter on the Rights and Welfare of Child (ACRWC) calls on states parties take appropriate measures to prevent the abduction, the sale of, or trafficking of children for any purpose or in any form, by any person including parents or legal guardians of the child.<sup>68</sup> Moreover, the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa urges States Parties to take appropriate and effective measures to prevent and condemn trafficking in women, prosecute the perpetrators of such trafficking and protect those women most at risk.<sup>69</sup> Apart from these, there are some instruments which touch up on some aspects of human trafficking. For instance, the International Covenant on Civil and Political Rights (ICCPR) prohibits slavery, servitude, and forced labor.<sup>70</sup> Similar provision is enshrined in the International Convention on Rights of All Migrants Workers and Members of Their Families (MWC).<sup>71</sup> Further, the International Covenant on Economic, Social and Cultural Rights (ICESCR) calls for the adoption of special measures to protect children from economic and social exploitation.<sup>72</sup>

The Trafficking Protocol also touches up on protection of human rights of victims of trafficking.<sup>73</sup> Its preamble states the need to protect the 'internationally recognized human rights'

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<sup>66</sup> The Optional Protocol to the Convention on the Rights of the Child on the Sales of Children, and Child Pornography (OP CRC on Sale of Child), adopted in 2000, arts.1-3.

<sup>67</sup> The African Charter on Human and Peoples' Rights (ACHPR), adopted in 1981.

<sup>68</sup> The African Charter on the Rights and Welfare of Child (ACRWC) adopted in 1990, art.29.

<sup>69</sup> The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, art.4 (2) (g).

<sup>70</sup> The International Covenant on Civil and Political Rights (ICCPR), adopted in 1966, art.8.

<sup>71</sup> The International Convention on Rights of All Migrants Workers and Members of Their Families (MWC), adopted in 1990, art.11.

<sup>72</sup> The International Covenant on Economic, Social and Cultural Rights (ICESCR), adopted in 1966, art.10 (3).

<sup>73</sup> However, unlike the criminal provisions, which are obligatory on State Parties, the human rights protections remain merely discretionary under the Protocol, GTZ 2008, supra note 54; Pearson, supra note 54, Human Traffic, supra note 54, p.2. Gallagher argues that the Protocol falls short of minimum standards in relation to the protection and assistance of victims of trafficking see Gallagher, supra note 54. In a similar vein some argued that, the Protocol is more of an anti-crime treaty than a human rights treaty, and at times it is a diluted rather than a total commitment to human rights, Vitit Muntarbhorn, Human Rights versus Human Trafficking in the Face of Globalization, p.4.

of those trafficked.<sup>74</sup> Art.2 also notes that the protection of human rights of victims is one purpose of the protocol.<sup>75</sup> Importantly, Arts.6-8 provides protection of human rights of victims of trafficking. These include, in particular, temporary resident status and temporary shelter, medical and psychological services, access to justice as well as compensation or restitution.<sup>76</sup>

Finally, the question may arise as to what is the value added by considering human trafficking as human rights issue. There are two main advantages accrued in putting human trafficking in human rights perspective.<sup>77</sup> First of all considering human trafficking as human rights issue facilitates the understanding of the problem of trafficking.<sup>78</sup> Consequently, Human rights regime considers those trafficked as victims of human rights abuses and calls for adopting victim-centered approach anti-trafficking response.<sup>79</sup> Secondly, human rights framework unlike criminal justice approach<sup>80</sup> adopts a holistic response to trafficking. Hence it attempts to address not only the process and consequences of trafficking but also the root causes of trafficking.<sup>81</sup>

## Conclusion

The Trafficking Protocol has broadly and comprehensively defined trafficking in persons for the first time at international level. By so doing it sets minimum common standards of achievements for all concerned actors as regards the issue of human trafficking. Additionally, it declares that the consent of the victim is irrelevant as long as means (use of force, abduction, fraud, deception, etc) of trafficking are present. Hence, it is no longer tenable to invoke the consent of the victims to be exonerated from criminal liability of trafficking crime. Furthermore, the broadening of

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<sup>74</sup>Preamble of Trafficking Protocol, para.1.

<sup>75</sup> Art.2 (b) of Trafficking Protocol.

<sup>76</sup>See arts.6-8 of Trafficking Protocol.

<sup>77</sup> Obokata, Trafficking and Smuggling of Human Beings in Europe: Protection of Individual Rights or States' Interests? Web Journal of Current Legal Issues, available at "[www.webjcli.ac.uk](http://www.webjcli.ac.uk)"[last accessed on June 7, 2011).

<sup>78</sup> As Jordan rightly noted, the human rights framework unlike criminal justice approach shifts the focus away from seeing trafficked persons as objects towards understanding them as people bearing human rights, see Jordan, supra note 17, p.30.

<sup>79</sup> Obokata, supra note 9, p.35; OHCHR Principles and Guidelines, supra note 51, Guideline 1.

<sup>80</sup>Criminal justice approach viewing trafficking as crime and immigration issues focuses on the process and consequence of trafficking. Hence it does not bother to address the underlying root causes of trafficking crime, the next chapter will discuss in detail the pros and cons of criminal justice approach vis-à-vis a human rights approach.

<sup>81</sup> Obokata, supra note 9, p.35.



possible exploitative purposes of human trafficking opens a window of opportunity to look beyond prostitution and sexual exploitation in dealing with issues of women trafficking.

The discussion over the concept of trafficking is not complete without endeavoring to strike the dividing line between trafficking and human smuggling. In this regard, while an attempt is made to draw the distinction between trafficking and smuggling in UN Protocols and scholarly writings by identifying certain distinguishing features, nevertheless it is submitted that there is only a thin line between the two criminal activities. Hence, it is commended that unless a thorough and competent investigation is undertaken to identify the smuggled and trafficked ones, it is in the best interest of protection of human rights to err on the side of caution and to treat all illegal immigrants as potential victims of trafficking crime.

Importantly, in this chapter an attempt has been made to draw a common denominator between human trafficking and human rights system. Accordingly, it has been established that human trafficking squarely falls within the realms of human rights regime. For one thing a violation of human rights is both a cause and consequence of human trafficking. For another a human rights framework offers a holistic response to problems of trafficking by addressing not only the process and consequences of trafficking but also the underlying root causes of trafficking.

Having said this, the remaining issues are: what are human rights frameworks to counteract women trafficking? How it differs from criminal justice approach and offers advantageous alternative solutions? What are the available normative and institutional frameworks to realize human rights approach to combat women trafficking? And how this approach can be implemented and enforced to see any meaningful reduction and/or eradication of women trafficking? These and other related issues will be addressed in the next chapter in great depth in order to lay down a conceptual background to assess the anti-trafficking responses so far undertaken in Ethiopia to combat women trafficking.

## **Chapter Three: A Human Rights Based Approach to Counteract Women Trafficking**

### **3.1.Introduction**

As discussed in chapter two women trafficking can (arguably should) be considered as a matter of human rights law. Women trafficking to a large extent are caused due to deprivation of human rights. The phenomena of trafficking in women entail violations of a host human rights entitlements and guarantees. It follows from this that any meaningful and sustainable anti-trafficking initiatives must be anchored on the primacy of promotion and protection of human rights. A human rights framework anti-trafficking response is identified as a Human Rights Based Approach model. Thus, the aim of this chapter is to explore the essence and standards of Human Rights Based Approach response. But this requires whether there are other approaches relevant to combat human trafficking. Accordingly, the chapter starts off with discussion on approaches to counteract women trafficking. Specifically, it seeks to expound the Criminal Justice Approach anti-trafficking initiatives taking Protocol to Prevent, Suppress and Punish Trafficking In Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime<sup>1</sup> as an example. Further, it tries to compare and contrast with a Human Rights Based Approach response.

The chapter also tries to flesh out in detail the contents and standards of Human Rights Based Approach anti-trafficking response. It will be shown that there are certain elements of Human Rights Based Approach which are mainly derived from norms, standards and principles of human rights law regime. These standards guide prosecution, protection and prevention of trafficking strategies in Human Rights Based Approach response. It has to be admitted at the outset that it would be naive to maintain that all of these standards are mandatory states obligations as such. While some of them mostly those dealing with protection and prevention are rather optional, a modest attempt is made to build a bit by bit a posture of roadmap Human Rights Based Approach guidelines available to international, regional and national actors serious about eradicating women trafficking.

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<sup>1</sup>Protocol to Prevent, Suppress and Punish Trafficking In Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime, adopted in 2000 and entered into effect in 2003(hereafter Trafficking Protocol ).

The chapter is divided in two parts. The first part tries to set the stage by discussing approaches to counteract women trafficking. Thus, it seeks to justify how a Human Rights Based Approach response has to be followed by detailing the pitfalls of Criminal Justice Approach. The second part tries to outline the hands and feet of a Human Rights Based Approach. It seeks to flesh out Human Rights Based Approach standards imposed by international legal and policy framework on states regarding prosecution of trafficking cases, protection of trafficked persons and prevention of trafficking. Having set the markers of Human Rights Based Approach standards, the remaining inquiry would be to explore whether Ethiopian anti-trafficking responses hitherto adopted are in line with these standards or otherwise. While I leave this question hanging on for the next chapter, I start discussing the theme of this chapter as follows.

### **A. Part One**

#### **3.2. Approaches to Counteract Women Trafficking**

There are two common approaches<sup>2</sup> identified to combat human trafficking including women trafficking.<sup>3</sup> These are Criminal Justice Approach and Human Rights Based Approach anti-trafficking responses. While the former favors law enforcement oriented, i.e., crime and border control anti-trafficking interventions, the latter adopts a primacy of protection of human rights in designing and realizing anti-trafficking initiatives. The major distinctions emanate from the way they conceptualize trafficking problem and resultant measures they propose from their vantage points of viewing the trafficking problem. In this part of the chapter an attempt is made to expound these two dominant anti-trafficking approaches. In so doing an attempt is made to outline the main features of both approaches. Furthermore, I try to compare and contrast the two approaches and make a mini-conclusion on the debate of Criminal Justice Approach Versus

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<sup>2</sup> Although there are other approaches identified in literatures, they could be subsumed under the two approaches, Elizabeth Yuko, *Theories, Practices and Promises: Human Trafficking Laws and Policies in Destination States of the Council of Europe*, LLM dissertation submitted to Dublin City University, School of Law and Government, September 2009, p.22.

<sup>3</sup> Dina Haynes, *Used, Abused, Arrested and Deported: Extending Immigration Benefits to Protect the Victims of Trafficking and to secure the Prosecution of Traffickers*, *Human Rights Quarterly*, Vol.26, No. 2, (2004), pp.221-272, at pp.221, 238. See also Anchinesh Shiferaw Mulu, *Legal Protections to Victims of Transnational Trafficking: The Case of Ethiopia and Mozambique*, LLM Dissertation (Human Rights and Democratization in Africa), Pretoria University, Center for Human Rights, (2009), p.17.

Human Rights Based Approach before fleshing out the standards of Human Rights Based Approach anti-trafficking response.

### 3.2.1. Criminal Justice Approach Anti-Trafficking Response

Criminal Justice Approach is perhaps the most common dominant and hitherto accepted framework at national and international level to combat human trafficking.<sup>4</sup> It has been in existence since the early periods of 20<sup>th</sup> Century.<sup>5</sup> Most of international anti-trafficking instruments previously adopted have been informed and influenced by Criminal Justice Approach.<sup>6</sup> As shortly shown below, the Trafficking Protocol, despite the unprecedented lobbying of human rights communities for adopting a Human Rights-Based Approach, it does not make a break from its predecessors in preferring the primacy of Criminal Justice Approach.<sup>7</sup>

Criminal Justice Approach considers human trafficking as a crime and immigration (border) issue requiring aggressive criminal law and border enforcements.<sup>8</sup> And it is characterized by putting emphasis on crime and immigration control responses.<sup>9</sup> It prescribes the criminalization of human trafficking and related offences such as breaches of prostitution, immigration and labor law as sole tools to combat human trafficking.<sup>10</sup> Particularly, it is manifested by paying great attention on the prosecution of the traffickers and curtailing illegal migration and organized crime through stricter law enforcement and border control measures.<sup>11</sup>

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<sup>4</sup>Karen E. Bravo, Exploring the Analogy Between Modern Trafficking in Humans and the Trans-Atlantic Slave Trade, Boston University International Law Journal, Vol.25, (2007), pp.207-295, at p. 224; Elizabeth M. Bruch, Models Wanted: The Search for an Effective Response to Human Trafficking, Stanford Journal of International Law, Vol. 40, No.1, (2004), p.2.

<sup>5</sup>Nilanjana Ray, Looking at Trafficking Through a New Lens, Cardozo Journal of Law and Gender, Vol.12, (2006), pp.909-928, at p.914.

<sup>6</sup>For a detailed discussion on earlier trafficking specific treaties in light of criminal justice approach see, Alice Edwards, Traffic In Human Beings: At the Intersection of Criminal Justice, Human Rights, Asylum/Migration and Labor, Denver Journal of International Law & Policy, Vol. 36, No.1 2007, pp.15-18(He notes that "Apart from the 1904 Agreement, all trafficking-specific treaties had and continue to adopt a criminal law focus."), p.15; see Bruch, supra note4, at p.4. See generally ibid, pp.2-4.

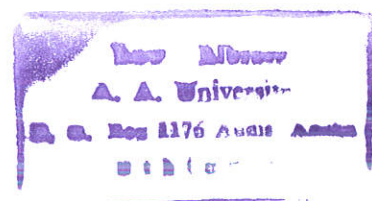
<sup>7</sup> Bruch, supra note 4, p.5.

<sup>8</sup>Janie Chuang, Beyond a Snapshot: Preventing Human Trafficking in the Global Economy, Indiana Journal of Global Legal Studies, Vol. 13, Issue 1, (2006), pp. 137-163, at p.138.

<sup>9</sup>Tom Obokata, Trafficking of Human Beings From a Human Rights Perspective: Towards a Holistic Approach (Leiden: Martinus Nijhoff Publishers, 2006), p.4.

<sup>10</sup>Yuko, supra note 2, p.23.

<sup>11</sup> Haynes, supra note 3, p.239; Ray, supra note 5, p.915.



It also conditions the victims' protection measures on the willingness or ability of a victim to cooperate the prosecution of traffickers. There is a tendency to consider trafficked persons as tool for facilitation of prosecution of traffickers.<sup>12</sup> Thus far, protection measures may be granted to trafficked persons as a function of their usefulness to the State as an instrument in the prosecution of those involved in the trafficking process.<sup>13</sup> As such the principal concern of the Criminal Justice Approach is to stop crime, not violation and exploitation of women, whose interests are thus secondary, or presumed to be generally served, by stopping the criminals.<sup>14</sup> In short the cardinal components of Criminal Justice Approach are: criminalization, prosecution, and border enforcement.<sup>15</sup>

The proponents of Criminal Justice Approach maintain that adopting stronger legislation could curb trafficking in persons because it would mean more effective detection and prosecution of traffickers and increase the penalties for trafficking.<sup>16</sup> They further note that harsher punishments will discourage traffickers from operating and stricter border controls will make it more difficult for traffickers to transport persons to the end destination.<sup>17</sup> To be fair, Criminal Justice Approach has the potential to deter traffickers from engaging into women trafficking by portraying trafficking as a low return and a high risk venture.<sup>18</sup> This is the case through criminalizing trafficking and setting harsher penalties in criminal legislation. It could also be used to increase the likelihood of prosecution of traffickers which in turn serves as preventive measures.<sup>19</sup> As such criminal justice approach offers the potential for the direct prosecution of traffickers and a tangible way of enforcing international law.<sup>20</sup>

Further, a Criminal Justice Approach provides benefits by allocating resources to combat trafficking. As Bruch argues generally crime prevention resources at the national and international levels not only in financial terms, but also in terms of personnel and enforcement mechanisms are greater than those for human rights concerns.<sup>21</sup>

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<sup>12</sup> Yuko, *supra* note 2, p. 36.

<sup>13</sup> *Ibid.*

<sup>14</sup> Elaine Pearson, *Human Rights and Trafficking in Persons: A Handbook*, (GAATW, Bangkok) (2000), p.62.

<sup>15</sup> Bravo, *supra* note 4, p. 231.

<sup>16</sup> Pearson, *supra* note 14.

<sup>17</sup> Elaine Pearson, *Human Rights and Trafficking in Persons: A Handbook*, (GAATW; Bangkok) (2000) p.62

<sup>18</sup> Haynes, 243; Kristof Van Impe, *People for Sale: The Need for a Multidisciplinary Approach towards Human Trafficking*, *International Migration, Special Issue 2000/1*, pp.113-130, p.122; Bruch, *supra* note 4, p.6.

<sup>19</sup> Haynes, *supra* note 3, 243.

<sup>20</sup> Bruch, *supra* note 4, p.6. This could be contrasted with the weakness of human rights regime vis-a-visa private actors and enforcement of human rights obligations.

<sup>21</sup> *Ibid.*

While the components of this approach can be found in various international and domestic anti-trafficking instruments, here the focus is made on Trafficking Protocol. Thus the following section deals with Trafficking Protocol as instrument of law enforcement. Attempt is made to show that the Protocol has been a typical embodiment of Criminal Justice Approach anti-trafficking model envisaged at international level.

### **3.2.1.1. Trafficking Protocol as Instrument of Law Enforcement**

The Vienna process the negotiation to adopt the Trafficking Protocol has been dominated by two highly controversial issues.<sup>22</sup> The first issue which unfortunately consumed a good portion of the deliberation sessions has been over the legal definition of trafficking.<sup>23</sup> The second one has been the debate over anti-trafficking framework. The battle has been whether to regard trafficking as a crime and border control issue or the human rights issue of trafficked persons.<sup>24</sup> Despite the lobbying of human rights communities in the Vienna process for approaching anti-trafficking policy in human rights perspective, it was the crime and immigration control considerations that motivated many states to adopt Criminal Justice Approach as international legal order to combat trafficking.<sup>25</sup>

Consequently, the Trafficking Protocol, as widely acknowledged, is emerged as anti-crime treaty than human rights instrument. There are two main justifications for holding Trafficking Protocol as a typical example of Criminal Justice Approach model. The first is related with the way the instrument has come about. The Protocol was created at the UN Commission on Crime Prevention and Criminal Justice in Vienna rather than at one of the human rights bodies located in Geneva; and made supplementary Protocol to United Nations Convention Against Transnational Organized Crime Convention<sup>26</sup> which is exclusively criminal justice treaty.<sup>27</sup>

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<sup>22</sup>Janie Chuang, *The United States As Global Sheriff: Using Unilateral Sanctions To Combat Human Trafficking*, Michigan Journal of International Law Vol. 27 (Winter 2006), p.442. for excellent discussion on the background issues of Trafficking Protocol see generally, Anne Gallagher, *Human Rights and the New UN Protocols on Trafficking and Migrant Smuggling: A Preliminary Analysis*, Human Rights Quarterly, Vol.23, No.4 (2001), pp.975-1004.

<sup>23</sup>This issue has been thoroughly dealt with chapter two. Thus, here the focus is on the second issue, i.e. on anti-trafficking framework debate.

<sup>24</sup>Chuang, supra note 22.

<sup>25</sup>Ibid, p.446; Chuang supra note 8, p.147.

<sup>26</sup>United Nations Convention Against Transnational Organized Crime, adopted in 2000 (Organized Crime Convention).

Further, the monitoring organ happens to be a law enforcement specialist institution, i.e., United Nation Office on Drug and Crime (UNODC). This event leads some commentators to suggest that trafficking which hitherto has been within the exclusive domain of human rights system had been hijacked unceremoniously from human rights community.<sup>28</sup>

More convincingly, the provisions of the instrument are self-evident of the clear prioritization of Criminal Justice framework. While law enforcement provisions are couched in strong language,<sup>29</sup> provisions dealing with protection and prevention are crafted in weak language.<sup>30</sup> Accordingly, the protections of trafficked persons are made optional not mandatory obligations unlike law enforcement measures.<sup>31</sup> It has been maintained that with respect to protection the trafficking protocol disappointed.<sup>32</sup> Hence, subjecting to “in appropriate cases and to the extent possible under its domestic law” caveats, the Trafficking Protocol requires states only to *consider* implementing measures providing for trafficked persons’ physical and psychological recovery and *endeavor* to provide for their physical safety, among other goals.<sup>33</sup> Regarding prevention, it requires states to *endeavor* to undertake measures such as information campaigns and social and economic initiatives to prevent trafficking,<sup>34</sup> as well as “to alleviate the factors that make persons . . . vulnerable to trafficking, such as poverty, underdevelopment and lack of equal opportunity,” and to discourage demand for trafficking.<sup>35</sup> This apparently ungenerous and unequivocal nature of the protection and prevention related provisions of the Protocol manifests the prioritization of Criminal Justice Approach.

Some are optimistic that the gap left in the Trafficking Protocol regarding protection and prevention of trafficking may be filled by already existing human rights framework, and / or

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<sup>27</sup> Bruch, supra note 4, p.6.

<sup>28</sup> Gallagher in introduction to her book notes the hijacking of trafficking from human rights community in Vienna process, she says: “Human trafficking, an obscure but jealously guarded mandate of the UN’s human rights system, had been . . . unceremoniously snatched away from its traditional home”, Anne T. Gallagher, *The International Law of Human Trafficking* (Cambridge: Cambridge University Press, 2010), p.1. Other authors also hold this incidence as a ‘lost opportunity’ for human rights advocates, see inter alia, Chuang, supra note 22; Ann D. Jordan, *Human Rights or Wrongs? The Struggle for a Rights-Based Response to Trafficking in Human Beings, Gender and Development*, Vol. 10, No. 1, (2002), pp.28-37, at p. 33.

<sup>29</sup> See for comparison arts.5, 10, 11 of Trafficking Protocol, which states that “Each States Parties shall adopt ....

<sup>30</sup> Chuang, supra note 8, pp.148-149.

<sup>31</sup> Gallagher, supra note 22, p.990.

<sup>32</sup> Gallagher, supra note 28, p.2.

<sup>33</sup> Trafficking Protocol, arts.6-8.

<sup>34</sup> Ibid, art.9 (2).

<sup>35</sup> Ibid, art.9 ((4) (5)).

other branches of international law such as Transnational Criminal Law( hereafter TCL) and International Criminal Law(hereafter ICL); and regional anti-trafficking instruments.<sup>36</sup> Be this as it may, the Trafficking Protocol remains as typical law enforcement instrument with little protection guarantees of trafficked persons human rights.

At the end, it is worth to note the accomplishment of Trafficking Protocol that it has so far yielded some gains in influencing international, regional and national standard setting tones. It has significantly transformed the norm setting in international, regional and national levels.<sup>37</sup> In particular the definition of trafficking in persons articulated in the Trafficking Protocol continuous to serve as touchstone for national governments in adopting anti-trafficking legislative and policy frameworks.

In sum, the Trafficking Protocol even though it has been soft and weak on human rights count, it has managed to establish strong criminal justice frame work. As such it could be credited on criminal justice count.<sup>38</sup>

### **3.2.1.2.Draw Backs of Criminal Justice Approach**

Criminal Justice Approach is widely criticized for its ostensible lack of protection measures for trafficked persons. It offers little protection for victims of trafficking due in part of viewing trafficking as a problem of crime and immigration issues. Evidently the provisions of Trafficking Protocol dealing with protection aspects of trafficked persons have been couched in discretionary languages, while the provisions related to punishment are made mandatory.<sup>39</sup> To make even matters worse Criminal Justice Approach has left little room for victims to assert or protect their rights and interests.<sup>40</sup>

It is also criticized for relegating the protection of victims of trafficking as secondary matter.<sup>41</sup> To put it differently, the Criminal Justice Approach places the safety and protection of victims'

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<sup>36</sup>Gallagher, supra note 28, p.2; Obokata, supra note p.167. Regarding the interplay of ICL and TCL with human rights law system in combating human trafficking, see generally Obokata pp.165-169.

<sup>37</sup> Gallagher, supra note 28, p.5.

<sup>38</sup> Chuang, supra note 22, p. 448.

<sup>39</sup> Bruch, supra note 4, p.8.

<sup>40</sup> Ibid.

<sup>41</sup> Ray, supra note 5, p.918.

of trafficking in a subordinate position to the interests of prosecution and trial. This approach has been influenced by conceiving trafficking as crime against the state not as human rights violations and crime against individuals.<sup>42</sup> Hence, victims of trafficking are seen foremost as witnesses or informants, rather than as victims of a serious crime.<sup>43</sup> To this effect several national governments take measures that objectify trafficked persons worth only for prosecution of traffickers.<sup>44</sup> It subjects victims protection benefits to the ability or willingness of the victims to cooperate prosecution of traffickers. That is to say, the victims are granted protection for the sake of facilitation of prosecution rather than for their dignity and safety. Such an approach fails to help facilitation of prosecution of traffickers and protect the victims either. Because such conditionality of protection measures offers little incentive for trafficked persons to come forward to testify, it fails to sufficiently protect persons who have already been seriously harmed.<sup>45</sup>

Moreover Criminal Justice Approach implicates the trafficked persons as offenders of breach of immigration law.<sup>46</sup> Like any other undocumented immigrants, the trafficked persons are placed in detention, prosecuted and then deported.<sup>47</sup> There are several studies showing that many countries continue to prosecute trafficked persons despite the existence of international instrument outlawing the prosecution of the latter.<sup>48</sup> It has been noted that law enforcement officials tend to prosecute trafficked persons since it is relatively easier to charge them with prostitution, document fraud, or immigration or labor violations than charging the difficult cases of traffickers.<sup>49</sup> As Wuiling rightly concludes a purely criminal approach in which victims are

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<sup>42</sup> Mohamed Y. Mattar, *Incorporating the Five Basic Elements of a Model Antitrafficking in Persons Legislation in Domestic Laws: From the United Nations Protocol to the European Convention*, the protection project, 2006.

<sup>43</sup> Natalia Ollus, *The United Nations Protocol to Prevent, Suppress And Punish Trafficking In Persons, Especially Women And Children: A Tool For Criminal Justice Personnel*, 122nd International Training Course Reports of the Course, Resource Material Series No. 62, p.17; Ray, *supra* note 5, p.918.

<sup>44</sup> Jordan, *supra* note 28, p.29.

<sup>45</sup> Haynes, *supra* note 3, p.247.

<sup>46</sup> *Ibid*, p.238.

<sup>47</sup> *Ibid*. See also Pearson, *supra* note 14, p.63.

<sup>48</sup> Anne Gallagher and Paul Holmes, *Developing an Effective Criminal Justice Response to Human Trafficking: Lessons from the Front Line*, *International Criminal Justice Review*, Vol. 18, No. 3, (2008), pp. 318-43 at p. 331; Mattar, *supra* note 42, p.36; Haynes, *supra* note 3, p.239;

<sup>49</sup> Haynes, *supra* note 3, p.239.

perceived as law-breakers revictimizes them and impedes the criminal prosecution of those truly responsible, reinforcing the vicious cycle that characterizes women trafficking.<sup>50</sup>

Finally, owing to its fixation to prosecution, the Criminal Justice Approach model fails to adequately address the structural socio-economic root causes of women trafficking. As UN Special Rapporteur on Trafficking in persons<sup>51</sup> notes, the law enforcement approach should not be exclusively relied upon as a prevention method. In the view of the Special Rapporteur, measures to prevent trafficking will not be effective or sustainable unless the underlying social, economic and political factors that create an environment conducive to trafficking are addressed.<sup>52</sup> As such trafficked women are prone to be re-victimized and re-trafficked. And the vicious cycle of trafficking will not be broken easily. Obokata also holds that unlike Human Rights Based Approach the Criminal Justice Approach 'is not necessarily best equipped' to promote a holistic approach to address the causes, process and consequences of women trafficking crime.<sup>53</sup>

### **3.2.2. A Human Rights-Based Approach Antitrafficking Response**

Human Rights Based Approach in light of combating trafficking can be understood as a conceptual framework for dealing with a phenomenon such as trafficking that is normatively based on international human rights standards and that is operationally directed to promoting and protecting human rights. It affirms that such an approach requires analysis of the ways in which human rights violations arise throughout the trafficking cycle, as well as of States' obligations under international human rights law. It seeks to both identify and redress the discriminatory practices and unjust distributions of power that underlie trafficking, that maintain impunity for traffickers, and that deny justice to victims of trafficking. Under a human rights-based approach,

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<sup>50</sup> Cheah Wuiling, *Assessing Criminal Justice and Human Rights Models in the Fight against Sex Trafficking: A Case Study of the ASEAN Region*, Essex Human Rights Review Vol. 3 No. 1, pp.46-63, p.62

<sup>51</sup> Report of the Special Rapporteur on Trafficking In Persons, Especially Women and Children, Joy Ezeilo, submitted to UN General Assembly in accordance with Human Rights Council resolution 8/12.( 9 August 2010, A/65/288)(hereafter Joy Ezeilo, Report on the Prevention of Trafficking In Persons).

<sup>52</sup> Ibid, para.20. See also Jordan, supra note 28, p.30.

<sup>53</sup> Obokata, supra note 9, p.36.

every aspect of the national, regional and international response to trafficking is anchored in the rights and obligations established by international human rights law.”<sup>54</sup>

It has to be submitted that the renewed interest in a Human Rights Based Approach response to counteract human trafficking has been immensely influenced by a Human Rights Based Approach to development programming triggered by intergovernmental organizations and NGOs.<sup>55</sup> Accordingly, the principles and standards developed in the area of development and interplay of human rights regime are freely borrowed into Human Rights Based Approach anti-trafficking strategies.<sup>56</sup>

Human Rights Based Approach recognizes that trafficking is first and foremost a human rights issue. It holds that trafficking in human beings constitutes both a cause and a consequence of human rights violations. According to the former UN High Commissioner for Human Rights, Mary Robinson, “trafficking is a cause of human rights violation because it violates fundamental human rights, such as the right to life, the right to dignity and security, the right to just and favorable conditions of work, the right to health, the right to equality and the right to be recognized as a person before the law. It is a consequence because it is rooted in poverty, inequality and discrimination.”<sup>57</sup>

Human Rights Based Approach takes the protection of the human rights of victims of trafficking as the genuine guiding principles for adopting measures, policy, and legislation in the fight against human trafficking.<sup>58</sup> It focuses on the victims and promotion and protection of their rights.<sup>59</sup> In this approach, the position of the victims, the violations of their human rights and their vulnerable position are the starting points for taking countermeasures against human trafficking.<sup>60</sup> Accordingly, it requires that anti-trafficking responses have to be centralized on

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<sup>54</sup>Commentary on Recommended Principles and Guidelines on Human Rights and Human Trafficking, United Nations Office of High Commissioner for Human Rights, (2010)( hereafter Commentary on Trafficking Principles and Guidelines),pp.49-50. For further discussion on human rights based approach anti-trafficking programming, see Marjan Wijers, An Exploration of the Meaning of A Human Rights Based Approach to Trafficking , GAATW Alliance News, Issue 22, (2004), pp.7-14.

<sup>55</sup> Ibid.

<sup>56</sup> Ibid.

<sup>57</sup> Wijers, supra note 54, p.8.

<sup>58</sup>Conny Rijken and Dagmar Koster, A Human Rights Based Approach to Trafficking in Human Beings in Theory and Practice, p.9, available at “<http://ssrn.com/abstract=1135108>” (Last visited August 10, 2011).

<sup>59</sup> Bravo, supra note, 4, p.231.

<sup>60</sup> Rijken and Koster supra note 58; Haynes, supra note 3, p.247.



the needs and safety of victims of trafficking.<sup>61</sup> Since it puts victims at the center stage of anti-trafficking, it is also known as victim centered approach.<sup>62</sup>

Human Rights Based Approach views trafficked persons as victims of crime and human rights abuses deserving protection and assistance.<sup>63</sup> It shifts the attention from a State's right to control trafficked persons to their obligation to protect them.<sup>64</sup> It provides a new perspective of viewing<sup>65</sup> and responding to the problem of trafficking.<sup>66</sup> It suggests that trafficked persons have to be considered as victims of human rights abuses rather than criminals.<sup>67</sup> Smith and Mattar argue that the foundation of the Human Rights Based Approach shifts the notion of criminalization from the trafficked persons to the traffickers through the decriminalization and protection of the trafficked persons in conjunction with the criminalization and prosecution of the traffickers.<sup>68</sup>

Human Rights Based Approach promotes prosecution of traffickers, but do not condition victim protection on the willingness or ability of the victim to assist with the prosecution.<sup>69</sup> It facilitates the prosecution of traffickers by securing confidence of victims to testify against their abusers. As Haynes observes, Human Rights Based Approach allows victims of trafficking to become better potential witnesses by securing their safety and physical presence and promoting their psychological capacity to testify.<sup>70</sup> It takes into account the agency of trafficked person in effecting prosecutorial efforts. As Pearson notes rights based empowering strategies will lead to

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<sup>61</sup> Obokata, supra note 9, p.35.

<sup>62</sup> Haynes, supra note, 3, p.238.

<sup>63</sup> Yuko, supra note, 2, p.29; Jordan, supra note 28, p.30.

<sup>64</sup> Yuko, supra note, 2, p.30. Regarding states obligation in protection of trafficked persons see generally, Gallagher, supra note 28, chapters 5 and 6; see also Obokata, chapter 5. For analysis of states obligation to uphold due diligence standards in protection of trafficked persons, see generally, Viviana Waisman, Human Trafficking : State Obligations to Protect Victims' Rights, the Current Framework and a New Due Diligence Standard, *Hastings Int'l & Comp.L.Rev.*, Vol.33,No.2(2010),pp.385-430.

<sup>65</sup>This is considered as Framework of analysis which indicates exploring and identifying relevant human rights norms and principles in relation to trafficking in human beings. These include, but are not limited to, the rights to life, work, health as well as prohibition of torture and slavery. Obokata, supra note 9, p.35.

<sup>66</sup>This is considered as Framework of action which attempts to articulate legal obligations imposed up on states, such as obligation to prosecute trafficking cases, protect trafficked persons and prevent trafficking. Ibid.

<sup>67</sup>Ibid, p.35.

<sup>68</sup>Smith, Linda and Mohamed Mattar, *Creating International Consensus on Combating Trafficking in Persons: US Policy, the Role of the UN, and Global Responses and Challenges*, *The Fletcher Forum of World Affairs*, Vol. 28, (2004), pp 1621-162, as quoted in Yuko, supra note 2, p.30.

<sup>69</sup> Haynes, supra note 3, p.247.

<sup>70</sup> Haynes, supra note 3, p.252.

more effective investigation and successful prosecution of traffickers. Thus women who understand their rights and are protected from retaliation and prosecutions will cooperate in investigations.<sup>71</sup> This means as some authors argue that prosecution is part of the package of the Human Rights Based Approach to fight human trafficking.<sup>72</sup>

It also goes beyond the immediate consequences and processes of trafficking phenomena and seeks to dismantle the structural factors causing and sustaining women trafficking.<sup>73</sup> It has been widely established that women trafficking is fueled by structural contexts exposing women and girls to the net of traffickers.<sup>74</sup> As Ray observes trafficking is ‘a symptom’ of socio-economic disease such as: feminized poverty, discrimination, lack of education, unemployment, lack of access to resource causative root causes feeding trafficking.<sup>75</sup> Unless these underlying root causes are uprooted, there is no way of breaking the vicious cycle of trafficking crime. Adopting Human Rights Based Approach would contribute to eradicate trafficking by addressing underlying ills fostering contemporary slavery.<sup>76</sup>

Furthermore, it is also beneficial in addressing smuggling of human beings by providing ‘a common tool of analysis and action’ in relation to trafficking and smuggling.<sup>77</sup> Human Rights

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<sup>71</sup>Pearson, supra note, 14, p.66. For analysis of a host protection and assistances in store for trafficked persons in Human Rights Based Approach anti-trafficking response see infra part two, section 3.2.2 of this chapter.

<sup>72</sup> Rijken and Koster, supra note 58. But note that in Human Rights Based Approach prosecution entails twin purposes of ending impunity and securing justice for victims. As such it seeks to establish effective criminal justice administration which include, inter alia, ensuring victims protections and remedies as well granting fair trial for suspects of trafficking crime. On prosecution of trafficking in context of Human Rights Based Approach see infra section 3.2.1 of this chapter. see also generally, Gallagher and Holmes, supra note 58, Anne T. Gallagher and Nicole Karlebach, Prosecution of Trafficking in Persons Cases: Integrating a Human Rights-Based Approach in the Administration of Criminal Justice, Background Paper, July, 2011, Geneva, Available at: [http://works.bepress.com/anne\\_gallagher/18](http://works.bepress.com/anne_gallagher/18) (last visited on August 12, 2011). See also Gallagher, supra note 28.

<sup>73</sup> Obokata, supra note 9, p.35.

<sup>74</sup> On this point see inter alia, Joy Ezeilo, Report on the Prevention of Trafficking In Persons, supra note 51; Commentary to Trafficking Principles and Guidelines, supra note 54; Jordan, supra note 28.

<sup>75</sup> Ray, supra note 5, p.924.

<sup>76</sup> On this point see infra part two section 3.2.3 of this chapter, where discussion is made to explore states obligations to address vulnerable root causes of trafficking in women in particular and trafficking in persons in general.

<sup>77</sup> Obokata, supra note 9, p.36; Gallagher, supra note 28, p.3.

Based Approach framework seeks to protect the human rights of smuggled migrants regardless of their status.<sup>78</sup>

Human Rights Based Approach adopts a holistic anti-trafficking framework encompassing prosecution, protection, and prevention. It suggests that all three Ps<sup>79</sup> must be implemented simultaneously to counteract women trafficking in a 'humanized fashion'.<sup>80</sup> It does not advocate preferences or prioritization among the three Ps; rather all of them are integral part of anti-trafficking package. In other words, Human Rights Based Approach does not require a tradeoff among anti-trafficking strategies.

Unlike Criminal Justice Approach it takes on board the agency of trafficked persons (victims) in designing and executing anti-trafficking strategies. It frames trafficked persons as active participants and beneficiaries of anti-trafficking initiatives. Accordingly, protection of human rights of trafficked persons including, the right to participation in designing, steering and evaluating anti-trafficking initiatives, permeates through all three Ps in Human Rights Based Approach framework.<sup>81</sup> Hence, it takes a full picture of the problem of women trafficking including the worse implications of designing exclusionist intervention strategies.<sup>82</sup> In other words, it attempts to 'humanize' anti-trafficking responses by shifting the perception from viewing trafficked persons as only instrumentalities of facilitating prosecution of traffickers to looking them as bearers of rights claimable against the state. Hence, it seeks to make the trafficked persons more visible as subjects of entitlements than objects of law enforcement.<sup>83</sup> It recognizes the trafficked persons as rights holders who are entitled to protection and assistances

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<sup>78</sup>On this point, see generally Tom Obokata, *Smuggling of Human Beings from a Human Rights Perspective: Obligations of Non-State and State Actors under International Human Rights Law*, IJRL, (2005).

<sup>79</sup> Three Ps stands for shorthand prosecution, protection and prevention strategies. These so called three Ps frequently appear in anti-trafficking literatures and reports; but see also five Ps in Mattar, *supra* note 42; and Joy Ezeilo, *Report on the Prevention of Trafficking In Persons*, *supra* note 51.

<sup>80</sup> See Conny Rijken and Renée Römkens, *Trafficking for Sexual Purposes as a Globalized Shadow Economy: Human Security as the Tool to Facilitate a Human Rights Based Approach*, in Rianne Letschert and Jan Van Dijk (eds.), *The New Faces of Victimhood Globalization, Transnational Crimes and Victim Rights*, (2011) pp.73-98.

<sup>81</sup>See Wijers, *supra* note 54; Joy Ezeilo, *Report on the Prevention of Trafficking In Persons on the importance of Human Rights Based Approach in imposing the obligation to participate trafficked persons in designing, implementing and evaluating anti-trafficking initiatives*, paras.49-53.

<sup>82</sup> Wijers, *supra* note 54.

as rights per se. It categorically opposes the instrumentalities of trafficked persons to access protection and support.<sup>84</sup>

### 3.2.2.1. Draw Backs of Human Rights Based Approach

It has to be admitted upfront that Human Rights Based Approach is not a perfect panacea to cure and eradicate all evils of trafficking. There are some pitfalls in Human Rights Based Approach anti-trafficking response. The first draw backs stems from the weakness of enforcement mechanism in human rights regime.<sup>85</sup> Treaty monitoring organs are reportedly overdue with caseloads and backlogs.<sup>86</sup> In addition, the non-binding nature of the recommendations, opinions, and general comments of these organs hampers the meaningful realization of Human Rights Based Approach.<sup>87</sup> In this connection Gallagher notes that the track record of human rights system in combating trafficking has not been promising. She states that there was no comprehensive definition of human trafficking let alone binding obligations of states during the past fifty years when human trafficking had been under the 'sole ownership' of human rights business.<sup>88</sup> Further, the obvious lack of political will on states parties to promote and protect human rights guarantees could be counted as pitfalls of human rights framework.<sup>89</sup> All in all, human rights system being a precious but blunted sword in its own alone will not be able to defeat the battle against trafficking.

Secondly, the human rights regime has not developed a viable binding system of holding Non-State Actors accountable for human rights violations. It has been widely held that the principal perpetrators of human trafficking crime are Non-State Actors, such as organized crime group,

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<sup>83</sup> Ibid.

<sup>84</sup> Ibid, p.12.

<sup>85</sup> Some authors argue that the weakness exhibited in human rights regime can be compensated by applying other branches of international law such as ICL and TCL in trafficking cases. See for instance, Obokata, supra note 9, p.37.

<sup>86</sup> Ibid, p.36.

<sup>87</sup> Ibid; Bravo, supra note 4, p.234.

<sup>88</sup> Gallagher, supra note 28, p.4.

<sup>89</sup> Bruch, supra note 4, p.12.

individuals, brokers, and so forth.<sup>90</sup> Paradoxically, there are no human rights frameworks yet devised to hold these actors directly accountable for human rights violations.<sup>91</sup>

Further, human rights system lack a specialized treaty addressing human trafficking in human rights perspectives.<sup>92</sup> While some instruments have provisions dealing with trafficking and related acts, they are scattered lacking a comprehensive specialized hard law instrument.<sup>93</sup>

In the face of these weaknesses in human rights system- spring board of Human Rights Based Approach response- some trafficking specialists call for cross fertilization of principles of international law branches.<sup>94</sup> Both Gallagher and Obokata argue for the possibility of compensating deficiencies of human rights regime through applying principles and norms of TCL and ICL. Further, Gallagher contends that we have to take note of regional anti-trafficking instruments such as Council of Europe Convention on Action against Trafficking in Human Beings<sup>95</sup> and South Asian Association for Regional Cooperation Convention on Preventing and Combating Trafficking in Women and Children for Prostitution<sup>96</sup> to rectify the ills of both Criminal Justice Approach and Human rights frameworks.<sup>97</sup>

### 3.2.3. Mini-Conclusion: The Way Forward

Given the ineffectiveness perhaps counterproductive nature of Criminal Justice Approach response to eradicate women trafficking, it is high time to shift the focus from it. Human Rights Based Approach stands as a viable and sustainable alternative model to Criminal Justice

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<sup>90</sup>Rijken and Römkens, supra note 80, p.87. see note 63, (stating in case of Trafficking in Human Beings the violator is usually not a state but an individual or a group of individuals. Even though nowadays the view has been adopted that non-state actors also have responsibility to protect individuals against human rights violations, this does not mean that human rights obligations automatically have their effect in horizontal relations between citizens, *ibid.*

<sup>91</sup> *Ibid*; Yuko, supra note, 2, p.31.

<sup>92</sup> Bruch, supra note 4, p.15.

<sup>93</sup> It is worth to recall that there specialized human rights soft law instrument dealing with trafficking in human rights lens, See for instance, Recommended Principles and Guidelines on Human Rights and Human Trafficking, Economic and Social Council as an addendum to the report of the United Nations High Commissioner for Human Rights (E/2002/68/Add. 1) (hereafter Trafficking Principles and Guidelines). But the obvious caveat is it is not binding instrument.

<sup>94</sup> Gallagher, supra note 28; Obokata, supra note, 9, p. 37.

<sup>95</sup> Council of Europe Convention on Action against Trafficking in Human Beings, adopted in 2005, (hereafter European Trafficking Convention).

<sup>96</sup> South Asian Association for Regional Cooperation Convention on Preventing and Combating Trafficking in Women and Children for Prostitution, adopted in 2002 (hereafter SAARC Convention).

<sup>97</sup> Gallagher, supra note, 28.



Approach to counteract women trafficking effectively. As thoroughly discussed in the preceding section Human Rights Based Approach integrates all three Ps without requiring either tradeoff or prioritization among them with protection of human rights as common thread. It simultaneously requires the closing of circle of justice to fight the impunity of traffickers and expansion of circumference of freedoms and rights of trafficked persons. Putting the rights of trafficked persons at the center of anti-trafficking initiatives, it has prospect of reducing and ultimately eradicating women trafficking. Due its inclusive nature it takes the agency of trafficked persons to develop and implement anti-trafficking initiatives. Further it seeks to go to dry the roots of women trafficking by calling for dismantling underlying structural factors causing and sustaining contemporary slavery. While there are some bottle necks that would hamper the effectiveness of Human Rights Based Approach response, relatively speaking there is a better future in Human Rights Based Approach to counteract women trafficking. Although a golden opportunity to adopt a human rights based instrument at international level has been lost in Vienna process, the same opportunity does exist at national level especially for those countries that did not legislate a comprehensive anti-trafficking law such as Ethiopia.<sup>98</sup> At this historic junction it is thus far imperative to contemplate about adopting Human Rights Based Approach anti-trafficking initiatives in domestic arena.

Having said this, part two of this chapter seeks to flesh out the standards (key indicators) of a Human Rights Based Approach in prosecuting traffickers, protection of the rights of trafficked persons and prevention of trafficking. After laying down the parameters to measure anti-trafficking initiatives whether they have adopted a Human Rights Based Approach or otherwise, the review of Ethiopian anti-trafficking initiatives will be made against these standards to assess whether they are in line with Human Rights Based Approach or not in the next chapter.

## **B. Part Two**

### **3.3. A Human Rights Based Approach Anti-Trafficking Response ‘Standards’**

A Human Rights Based Approach requires that anti-trafficking initiatives have to be adopted in line with some underlying standards identified as benchmarks. Accordingly, there are some Human Rights Based Approach standards that have to be complied with in prosecution,

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<sup>98</sup> Jordan, supra note 28.

protection and prevention anti-trafficking strategies. All three Ps anti-trafficking strategies must be informed by promotion and protection of human rights of victims of trafficking. Protection of human rights should be a common golden thread connecting all anti-trafficking strategies in Human Rights Based Approach. Thus, Human Rights Based Approach integrates human rights norms, principles and standards in designing and implementing anti-trafficking response at international, regional and national level. National governments are required to observe their obligations derived from international human rights law in devising and executing anti-trafficking response informed by Human Rights Based Approach. If a country's anti-trafficking initiatives are in compliance with these Standards, then it is said that the country in question has adopted a Human Rights Based Approach anti-trafficking response. Hence, before putting Ethiopia's anti-trafficking initiatives on the test, it is logical to flesh out at the outset the Human Rights Based Approach standards in prosecution, protection and prevention anti-trafficking strategies.

### **3.3.1. Prosecution of Trafficking Cases**

Some authors tend to limit a Human Rights Based Approach to protection and prevention aspects of anti-trafficking response.<sup>99</sup> There are tendencies to draw a demarcation between Criminal Justice Approach and Human Rights Based Approach in a way that the former specializes in prosecution while the latter specializes in protection and prevention. But the fact remains that Human Rights Based Approach does take the effective prosecution aspect on board as essential perhaps the starting point in comprehensive anti-trafficking initiatives. Hence Human Rights Based Approach does not rule out prosecution aspect rather considers as essential component of anti-trafficking response. As some emphasize a Human Rights Based Approach is as important for the prosecution aspect of the trafficking response as it is for every other aspect including protection and prevention.<sup>100</sup> Effective criminal justice response is essential component of Human Rights Based Approach anti-trafficking response.<sup>101</sup> It is so because criminalization of trafficking coupled with severe punishment can deter traffickers from abusing human rights.<sup>102</sup> But it should be noted that criminal justice response must be facilitated in accordance with

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<sup>99</sup> Wijers, *supra* note, 54, p.7.

<sup>100</sup> Gallagher and Karlebach, *supra* note, 72, p.5.

<sup>101</sup> Obokata, *supra* note 9, p.151.

<sup>102</sup> *Ibid.*

human rights law.<sup>103</sup> Thus far, human rights framework and effective criminal justice response can coexist.<sup>104</sup> It is in this understanding that this section discusses the Human Rights Based Approach standards in prosecution of trafficking cases.

The prosecution aspect of anti-trafficking responses is a very broad category that encompasses the investigatory, prosecutorial and adjudicatory phases of a trafficking case; as well as issues related to the applicable legal framework; international legal cooperation and asset confiscation.<sup>105</sup> The following analysis seeks to expound the elements and standards of prosecution in light of Human Rights Based Approach response. Specifically, the thesis focuses on: criminalization, investigation, prosecution, punishment, rights of suspects, asset recovery (confiscation and seizure), and international cooperation components of prosecution aspect of anti-trafficking strategies.

### **3.3.1.1. Criminalization of Trafficking and Related Conducts**

Criminalization of trafficking and related conducts in national legislative framework is essential to enhance the prosecution of suspects of women trafficking. It also serves as prevention of trafficking offence through deterring the contemplation of engaging in trafficking crime. The obligation to criminalize human trafficking is well established in international legal laws including human rights law instruments. The obligation can be discharged through enacting special anti-trafficking law or amending the existing laws, usually criminal code.<sup>106</sup>

There is a growing understanding that states must criminalizing trafficking as it has been defined in international law.<sup>107</sup> This entails that trafficking should be criminalized in all its forms.<sup>108</sup> Accordingly, criminalization should include acts, means and purpose elements of trafficking as provided in the Trafficking Protocol.<sup>109</sup> Trafficking law must also recognize the possibility of women, men and children becoming victims of trafficking; and that the trafficking in children must be defined differently from trafficking in adults.<sup>110</sup> Hence, a trafficking law that

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<sup>103</sup> Ibid.

<sup>104</sup> Ibid p.153; Gallagher, supra note 28, p.376.

<sup>105</sup> Gallagher and Karlebach, supra note 72, p.6.

<sup>106</sup> Gallagher and Holmes, supra note 48, p.322. But the preference is given to enacting a comprehensive anti-trafficking law, *ibid*.

<sup>107</sup> Trafficking Protocol, art.3. See also Gallagher and Karlebach, supra note 72, p.6.

<sup>108</sup> Gallagher and Holmes, supra note 48, p.320.

<sup>109</sup> On definition of trafficking in persons, see chapter two of this thesis.

<sup>110</sup> Gallagher and Karlebach, supra note 72, p.7.

covers only trafficking into sexual exploitation, or only trafficking in women and children, would fall short of this standard.<sup>111</sup> Further, trafficking law must declare that the consent<sup>112</sup> of the victim does not exonerate the criminal liability of the culprit.<sup>113</sup>

It has been also noted that the scope of criminalization should include not only the actual commission, but also attempt and being accomplice in the commission of crime of trafficking.<sup>114</sup> Similarly, states are required to ensure in their legislative framework that criminal liability can be extended to natural as well as legal persons.<sup>115</sup>

Apart from these, Human Rights Based Approach requires states to criminalize offences related to trafficking.<sup>116</sup> As such states are required to ensure that their national laws criminalize forced labor, exploitative labor, exploitation of prostitution; slavery; and practices similar to slavery including child labor, forced marriage, debt bondage and illegal removal of organs and torture (inhumane and degrading treatment). There are plethora of International and regional human rights law instruments imposing obligations on states parties to prohibit related offences to trafficking.<sup>117</sup>

Another important element of criminalization of trafficking offence is establishing criminal jurisdiction. In this regard while there are no hard rules obliging states, it has been noted that establishing as broad a jurisdictional reach as possible promotes an effective criminal justice

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<sup>111</sup> *ibid*; Gallagher, *supra* note 28, p.374; Gallagher and Holmes, *supra* note 48, p.322.

<sup>112</sup> On issue of consent, see chapter two of this thesis.

<sup>113</sup> Trafficking Protocol, art.3 (b).

<sup>114</sup> Trafficking Protocol art.5 (2).

<sup>115</sup> Gallaher and Karlebach, *supra* note 72, p.7.

<sup>116</sup> Trafficking Principles and Guidelines, Principle 12.

<sup>117</sup> The Convention on Elimination all forms of Discrimination Against Women ( CEDAW), adopted in 1979, art.6; the Convention on Rights of the Child( CRC) adopted in 1989, art.35; the Optional Protocol to the Convention on the Rights of the Child on the Sales of Children, and Child Pornography (CRC OPS), adopted in 2000, arts. 1-3; the International Covenant on Civil and Political Rights (ICCPR), adopted in 1966, art.8; the International Covenant on Economic, Social and Cultural Rights (ICESCR), adopted in 1966, art.10 (3); the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), Adopted in 1984, art.2; The International Convention on Rights of All Migrants Workers and Members of Their Families (MWC), adopted in 1990, art.11. At regional level: The African Charter on Human and Peoples' Rights (African Charter), adopted in 1986, art.5; The African Charter on Rights and Welfare Child(ACRWC), adopted in 1990, art.29;

response to trafficking.<sup>118</sup> Hence, establishing not only territorial but also extra-territorial jurisdiction in cases concerning human trafficking enhances prosecution of traffickers through denying them safe havens. Mattar recognizes that antitrafficking legislation should also have extraterritorial jurisdiction which means the application of domestic laws regardless of the place where the act was committed.<sup>119</sup>

Moreover, another essential aspect of the obligation to criminalization is non-criminalization of trafficked persons. In many cases trafficked persons have been prosecuted for status related crimes: illegal migrant, prostitute, lack of valid residence and working papers and so forth. As discussed elsewhere this has been held as one of the major pitfalls of traditional Criminal Justice Approach.<sup>120</sup> Criminalization and detention of trafficked persons are incompatible with Human Rights Based Approach response since they re-victimize trafficked persons and deprive them of their fundamental rights.<sup>121</sup> As such Human Rights Based Approach entails the obligation of non-criminalization of victims of trafficking for status related offences.<sup>122</sup> Various international policy bodies have confirmed non-prosecution of trafficked persons as the standard. The UNODC, for example, request States Parties to “[c]onsider, in line with their domestic legislation, not punishing or prosecuting trafficked persons for unlawful acts committed by them as a direct consequence of their situation as trafficked persons, or where they were compelled to commit such unlawful acts.”<sup>123</sup> Further, both the Human Rights Council<sup>124</sup> and the General Assembly<sup>125</sup> have made similar recommendations.

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<sup>118</sup> UNODC, *Combating Trafficking In Persons: A Handbook for Parliamentarians* (UNODC Handbook), (2009), pp.88-90.

<sup>119</sup> Mattar, supra note 42, p.60.

<sup>120</sup> Further see drawbacks of Criminal Justice Approach, part one, section 3.1.1.3 of this chapter.

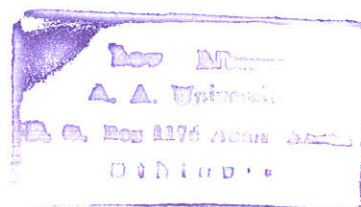
<sup>121</sup> Gallagher and Karlebach, supra note 72, p. 8.

<sup>122</sup> See Trafficking Principles and Guidelines, Guideline 5, para.5 and Principle 7.

<sup>123</sup> Recommendations adopted by the meeting of the Open-ended Interim Working Group on Trafficking in Persons held in Vienna on 14 and 15 April 2009, annexed to Trafficking in Women and Girls, Report of the Secretary-General, UN Doc. A/63/215 (4 August 2008), para. 11; as quoted in Gallagher and Karlebach, supra note 72, pp.8-9.

<sup>124</sup> Trafficking in Persons, Especially Women and Children, Human Rights Council Resolution 11/3, UN Doc. A/HRC/RES/11/3 (17 June 2009), para. 3.

<sup>125</sup> General Assembly Resolution 63/156 (30 January 2009), para. 12.



### 3.3.1.2. Due diligence in Investigations, and Prosecutions of Trafficking Cases

Prescribing the criminalization of trafficking and related conducts in legislative framework remains toothless dog unless coupled with investigation and prosecutorial measures and procedures. In this regard states are required to put in place means and ways of facilitating effective investigation and prosecution of trafficking cases. Accordingly, the international law including human rights law regime impose the obligation to investigate and prosecute trafficking cases with due diligence.<sup>126</sup> The Due diligence standard generally requires states to undertake investigations and prosecutions seriously. Interestingly, the duty extends to cases involving private (non-state) perpetrators.<sup>127</sup> Generally, it consists: rapid and accurate victim identification, specialization of investigatory functions and prosecutorial process.<sup>128</sup>

Another key element in conducting effective investigation of trafficking and related offences is the duty to build the technical capacity of law enforcement agencies. In this connection international law recognizes that effective criminal justice response requires trained and competent officials.<sup>129</sup> Thus capacity building training should be given to law enforcement agencies.

In addition establishing specialized investigatory units;<sup>130</sup> strengthening coordination between various criminal justice agencies;<sup>131</sup> and establishing close cooperation between specialist criminal justice agencies and victim support agencies<sup>132</sup> to ensure that the rights of victims are upheld and that they receive protection and support appropriate to their needs are considered as essentials of adopting effective criminal justice response.

Further, effective criminal justice responses call for taking into account gender perspective in investigation and prosecution of trafficking cases. Trafficking Protocol, for example, highlights the importance of ensuring the integration of a gender perspective into responses to

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<sup>126</sup> Obokata, supra note 9, p.150.

<sup>127</sup> Gallagher and Karlebach, supra note, 72, p.15.

<sup>128</sup> Ibid.

<sup>129</sup> Gallagher and Holmes, supra note 48, p.328.

<sup>130</sup> Art.20 of Organized Crime Convention; art.10 Trafficking Protocol.

<sup>131</sup> Gallagher and Karlebach, supra note 72, p.17.

<sup>132</sup> Trafficking Protocol, arts. 6(3), 9(3).

trafficking.<sup>133</sup> Hence, integrating an appropriate gender perspective in the fields of investigations and prosecution will ensure that criminal justice responses do not discriminate against any person on any of the prohibited grounds and that such responses do not result in a violation of any other established right.<sup>134</sup> Conversely, failure of national criminal justice agencies to integrate a gender perspective into their work may aggravate the harm done to victims and render responses less effective in terms of ending impunity and securing justice.<sup>135</sup>

### **3.3.1.3. Rights of the Suspects**

Human Rights Based Approach also worries about the human rights of suspects of trafficking crime. Human Rights Based Approach provides that the pursuit of traffickers can never be at the expense of international human rights rules governing the administration of justice.<sup>136</sup> In this respect human rights law guarantee to all persons, the right to receive a fair and public hearing by a competent, independent and impartial tribunal established by law.<sup>137</sup> Thus states are required to observe the fundamental rights of suspects in trafficking cases importantly the right to fair trial.<sup>138</sup>

### **3.3.1.4. Proportionality in Sanctions**

International law requires states to impose effective and proportionate sanctions for trafficking and related offences.<sup>139</sup> This entails recognizing trafficking in antitrafficking legislation as a serious crime which warrants penalties applicable to other serious offence such as rape and drug trafficking.<sup>140</sup> For instance, the Organized Crime Convention requires that offences established under the Trafficking Protocol should be liable to sanctions that take into account the gravity of the offences and that discretionary sentencing powers take into account the need to deter the

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<sup>133</sup> Trafficking protocol art.10(2)

<sup>134</sup> Gallagher and Karlebach, *supra* note, 72, p.17.

<sup>135</sup> *Ibid.*

<sup>136</sup> Obokata, *supra* note 9, p.151.

<sup>137</sup> See ICCPR, arts, 9 &14; African Charter, art.6& 7.

<sup>138</sup> Basic fair trial principles include the principle that all persons are considered equal; that everyone is entitled to and receives a fair and public hearing by a competent, independent and impartial tribunal established by law; and that all accused persons are presumed innocent until proven guilty according to law. International law also grants a range of procedural and other rights to suspects. These rights are extensive and include: the right to be informed promptly and in detail of the nature and cause of the charges; and the right of accused persons to examine or have examined the witnesses against them and to obtain the attendance and examination of witnesses on their behalf under the same conditions, ICCPR, art.14 (3); See Obokata, *supra* note 9, pp.152-153; Gallagher and Karlebach, *supra* note 72, p. 18.

<sup>139</sup> *Ibid.*

<sup>140</sup> Mattar, *supra* note 42, p.17.

commission of trafficking-related offences.<sup>141</sup> The Convention also requires in cases of trafficking involving legal persons that such legal persons be made subject to effective, proportionate and dissuasive criminal or non-criminal sanctions including monetary sanctions.<sup>142</sup>

The Organized Crime Convention requires penalties that take into account the gravity of the offence and that give due regard to deterrence.<sup>143</sup> Sanctions must be generally consistent with the harm caused and the benefits derived from trafficking and related exploitation. In other words, sanctions must, “clearly outweigh the benefits of the crime”.<sup>144</sup>

Proportionality of sanctions also calls for making trafficking crime aggravated offence under certain circumstances.<sup>145</sup> For example, the Trafficking Principles and Guidelines, request States to consider making legislative provision for additional penalties to be applied to persons found guilty of trafficking in aggravating circumstances, including offences involving trafficking in children or offences committed or involving complicity by State officials.<sup>146</sup>

### **3.3.1.5. Asset Recovery (Confiscation and Seizures)**

Effective criminal justice requires breaking the economic back of traffickers so that they feel the harm of their acts and be deterred from engaging in the same acts again. As such asset recovery significantly enhances preventive measures besides helping effective criminal justice response. In some ways it could also be beneficial to remedy victims of trafficking.<sup>147</sup> Accordingly, international law requires states to take action to recover the assets<sup>148</sup> of trafficking related crimes.<sup>149</sup> For example, The Organized Crime Convention sets out rules and procedures for

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<sup>141</sup> Organized Crime Convention, Article 11. A State that is party to the Organized Crime Convention and not the Trafficking Protocol would be required to establish that trafficking is, under its law, a “serious crime” as defined in the Convention for these provisions to apply to trafficking offences: Organized Crime Convention, Article 2(9) (b).

<sup>142</sup> Organized Crime Convention, art.10 (4).

<sup>143</sup> Organized Crime Convention, art.11.

<sup>144</sup> Gallagher and Karlebach, *supra* note 72, p.19.

<sup>145</sup> UNODC Handbook, *supra* note 118, p. 28.

<sup>146</sup> Trafficking Principles and Guidelines, Guideline 4.3; see also UNODC Handbook, *supra* note 118, p.28.

<sup>147</sup> See further access to remedies, see *infra* section 3.2.2.6 of this chapter (noting the importance of utilizing assets confiscated of traffickers to compensate victims).

<sup>148</sup> The assets of a trafficking crime include profits or proceeds of trafficking as well as instrumentalities such as factories, brothels, boats and farms where the exploitation took place, Gallagher and Karlebach, *supra* note 72, p.22.

<sup>149</sup> Asset recovery is usually a three-step process: (i) investigative measures to trace the assets in question; (ii) preventive measures to immobilize the assets identified as related to the crime in question (freezing, seizing); and (iii) confiscation, return and disposal, *ibid*.

identification, tracing, freezing and seizure of assets and confiscation of proceeds of designated crimes including trafficking.<sup>150</sup> States Parties to the Convention and the Trafficking Protocol are required to create adequate powers (relating to both substantive and procedural law) to enable and support confiscation and seizure.<sup>151</sup> This could include providing forfeiture (confiscation) of assets in antitrafficking law as punishment for traffickers in addition to imprisonment sentence.<sup>152</sup> Other international instruments also identify an obligation on States Parties to confiscate the assets and proceeds of relevant crimes.<sup>153</sup>

It is relevant here to pose the question whether there is international legal obligation requiring States to use confiscated assets to remedy victims of trafficking? Undoubtedly, the linking of a criminal justice measure, such as confiscation of proceeds, to victim support is an important step forward in integrating a human rights approach to trafficking.<sup>154</sup> Currently however, as Gallagher states the relevant international law on this point is advisory rather than mandatory.<sup>155</sup> For example, the Organized Crime Convention requires States parties to consider specific disposal options including victim compensation *as a priority option*.<sup>156</sup> It is interesting to note nonetheless that the Special Rapporteur has made, in her recent report to the Human Rights Council on remedies, recommendation that States: “establish legislative provisions for the confiscation of assets and proceeds of trafficking offences, and for the use of such assets and proceeds to compensate trafficked persons”.<sup>157</sup> Moreover, she recommended that States ensure law enforcement officials are adequately trained in identifying, tracing, freezing and confiscating assets connected to the crime of trafficking.”<sup>158</sup>

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<sup>150</sup> Organized Crime Convention, Arts.12-14.

<sup>151</sup> Ibid, art.12.

<sup>152</sup> Mattar, supra note 42, p.22.

<sup>153</sup> CRC OPS art.7; see also Trafficking Principles and Guidelines, Guideline 16.

<sup>154</sup> Gallagher and Karlebach, supra note 72, p.23.

<sup>155</sup> Ibid.

<sup>156</sup> Organized Crime Convention, art.14 (2).

<sup>157</sup> Human Rights Council, Report of the Special Rapporteur on Trafficking in Persons Especially Women and Children, Joy Ngozi Ezeilo, Un Doc. A/HRC/17/35 (2011), para. 70.

<sup>158</sup> Further see, Trafficking Principles and Guidelines, Principle 16, Guideline 4.4; reverberating similar position; see also Mattar, supra note 42, describing some domestic laws which incorporated similar concept.

### 3.3.1.6. International Cooperation in Investigation and Prosecution of Trafficking Cases

The transnational nature of trafficking crime warrants the need for strengthening international cooperation in law enforcement to deny traffickers and their assets any safe havens. Accordingly, international law and policy strongly call for more effective international cooperation in the investigation and prosecution of traffickers. The Organized Crime Convention and Trafficking Protocol, for example, both contain many provisions aimed at ensuring states have an adequate legal basis and appropriate tools to undertake such cooperation.<sup>159</sup> In this section attempt is made to discuss extradition, mutual legal assistance and information exchange of international cooperation aspects in light of Human Rights Based Approach standards.

#### a) Extradition<sup>160</sup>

The obligation to make trafficking an extraditable offence has been dully confirmed in international trafficking specific instruments. The Organized Crime Convention, for instance, requires states to make trafficking an extraditable offence under their national law and extradition treaties.<sup>161</sup> This obligation is also echoed in other international legal instruments.<sup>162</sup>

Protection of human rights occupies a key place in extradition procedure. That is why the importance of fair treatment and human rights in extradition is emphasized in the Organized Crime Convention.<sup>163</sup> The relevant international rules require States to deny requests for extradition that may result in the suspect being treated unfairly (e.g. being tried for conduct that has already been the subject of acquittal or punishment or that is not an offence in the requested State).<sup>164</sup> These rules also prevent persons from being extradited on grounds that the request is discriminatory in purpose or effect, or that the person may be subject to the death penalty, torture or cruel, inhuman or degrading treatment or punishment.<sup>165</sup> States can also refuse extradition when the Requesting State is not able to assure that the suspect will receive the minimum procedural guarantees that are essential to a fair trial.

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<sup>159</sup> Gallagher and Karlebach, *supra* note 72, p.24.

<sup>160</sup> Extradition is the formal process whereby one State (the Requesting State) asks another State (the Requested State) to return an individual to face criminal charges or punishment in the Requesting State, *ibid*.

<sup>161</sup> Organized Crime Convention, art.16.

<sup>162</sup> CRC OPS art.5.

<sup>163</sup> Arts. 16(13), 16(14) of Organized Crime Convention.

<sup>164</sup> Gallagher and Karlebach, *supra* note 72, p.25.

<sup>165</sup> *Ibid*.

## **b) Mutual Legal Assistance**

Mutual legal assistance is the process countries use to formally ask other countries to provide information and evidence for the purpose of an investigation or prosecution.<sup>166</sup> While mutual legal assistance regimes are often established through a bilateral or multilateral treaty,<sup>167</sup> states can also deal with mutual legal assistance matters through their domestic law.<sup>168</sup>

International legal rules related to trafficking confirm the importance of mutual legal assistance<sup>169</sup> in trafficking and related cases. The Organized Crime Convention, for example, calls on States Parties to afford one another the widest measure of such assistance in investigations, prosecutions and judicial proceedings in relation to offences covered by that instrument, including trafficking.<sup>170</sup> It also sets out a detailed legal and procedural framework for mutual legal assistance between States Parties.<sup>171</sup> Other international instruments have also affirmed the importance of mutual legal assistance.<sup>172</sup>

Ensuring protection of human rights apply also in mutual legal assistance as they do to extradition. Thus, states are required to make sure that nothing in the terms of a mutual legal assistance request would constitute an actual or potential infringement of human rights, in relation to both the subject of the request and any third parties.<sup>173</sup> Cooperation may be turned down when requesting States do not respect basic rights and procedural guarantees as set out in major human rights instruments such as the international bill of rights.<sup>174</sup>

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<sup>166</sup> Ibid, p.26.

<sup>167</sup> Those treaties generally indicate: the kinds of assistance to be provided; the rights of the requesting and requested States; the rights of alleged offenders; and the procedures to be followed in making, receiving and executing requests, *ibid*.

<sup>168</sup> *Ibid*.

<sup>169</sup> Common types of mutual legal assistance include: taking evidence or statements from persons; locating and identifying witnesses and suspects; effecting service of judicial documents; executing searches and seizures; freezing assets; providing originals or certified copies of relevant documents and records; identifying or tracing proceeds of crime; facilitating the voluntary appearance of persons in the Requesting State; transfer of proceedings/investigation/prisoners; transfer of prisoners to give evidence; and video recording of testimony, *ibid*.

<sup>170</sup> Organized Crime Convention, art.18.

<sup>171</sup> Organized Crime Convention, art.18.

<sup>172</sup> CRC OPS, arts.6 & 10; Trafficking Principles and Guidelines, Guideline 11.8.

<sup>173</sup> Gallagher and Karlebach, *supra* note 72, p.27.

<sup>174</sup> *Ibid*.

### **c) Informal cooperation**

Informal cooperation is a separate, less rule-bound international criminal cooperation tool, which is available outside the formal mutual assistance regime.<sup>175</sup> Informal cooperation enables law enforcement agencies to share information and intelligence directly with their foreign counterparts without any requirement to make a formal mutual assistance request.<sup>176</sup> Hence, informal cooperation complements mutual legal assistance regimes. In the trafficking context, informal cooperation might be used to conduct surveillance, locate victims, or take voluntary witness statements.

The importance of law enforcement cooperation in the investigation of trafficking-related crimes has been recognized widely in international legal instruments. The Organized Crime Convention and the Trafficking Protocol both recognize informal cooperation between police agencies of different States. The convention encourages States Parties to enter into bilateral or multilateral agreements or arrangements with a view to enhancing cooperation between law enforcement agencies including through joint investigations.<sup>177</sup> Further, the Protocol highlights cooperation through information exchange for purposes such as victim/perpetrator identification in transit, document verification and proactive intelligence gathering.<sup>178</sup>

#### **3.3.2. Protection of Trafficked Persons**

Protection of trafficked persons is another obligations imposed on states to implement a Human Rights Based Approach anti-trafficking responses. Trafficked persons as victims of crime and human rights violations deserve a wide range protective guarantees and support to recover from horrors of trafficking and to lead safe and secured life. As failure to extend rights-based approach protection schemes leave victims to further revictimization, effective protection could be also served as prevention strategies. This section seeks to examine the markers of a Human Rights Based Approach standards required in protection of victims of trafficking.

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<sup>175</sup> Ibid.

<sup>176</sup> Ibid.

<sup>177</sup> Organized Crime Convention, arts. 19, 27(2).

<sup>178</sup> Trafficking Protocol, art. 10 (1).

### 3.3.2.1. Rapid and Accurate Victim Identification

The obligation of identifying victims of trafficking lies at the heart of protection of rights of trafficked persons. As such any rights accorded to trafficked persons are meaningless without corresponding obligation on states to identify the victims of trafficking.<sup>179</sup> Victims' identification should be conducted immediately, accurately and backed by multifaceted victim-centered support and assistance packages.<sup>180</sup> A human rights based approach requires early identification of and assistance to trafficking victims. It is also relevant to emphasize that identification is a prerequisite to secure other protection measures.<sup>181</sup> For example the Trafficking Principles and Guidelines recognize the link between identification and access to protection rights.<sup>182</sup>

Identification processes require the development of checklists, guidelines and procedures aimed at ensuring the rapid and accurate identification of trafficked persons.<sup>183</sup> It also entails offering training to relevant officials in the appropriate use of identification tools as well as provision for regular review to ensure their currency, accuracy, and correct application.<sup>184</sup>

The identification also contemplates the view of assuming presumption of victim status.<sup>185</sup> Put simply, if there is reason to believe someone has been trafficked, then that person should be treated as a victim unless and until another determination is made.

Regarding the content of obligation to identify the victims of trafficking, the trafficking protocol kept silent. But some policy instruments note the requirement to give training to law enforcement in victim identification.<sup>186</sup> And collaboration has to be made among victim support and law enforcement agencies.

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<sup>179</sup> Gallagher, supra note 28, p.282; Mattar, supra note 42, p.34.

<sup>180</sup> Gallagher and Holmes, supra note 48, p.328-329.

<sup>181</sup> Mattar, supra note 42, p.34.

<sup>182</sup> Trafficking Principles and Guidelines, Guideline 2; see UNDOC Toolkit to Combat Trafficking In Persons, 2008, p.251.

<sup>183</sup> Gallagher and Holmes, supra 48, p.329.

<sup>184</sup> Ibid.

<sup>185</sup> Ibid.

<sup>186</sup> UNODC Toolkit, supra note 182.

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<sup>182</sup> Trafficking Principles and Guidelines, Guideline 2; see UNDOC Toolkit to Combat Trafficking In Persons, 2008, p.251.

<sup>183</sup> Gallagher and Holmes, supra 48, p.329.

<sup>184</sup> Ibid.

<sup>185</sup> Ibid.

<sup>186</sup> UNODC Toolkit, supra note 182.

### 3.3.2.2. Non-prosecution of VoT for Status Related Offences

The trafficked persons are often detained, arrested and prosecuted in transit and destination countries for status related offences. The law enforcement agencies rushed into marking trafficked persons as illegal immigrants (smuggled immigrants) and consequently prosecute them with charges of violation of immigration law or lack of proper documentation, and so forth. Countries of origin also prosecute trafficked persons for unlawful departure and engaging in illegal activities such as prostitution.

It has been made clear that criminalization of trafficked persons for status related offence is the antithesis of a Human Rights Based Approach.<sup>187</sup> It does also inevitably contribute to deny trafficked persons the rights to which they are entitled under international law.<sup>188</sup> Essentially, a Human Rights Based Approach requires non-prosecution (non-criminalization) of trafficked persons. Hence, the need not to criminalize (prosecute) the victims of trafficking is getting recognition as normative standard.<sup>189</sup> While the Trafficking Protocol is silent on this point, international human rights policy instruments declares the requirement of non-criminalization of trafficked persons for status related offences. For example, The Trafficking Principles and Guidelines provide that

“[T]rafficked persons shall not be detained charged or prosecuted for their illegal entry into or residence in countries of transit or destination, or for their involvement in unlawful activities to the extent that such involvement is a direct consequence of their situation as trafficked persons.”<sup>190</sup>

Further, detaining victims of trafficking is inappropriate and it is antithesis of Human Rights Based Approach. States are encouraged to ensure that trafficked persons are not, in any circumstances, held in immigration detention or other forms of custody.<sup>191</sup>

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<sup>187</sup> Further See section 3.2.1.1 above.

<sup>188</sup> Gallagher, supra note 28, p.283.

<sup>189</sup> Ibid, p.285.

<sup>190</sup> Trafficking Principles and Guidelines, Guideline 7.

<sup>191</sup> Ibid, Guideline 2, para. 6 & Guideline 6, para. 1.

### 3.3.2.3. Protection and Support for Victims

#### a) Separating Protection and Support from Cooperation

A typical flaw of Criminal Justice Approach is conditioning the protection and support of victims of trafficking on their cooperation in prosecution of traffickers. There are several problems arise from conditional assistance of victims of trafficking. Primarily, it indicates denial of the rights of victims to receive protection and state obligation to provide protection.<sup>192</sup> To put it differently, conditional assistance sanctions the instrumentalities of trafficked persons to prosecution, while rejecting the fact that they are entitled to protection as a matter of right.<sup>193</sup> As Gallagher argues the compelled victim is unlikely to make a strong witness, particularly in the likely event that this person is still suffering from physical or psychological trauma or fears retaliation.<sup>194</sup> These leave us to contemplate to turn the table, i.e., seeking to disassociate protection from cooperation of with prosecutorial efforts.

Given the problematic traits of conditional assistance there is a growing acceptance to detach protection and assistance from cooperation of victims of trafficking with prosecution of traffickers. While Trafficking Protocol is silent on this issue, some human rights law and policy documents affirm the need to separate support and assistance from victims' cooperation.<sup>195</sup> The Legislative Guide also states that "support and protection shall ... not be made conditional upon the victim's capacity or willingness to cooperate in legal proceedings."<sup>196</sup> Thus, a Human Rights Based Approach requires that the protection and assistance must be made available as a right *per se* not to be conditional on victims' cooperation with criminal justice agencies.

#### b) Protection from Further Harm

Trafficking crime invariably entails violence to the life and limbs of trafficked persons. The exercise of threats of violence remains throughout the phenomenon of trafficking. Such threats do not abate up on escaping the physical trap of traffickers. In the face of this grim reality of victims of trafficking, there exists a need to break the circle of violence. In this respect States are placed under an international legal obligation to protect victims of trafficking from further harm.

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<sup>192</sup> Gallagher, supra note 28, p.298.

<sup>193</sup> Wijers, supra note 54.

<sup>194</sup> Gallagher, supra note 28, p.298.

<sup>195</sup> Ibid, pp.299-300; Trafficking Principles and Guidelines, at Guideline 6, para.1.

<sup>196</sup> Legislative Guides for the Implementation of the United Nations Convention Against Transnational Organized Crime and the Protocols Thereto, part 2, para. 62.

The Trafficking Protocol requires each State Party to “endeavor to provide for the physical safety of victims of trafficking in persons while they are within its territory.”<sup>197</sup>

In a similar vein, the Organized Crime Convention requires States Parties to provide witnesses (including those who are victims) with protection from potential retaliation or intimidation.<sup>198</sup> The Convention also requires States Parties to take appropriate measures, within their means, “to provide assistance and protection to victims, in particular in cases of threats of retaliation or intimidation.”<sup>199</sup> Measures of protection may include physical protection, domestic or foreign relocation, and special arrangements for giving evidence.<sup>200</sup> The CRC OPS also contains specific provisions on protection from further harm that would be applicable to certain child victims of trafficking.<sup>201</sup> The Trafficking Principles and Guidelines also refer to the responsibility of States to “protect trafficked persons from further exploitation and harm” as well as the need for States and others to “ensure that trafficked persons are effectively protected from harm, threats or intimidation by traffickers and associated persons.”<sup>202</sup> Protection from further harm includes, *inter alia*, the relocating of victims in to safety place, providing medical support, undertaking risk assessment to determine whether victims are under a particular risk of intimidation or retaliation.<sup>203</sup>

### **c) Protection of Privacy and Identity of VoT**

Protection from further harm is inherently linked to protection of the trafficked person’s privacy. Failure to protect privacy can increase the danger of intimidation and retaliation.<sup>204</sup> It may also cause humiliation and hurt to victims and compromise their recovery.<sup>205</sup> Thus, states should work towards protecting the privacy of trafficked persons to enable them to leave behind the effects of trafficking.

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<sup>197</sup> Trafficking Protocol, art.6 (5).

<sup>198</sup> Organized Crime Convention, art.24.

<sup>199</sup> *Ibid*, art.25 (1).

<sup>200</sup> Legislative Guideline, part1, para.350.

<sup>201</sup> CRC OPS, art.8 (1) f, & 8(5).

<sup>202</sup> Trafficking Principles and Guidelines, Principle 6.6.

<sup>203</sup> Gallagher, *supra* note 28, p.303.

<sup>204</sup> *Ibid*.

<sup>205</sup> *Ibid*.

In this respect, the Trafficking Protocol requires States Parties to protect the privacy and identity of victims of trafficking “in appropriate cases and to the extent possible under its domestic law.”<sup>206</sup> Further, the Trafficking Principles and Guidelines link the right to privacy to the need to ensure that trafficked persons are protected from their exploiters. The relevant provision states that “there should be no public disclosure of the identity of trafficking victims and their privacy should be respected to the extent possible, while taking into account the right of an accused person to a fair trial.”<sup>207</sup>

#### **d) Physical and Psychological Care and Support**

The victims of trafficking are entitled to care and support including physical and psychological care and support. Trafficking Protocol requires that: states parties to consider implementing measures to provide for the physical, psychological and social recovery of victims in particular the provision of (a) appropriate housing; (b) counseling and information in particular as regards their legal rights in a language that the victims can understand; (c) medical, psychological and material assistance; and (d) employment, education and training opportunities”<sup>208</sup> States Parties are required to take into account the age, gender, and special needs of victims of trafficking, particularly the special needs of children in applying these provisions to victims.<sup>209</sup>

Legislative guide notes that, while not obligatory, implementation of these provisions can provide important practical benefits including increasing the likelihood of victim cooperation in investigations and prosecutions, and avoiding further harm including revictimization.<sup>210</sup>

Apart from these, other non-treaty instruments reiterate the same obligation. The Trafficking Principles and Guidelines, for example, require States to ensure that victims of trafficking have access to adequate physical and psychological care.<sup>211</sup> It further notes that States and others are requested to consider ensuring, along with NGOs, the availability of “safe and adequate shelter that meets the needs of trafficked persons” and “access to primary health care and

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<sup>206</sup> Trafficking Protocol, art.6 (1).

<sup>207</sup> Trafficking Principles and Guidelines, Guideline 6, para.6.

<sup>208</sup> Trafficking Protocol ,art.6(3).

<sup>209</sup> Ibid, art.6 (4).

<sup>210</sup> Legislative Guide, part2, para.62.

<sup>211</sup> Trafficking Principles and Guidelines, Principle 8.

counseling”.<sup>212</sup> Furthermore, several resolutions of the UN General Assembly and Human Rights Council call for the provision of physical and psychological care to victims of trafficking.<sup>213</sup>

#### **e) Consular Access and Support**

The fact that trafficked persons have been detained, arrested and charged with criminal offenses as repeatedly noted in this thesis is a commonplace. Since these persons lack the resources of citizenship in destination or transit countries some kinds of support and assistance must be obtained from their countries of origin. Hence, it is important to emphasize that the right to consular assistance for arrested and /or detained victims of trafficking is crucial to ensure the protection of their rights in this regards.

The existence of the right to consular assistance has been contemplated in human rights instruments.<sup>214</sup> The Trafficking Principles and Guidelines, for example, request States and others to consider “ensuring that trafficked persons are informed of their right of access to diplomatic and consular representatives from their State of nationality.”<sup>215</sup> Further, it recommends that staff working in consulates and embassies be provided with appropriate training in responding to requests for information and assistance from trafficked persons.<sup>216</sup>

Regarding the importance of consular assistance and concomitant legal implication, Gallagher a leading international expert on human trafficking concludes that “Trafficked persons who have been arrested and/or detained by (or indeed, in) the country of destination for any reason have the right to be informed of the availability of consular assistance from their country of origin”.<sup>217</sup> They have the right to choose whether or not to utilize such access, to communicate freely with the consular post, and to obtain or decline consular protection and support. She adds that failure

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<sup>212</sup> Ibid, Guideline 6 para.1 and Guideline 6 para.2.

<sup>213</sup> See, for example, UN General Assembly, “Trafficking in Women and Girls,” UN Doc. A/RES/63/156, Jan. 30, 2009, at para.15; and UN Human Rights Council, “Trafficking in Persons, Especially Women and Children,” UN Doc. A/HRC/RES/11/3, June 17, 2009, at paras. 3(c), 3(d).

<sup>214</sup> CAT, art. 6; MWC, Art. 23. See the Trafficking Principles and Guidelines, Guideline 6 para.3.

<sup>215</sup> Ibid, Guideline 6 para.3.

<sup>216</sup> Ibid.

<sup>217</sup> Gallagher, supra note 28, p.313.

of a State to meet its international legal obligations in this regard bears the international responsibility of that State.<sup>218</sup>

#### **3.3.2.4. Legal Assistance and Participation in Legal Proceedings**

The victims of trafficking crime are rarely in a position to be aware of their rights and available Legal Avenue to vindicate their cases. The obvious knowledge gap coupled with their precarious position in terms of status; leave them in a desperate need of obtaining legal assistance. Plus the provision of legal assistance to trafficked persons paves the way for the realization of other important rights such as: the right to protection, the right not to be prosecuted for status-related offenses, and the right to participate in legal proceedings against their exploiters.<sup>219</sup> In the following subsections attempts is made to flesh out the contents of the right to receive legal assistance and the corresponding obligations placed on states. Further, the victims' right to participation in legal proceedings instituted against culprits is also discussed.

##### **a) Legal Information, Support and Participation**

The victims' right to receive information on legal measures available in the state is enshrined in trafficking-specialist instruments. The Trafficking Protocol, for instance, states that trafficked persons have to be provided with information on relevant court and administrative proceedings.<sup>220</sup> This should include information on the timing and progress of relevant proceedings as well as the disposition of any case in which the victim has an interest.<sup>221</sup> The Trafficking Protocol also places a duty on States to ensure that victims can be present at and have their concerns and views considered during criminal proceedings against traffickers in a manner not prejudicial to the rights of the defense.<sup>222</sup> Here it would be worth to note that these two provisions are mandatory.<sup>223</sup>

Furthermore, the Trafficking Principles and Guidelines affirm the right of victims of trafficking to receive legal information as well as legal and other assistance for the duration of any criminal

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<sup>218</sup> Ibid.

<sup>219</sup> Ibid, p.315.

<sup>220</sup> Trafficking Protocol, art.6 (2) (a).

<sup>221</sup> Gallagher, supra note 28, p.315.

<sup>222</sup> Trafficking Protocol, art.6(2)(b); Organized Crime Convention also contains similar provision which reads: "[e]ach State Party shall, subject to its domestic law, enable views and concerns of victims to be presented and considered at appropriate stages of criminal proceedings against offenders in a manner not prejudicial to the rights of the defense", art. 25(3).

<sup>223</sup> Gallagher, supra note 28, p.315.

proceedings against their exploiters, and the corresponding obligation on States to facilitate the provision of such assistance.<sup>224</sup> Additional support for a right of trafficked persons to legal information and assistance can be found in a key General Assembly resolution on criminal justice measures to eliminate violence against women which calls on States to:

make available to women who have been subjected to violence information on rights and remedies and on how to obtain them, in addition to information about participating in criminal proceedings and the scheduling, progress and ultimate disposition of the proceedings.<sup>225</sup>

### **b) Protection and Support for Victim-Witnesses**

The importance of the role of victim witnesses in legal proceedings initiated against traffickers is beyond dispute. Similarly, the victims' rights to participate safely in legal proceeding and concomitant states obligations to ensure the same are also not debatable. Accordingly, the obligation to protect victim witnesses is affirmed in international law.<sup>226</sup> The Organized Crime Convention, understanding the fact that victims can be at real risk of retaliation and intimidation, requires State Parties to take a wide range of "appropriate measures within its means to provide effective protection from potential retaliation or intimidation for witnesses in criminal proceedings who give testimony ... and, as appropriate, for their relatives and other persons close to them."<sup>227</sup> The Convention also requires State Parties to "take appropriate measures within its means to provide assistance and protection to victims" of trafficking in persons, "in particular in cases of threat of retaliation or intimidation."<sup>228</sup> Furthermore, various non-treaty instruments have reiterated the obligation to afford protection to victim witnesses in criminal justice administration.<sup>229</sup> In devising and applying victims-witnesses' protection measures, the fact that the states should be mindful of the special need and vulnerability of women and girls has also been noted.<sup>230</sup>

<sup>224</sup> Trafficking Principles and Guidelines, Principle 9, Guideline 4 para.8, Guideline 6 para.5.

<sup>225</sup> UN General Assembly, "Crime Prevention and Criminal Justice Measures to Eliminate Violence Against Women," UN Doc.A/RES/52/86, Dec. 12, 1997, Annex, para. 10(a).

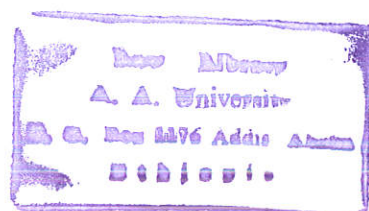
<sup>226</sup> See Mattar, he notes that "protection of witnesses is an internationally recognized principle," p.35;

<sup>227</sup> Organized Crime Convention, art.24.

<sup>228</sup> Ibid, art.25.

<sup>229</sup> See, for example, Trafficking Principles and Guidelines, Guideline 4 para.10, and Guideline 5 para.8.

<sup>230</sup> See, Trafficking Protocol, art.6 (4); The UN General Assembly, "Crime Prevention and Criminal Justice Measures to Eliminate Violence against Women," UN Doc. A/RES/52/86, Dec. 12, 1997, Annex, at paras. 8(c), 9(h).



Perhaps the essential component of ensuring protection of victim witnesses is the need to guarantee the privacy of trafficked persons involved in legal proceeding. Obviously, victims of trafficking will be reluctant to give evidence if this means being identified by the media or standing up in a public courtroom, often in view of their exploiter, and talking about traumatic personal experiences.<sup>231</sup> The problem can be more acute for women and girls who have suffered sexual and other forms of violence at the hands of their exploiters. Thus it goes without saying that national criminal justice systems should find ways to assist victims of trafficking to participate, safely and meaningfully, in legal proceeding.<sup>232</sup> To this end states are required (rather requested) to employ alternative measures to physical appearance and public testimony which aimed at protecting the witness's identity, privacy, and dignity of victim witness in criminal proceeding such as: video, closed hearings and witness concealment, preliminary or accelerated hearings, and the provision of free legal counsel.<sup>233</sup>

### **3.3.2.5.Repatriation of Victims**

Facilitating safe and supported voluntary repatriation of trafficked women ensures the protection of human rights of victims and contributes to end the cycle of re-trafficking. International law declares the rights and corresponding states obligations in areas of repatriation of victims of trafficking. Here an attempt is made to expound the Human Rights Based Approach standards derived from international legal and policy developments with regard to repatriation of victims of trafficking.

#### **a) Safe and Voluntary Return of Victims**

The international law imposes on states the obligation to facilitate a safe and voluntary return of victims.<sup>234</sup> The Trafficking Protocol, for instance, places obligations on both countries of destinations and origins to ensure a safe and preferably voluntary repatriation of victims of trafficking. Regarding the obligations of the former category it requires that repatriation to “preferably be voluntary” and to be conducted “with due regard for the safety of the person and for the status of any related legal proceedings.”<sup>235</sup> On the other hand, it calls on countries of origin to accept the return of a trafficked national or resident without undue delay and with due

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<sup>231</sup> Gallagher, supra note 28, p.319.

<sup>232</sup> Ibid, p.320.

<sup>233</sup> See, for example, UNODC Anti-Trafficking Practitioners' Manual (2009), Module 12; UNODC Model Law, paras.49–50.

<sup>234</sup> Mattar, supra note 42, p.48.

<sup>235</sup> Trafficking Protocol, art.8 (2).

regard for their safety.<sup>236</sup> Countries of origin are further required to cooperate in return, including through verifying victim nationality or residence and issuing necessary travel documents.<sup>237</sup> Further, Legislative Guide to the Protocol reiterates the Protocol's requirement that repatriation must be made with due regard to the safety of the victim.<sup>238</sup> Interestingly, the Protocol also made some saving clause in a bid to expand the scope of protection in this respect, by stating that the repatriation provisions outlined above are without prejudice to any right afforded to victims of trafficking by any domestic law of the receiving State Party, or to any agreement governing the return of trafficked persons, including obligations under customary international law regarding the return of migrants.<sup>239</sup> The standard of safe and preferably voluntary return, along with many of the related guarantees is affirmed in a wide array of international and regional legal and policy documents.<sup>240</sup>

### **b) Reintegration of Victims**

Naturally, the victims of trafficking face psychological, psychosocial and economic difficulties in attempt of re-entry into social life.<sup>241</sup> They need a supported reintegration so that they will be able to leave behind trauma and fears of stigmatization.<sup>242</sup> As a result, they may, depending on the nature and quality of support provided, be less vulnerable to intimidation, retaliation, social isolation, and stigmatization. Further, supported reintegration is a critical aspect of safe repatriation as victims of trafficking who are provided with reintegration assistance are much

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<sup>236</sup> Ibid, art.8 (1).

<sup>237</sup> Ibid, art.8 (3) & (4).

<sup>238</sup> Legislative Guide, part 2, para.61(c).

<sup>239</sup> Trafficking Protocol, art.8 (5) & (6).

<sup>240</sup> see, for example, Trafficking Principles and Guidelines, Principle 11 and Guidelines 4. para6, Guideline 6 para.7; African States, "Ouagadougou Action Plan to Combat Trafficking in Human Beings, Especially Women and Children," adopted by the Ministerial Conference on Migration and Development, Nov. 22–23, 2006 (Ouagadougou Action Plan), arts.4 and 5.

<sup>241</sup> As Mattar notes the victims of trafficking can face both threats of reprisals by the trafficker and the societal shame for having worked in prostitution, Mattar, *supra* note 42, p.47.

<sup>242</sup> While the Trafficking Protocol does not explicitly specify reintegration measures, the regional trafficking specialist instruments identify certain measures to be adopted in facilitating safe repatriation of victims. See, European Convention on Trafficking, Requiring members states to establish repatriation programmes ... [that] aim at avoiding re-victimization it further notes that Each party should make its best effort to favour the reintegration of victims into the society of the State of return, including reintegration into the education system and the labour market, in particular through the acquisition and improvement of their professional skills. With regard to children, these programmes should include enjoyment of the right to education and measures to secure adequate care or receipt by the family or appropriate care structures, art.16(6); (SAARC) Convention also identifies a range of "rehabilitation" measures such as legal advice, counseling, job training, and health care, art.IX(3), as quoted in Gallagher, *supra* note 28, p.353.

less likely to be re-trafficked.<sup>243</sup> In this regard, the need for repatriation that avoids revictimization is emphasized in key international and regional policy instruments.<sup>244</sup>

Further, it is becoming clearer that successful reintegration requires active cooperation between repatriating and receiving countries.<sup>245</sup> The importance of such cooperation is recognized in relevant regional treaties as well as in key international and regional policy documents.<sup>246</sup>

### **3.3.2.6. Access to Remedies**

Remedies confirm the status of trafficked persons as victims of crime and victims of human rights abuse. They are a practical means by which victims can both access and receive justice.<sup>247</sup>

It has been stated that “[t]rafficked persons, as victims of human rights violations, have an international legal right to adequate and appropriate remedies.”<sup>248</sup>

It has been confirmed that trafficking invariably entails multiple violations of human rights guarantees and entitlements. Similarly, it is well established in international human rights law that States have a duty to provide a domestic legal remedy to victims of human rights violations committed in their jurisdiction. There are myriads of international and regional human rights instruments which affirm the obligation to remedy violations of human rights.<sup>249</sup> Further it has been maintained that the right to seek remedy and concomitant state obligation is established as customary international law.<sup>250</sup>

In specific context of trafficking, the obligation to provide remedy for victims of trafficking has been declared in trafficking specific hard and soft-law instruments. The Organized Crime

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<sup>243</sup> Ibid, p.352.

<sup>244</sup> Trafficking Principles and Guidelines, Guideline 6 par.8; See also the Ouagadougou Action Plan, at 4 (“[a]dopt appropriate measures for the protection of victims of trafficking and provide them with information on their legal and other rights in the country of destination as well as the country of origin in case of repatriation ... Adopt specific measures to avoid criminalisation of victims of trafficking, as well as stigmatisation and the risk of re-victimisation”).

<sup>245</sup> Gallagher, supra note 28, p.354.

<sup>246</sup> See, for example, Trafficking Principles and Guidelines, Guidelines 11 para.11, Guideline 11 para.12; Ouagadougou Action Plan, at 3, 7.

<sup>247</sup> Gallagher, p.355;

<sup>248</sup> Trafficking Principles and Guidelines, Guideline 9.

<sup>249</sup> See, UDHR( art.8) ; ICCPR,(Art.2(3)); CERD (Art.6); CAT(Art.14); CRC( Art.39); MWC( Arts.83, 16(9)); Rome Statute(art.73) ;At regional level African Charter (Art.7(1)(a)).

<sup>250</sup> See, inter alia, Gallagher, supra note 28, p.357; see also Obokata,

Convention, for example, requires States Parties to “establish appropriate procedures to provide access to compensation and restitution for victims of offences covered by the Convention.”<sup>251</sup> The Trafficking Protocol also requires States Parties to ensure that their domestic legal systems contain measures that offer victims of trafficking the possibility of obtaining compensation for damage suffered.<sup>252</sup>

According to the Legislative Guide, the compensation requirement under both the Organized Crime Convention and the Trafficking Protocol would be satisfied by the State establishing one or more of three options:<sup>253</sup> provisions allowing victims to sue offenders for civil damages; provisions allowing criminal courts to award criminal damages (paid by offenders) or to impose orders for compensation or restitution against persons convicted of trafficking offenses; or provisions establishing dedicated funds or schemes to allow victims to claim compensation from the State for injuries or damages.<sup>254</sup> The offense of trafficking should be capable of forming the basis of a claim under at least one of these options.<sup>255</sup>

It is also worth to note the importance of establishing that assets recovered from traffickers should be used as a compensation for the victims. Facilitating confiscation of assets in the context of trafficking in persons should also assist in the enforcement of criminal or civil compensation claims against their exploiters.<sup>256</sup> This is particularly the case through ensuring that confiscated assets are made available for the purposes of victim support and compensation.

Further, the obligation to provide an effective and appropriate remedy to victims of trafficking is confirmed by UN organs,<sup>257</sup> and human rights bodies.<sup>258</sup> The Trafficking Principles and

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<sup>251</sup> The Organized Crime Convention, art.25 (2).

<sup>252</sup> The Trafficking Protocol, art.6 (6).

<sup>253</sup> Gallagher, *supra* note 28, p.362.

<sup>254</sup> Legislative Guide, part 1, at 170, and part 2, at 285–286.

<sup>255</sup> *Ibid*, part 1, para.170.

<sup>256</sup> Gallagher, *supra* note 28, p.369; Mattar, *supra* note 42, p.38-40, discussing in detail states practices in utilizing assets for compensation of victims of trafficking crime; He notes that some laws provide for paying the damages to victims of trafficking out of the property of traffickers. see foot note 178 for examples of domestic laws providing paying compensation out of assets of traffickers; *ibid* p.38.

<sup>257</sup> See, *inter alia*, UN General Assembly, “Trafficking in Women and Girls,” UN Doc. A/RES/63/156, Jan. 30, 2009, at para. 19; and UN Human Rights Council, “Trafficking in Persons, Especially Women and Children,” UN Doc. A/HRC/RES/11/3, June 17, 2009, at para. 1.

Guidelines are particularly specific on this point, declaring that “States should ensure that trafficked persons are given access to effective and appropriate remedies.”<sup>259</sup>

One a final note, it is worth to reiterate that a right to access to effective remedies is of twofold obligations. That is making such remedies available under criminal or civil law; and that States should ensure that victims are provided with information and assistance that will enable them to actually secure the remedies (such as: compensation or restitution) to which they are entitled.<sup>260</sup> This latter type of the right to information regarding access to remedies can be born into mind taking note of the legal illiteracy of vast majority of victims.<sup>261</sup> Since people cannot claim their rights if they do not know about them, the obligation to provide information regarding access to remedies must be highlighted. The Trafficking Principles and Guidelines, for instance, affirm that states should consider “[p]roviding information as well as legal and other assistance to enable trafficked persons to access remedies. The procedures for obtaining remedies should be clearly explained in a language that the trafficked person understands.”<sup>262</sup>

### **3.3.3. Prevention of Trafficking**

Prevention of trafficking invariably tied to other anti-trafficking responses. Both prosecution of trafficking cases and protection of trafficked persons contribute positively in prevention of trafficking. Therefore, effective anti-trafficking responses require a concerted and holistic approach aimed at eradication of trafficking through addressing the underlying causes fostering trafficking.

As repeatedly noted in this thesis, trafficking is caused and sustained due to the social and economic structural factors. Economic factors such as poverty, unemployment lack of access to opportunities are root causes feeding trafficking. Social exclusion including gender based discrimination in accessing social facility compounded with cultural practices tolerating

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<sup>258</sup> Promotion and Protection of All Human Rights, Civil, Political, Economic, Social and Cultural Rights, Including the Right to Development: Report submitted by the Special Rapporteur on trafficking in persons, especially women and children, Joy Ngozi Ezeilo,” UN Doc. A/HRC/10/16, Feb. 20, 2009, at para. 44.

<sup>259</sup> The Trafficking Principles and Guidelines, Principle 17. See also Guideline 9: “[t]rafficked persons, as victims of human rights violations, have an international legal right to adequate and appropriate remedies”.

<sup>260</sup> Gallagher, *supra* note 28, p.365. This can be articulated as the obligation to provide information regarding access to remedies, *ibid*.

<sup>261</sup> Often victims of trafficking will be denied their rights to access remedies due to lack information on the possibilities and processes for accessing remedies.

<sup>262</sup> The Trafficking Principles and Guidelines, Guideline 9 para.2.

(condoning) early marriage and forced marriage also counted as underlying causes of trafficking crime.

Having said this, it is beyond a dispute to sustain that addressing root causes of trafficking crime is a starting point to prevent trafficking including women trafficking effectively. But prevention oriented programs and policies have to be complied with human rights standards. Thus, this section seeks to examine the contents and contours of Human Rights Based Approach standards in prevention anti-trafficking response.

### **3.3.3.1. Prevention Through Addressing Root Causes**

Prevention refers to positive measures to stop future acts of trafficking from occurring.<sup>263</sup> Hence, policies and activities identified as prevention are generally those considered to be addressing the underlying causes of trafficking. It has been noted that trafficking is caused by structural problems which stem from deprivation of human rights. Specifically, poverty, inequality in opportunities, discrimination against women, and violence against women are principal factors causing and sustaining women trafficking.<sup>264</sup> Therefore, any effective and meaningful anti-trafficking strategies should address these underlying causes in order to see eradication of crime of women trafficking.

#### **a) Poverty Reduction**

Poverty has been noted as principal causative factors feeding human trafficking. The obligation to address poverty as requirement to prevent human trafficking is generally imposed under trafficking specialist instruments. The Trafficking Protocol, for example, calls on states to take measures to alleviate root causes of trafficking such as poverty, underdevelopment and lack of opportunities.<sup>265</sup> Such measures include, but are not limited to, “research, information and mass media campaigns and social and economic initiatives to prevent and combat trafficking in persons.”<sup>266</sup> The Trafficking Principles and Guidelines, for its part, request states to insert addressing poverty in prevention of trafficking strategies.<sup>267</sup> It also notes that States and intergovernmental organizations shall ensure that their interventions address the factors that

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<sup>263</sup> Gallagher, supra note 28, p.414.

<sup>264</sup> Ibid, p.415.

<sup>265</sup> Trafficking Protocol, art.9 (4).

<sup>266</sup> Ibid, art. 9(2).

<sup>267</sup> Trafficking Principles and Guidelines, Guideline 7, para.5.

increase vulnerability to trafficking, including inequality, poverty and all forms of discrimination.<sup>268</sup> The Ouagadougou Action Plan also contemplates the importance of addressing poverty in context of trafficking phenomenon.<sup>269</sup> It further requests member states to include human trafficking in poverty reduction strategies.<sup>270</sup> Finally, CRC OPS calls on states to promote strengthening international cooperation to address the root causes of sale of children (trafficking) such as poverty.<sup>271</sup>

It is gatherable from these legal and policy instruments that measures required in the respect of addressing poverty to combat trafficking include, inter alia, adopting development policies and programs aimed at addressing poverty and underdevelopment, and strengthening international cooperation for development (technical) assistance.

It must be stressed that poverty disproportionately and differently affects women and girls thereby exposing them to prey of traffickers. Thus, the obligation to address poverty inherently entails the measures aimed at addressing the feminization of poverty. In respect of gender dimension and link between poverty and trafficking, the CEDAW Committee noted in General Recommendation No. 19 that poverty and unemployment increase opportunities for trafficking in women and force many women, including young girls, into prostitution.<sup>272</sup> The CEDAW Committee has repeatedly identified a link between poverty and gendered forms of trafficking in its Concluding Observations on State reports.<sup>273</sup> The responsibility on States to review and change laws and practices that fuel gender-based discrimination and inequalities leading to or exacerbating trafficking has also been extensively acknowledged.<sup>274</sup>

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<sup>268</sup> Ibid, Principle 5.

<sup>269</sup> Ouagadougou Action Plan, at art.3.

<sup>270</sup> Ibid.

<sup>271</sup> CRC OPS art.10 (3).

<sup>272</sup> UN Committee on the Elimination of Discrimination against Women, "General Recommendation No. 19: Violence against Women," UN Doc. A/47/38, Jan. 29, 1992 (CEDAW General Recommendation No. 19), at paras. 14–15; see Joy Ezeilo, Report on the Prevention of Trafficking In Persons.

<sup>273</sup> Gallagher, *supra* note 28, p.420.

<sup>274</sup> See, for example, the Trafficking Principles and Guidelines, Guideline 7 par.6; UN Commission on Human Rights, "Report of the Special Rapporteur, Ms. Radhika Coomaraswamy, on Violence against Women, Its Causes and Consequences, on Trafficking in Women, Women's Migration and Violence against Women," UN Doc. E/CN.4/2000/68, Feb. 29, 2000, paras. 42–48, 54–60.

The obligation to address poverty in more general perspective has been established in human rights law regime. Accordingly, there are several international and regional human rights treaties of particular importance in addressing the link between poverty and vulnerability to trafficking. These are: the ICESCR, the CEDAW, the CRC, and CRC OPS. At the regional level, African Charter, Women's Protocol and ACRWC are also highly relevant.

### **b) Promoting Education Opportunities**

The lack of education has been noted as one of the prime factors causing the trafficking crime. Accordingly, promoting the education opportunities in general and to those of potential victims in particular contributes in the fight to prevent trafficking. In this regard the obligation to provide education opportunities have been reiterated in trafficking specific instruments. The Trafficking Principles and Guidelines, for instance, request states to develop programs that offer livelihood options, including basic education, skills training and literacy, especially for women and other traditionally disadvantaged groups.<sup>275</sup> Particularly it has been emphasized that the states are obligated to ensure improved education opportunities, especially for women and children.<sup>276</sup>

Further the obligation to provide access to education is established in international and regional human rights law instruments. For example, ICESCR (art.13), CRC (art.28), and CEDAW (art.10) are relevant international human rights instruments in establishing states obligation to provide access to education. At regional level African Charter (17), ACRWC (art.11), and Women's Protocol (art.12) impose similar obligation. While the obligation to ensure access to education applies to all persons, special attention should be given to women and girls who are vulnerable to the trafficking crime.<sup>277</sup>

### **c) Enhancing Employment Opportunities**

As consistently maintained in this thesis, the lack of employment opportunities is among the principal causative factors exposing women and girls to the prey of traffickers. Thus, the prevention strategies should aim at addressing the lack of employment in order to see eradication of women trafficking. In this respect the international law provides the rights to access

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<sup>275</sup> The Trafficking Principles and Guidelines, Guideline 7, para.2, it also urges states to improve children's access to educational opportunities and increasing the level of school attendance, in particular by girl children, *ibid* guideline 7, para.3.

<sup>276</sup> Gallagher, *supra* note 28, p.42.

<sup>277</sup> Tom Obokata, *supra* note 9, p.163.

employment opportunities and the concomitant states obligation. For instance, the Ouagadougou Action Plan calls on member states to endeavor to provide viable employment or other livelihood opportunities for youth in general and in particular for young women at risk.<sup>278</sup> Further, the UNODC Model Law requests states to undertake measures to alleviate underlying factors exposing people to trafficking such as unemployment.<sup>279</sup>

The obligation to ensure access to employment opportunities entails undertaking programs and policies to expand job opportunities. It also includes undertaking elimination of any *de jure* or *de facto* barriers to employment for vulnerable groups, including women.<sup>280</sup> Further, it imposes taking legal and social measures to ensure rights in employment including a minimum wage that enables an adequate standard of living.<sup>281</sup>

Moreover, the obligation to provide access to employment opportunities includes facilitating legal, gainful and non-exploitative migration.<sup>282</sup> The prevention strategies in this regard must take into account the demand for labor in abroad and the fundamental rights of migrants to earn safe and gainful means employment. The complete blanket ban of migration has been noted as counterproductive from human rights perspective.<sup>283</sup> Rather states are required to furnish adequate information about the rights of migrants and practical advice how to avoid the risk of trafficking for prospective migrant workers.<sup>284</sup> It has also been noted that the promotion of labor migration by the State requires the existence of regulatory and supervisory mechanisms to protect the rights of migrant workers.<sup>285</sup> Further, the obligation to ensure access to employment

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<sup>278</sup> Ouagadougou Action Plan, art.3.

<sup>279</sup> UNODC Model Law, art.35, p.68.

<sup>280</sup> See, for example, UN Commission on Human Rights, "Report of the Special Rapporteur, Ms. Radhika Coomaraswamy, on Violence against Women, Its Causes and Consequences, on Trafficking in Women, Women's Migration and Violence against Women," UN Doc. E/CN.4/2000/68, Feb. 29, 2000, at para. 4: "[t]he failure of existing economic, political and social structures to provide equal and just opportunities for women to work has contributed to the feminisation of poverty, which in turn has led to the feminisation of migration as women leave homes in search of viable options." See further, Ouagadougou Action Plan, at 3.

<sup>281</sup> See, for example, "Report of the Special Rapporteur on Trafficking in Persons, Especially Women and Children, Sigma Huda, Addendum: Mission to Bahrain, Oman and Qatar," UN Doc. A/HRC/4/23/Add.2, Apr. 25, 2007, esp. at paras. 69–82.

<sup>282</sup> The Trafficking Principles and Guidelines, Guideline 7, para.7; Joy Ezeilo, Report on the Prevention of Trafficking In Persons special Rapporteur report prevention, para.39-43.

<sup>283</sup> Ibid, para.40.

<sup>284</sup> Ibid, para.43; this include pre-departure training for prospective migrants.

<sup>285</sup> The Trafficking Principles and Guidelines, Guideline 7, para.7.

opportunities requires facilitating improved access to credit, finance, and productive resources, especially for women.<sup>286</sup>

It is worth to reiterate that the obligation to provide access to employment also requires ensuring equal opportunities for women alongside their men counterparts. Accordingly, it imposes the obligation to undertake elimination of any de jure or de facto barriers to employment for women and girls.<sup>287</sup> In this connection the efforts to guarantee temporary affirmative action for women in access to employment opportunities are welcome development in the eyes of human rights system.

In more general level, the right to access employment opportunities and the corresponding states obligations has been affirmed in human rights law regime. Just to mention few, ICESCR (art.6), CEDAW (art.11), and at regional level African charter (art.16) and Women's Protocol (art.13) are relevant instruments.

#### **d) Addressing Gender Based Discrimination**

Women and girls have been disproportionately exposed to trafficking, by and large, due to gender based discrimination in accessing socio-economic facilities and opportunities. Women and girls have been marginalized from mainstream socio-economic life and relegated to invisible position. As a result they are often more prone to risk of trafficking than their male counterparts. Put it differently, it is the lack of genuine choice resulted from discrimination that, in turn, renders women and girls more vulnerable than men to trafficking.<sup>288</sup>

Regarding the role of gender based discrimination in women trafficking the Special Rapporteur notes that "the failure to provide equal and just opportunities for women to education and work encourages the feminization of poverty. This, in turn, compels women to leave their homes in search of better opportunities, resulting in the feminization of migration."<sup>289</sup>

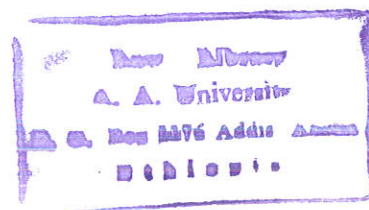
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<sup>286</sup> Gallagher, supra note 28, p. 421.

<sup>287</sup> See, for example, UN Commission on Human Rights, "Report of the Special Rapporteur, Ms. Radhika Coomaraswamy, on Violence against Women, Its Causes and Consequences, on Trafficking in Women, Women's Migration and Violence against Women," UN Doc. E/CN.4/2000/68, Feb. 29, 2000, at para. 4. See further, Ouagadougou Action Plan, at 3 ("States should endeavour to provide viable employment or other livelihood opportunities for youth in general and in particular for young women at risk, especially in regions prone to trafficking").

<sup>288</sup> Gallagher, supra note 28, p.423.

<sup>289</sup> Joy Ezeilo, Report on the Prevention of Trafficking In Persons, para.22.



The importance of uprooting discrimination against women as preventive measures of anti-trafficking response is beyond a dispute. It is submitted that the primary requirement in addressing discrimination in this context is enacting legislation which prohibits discrimination on ground of gender or any other irrelevant grounds.<sup>290</sup> Gallagher notes that States are placed under a clear legal obligation to ensure that their laws, systems, and practices do not promote, reward, or tolerate discrimination.<sup>291</sup> In a similar vein, the responsibility on States to review and change laws and practices that fuel gender based discrimination and inequalities leading to or exacerbating trafficking has also been extensively acknowledged.<sup>292</sup> Further, it also entails implementing education initiatives aimed at educating the public about violence against women and removing negative attitudes toward women.<sup>293</sup>

On the other hand the obligation to address gender based discrimination in context of counteracting women trafficking, entails ensuring equal access of opportunities to women and men alike.<sup>294</sup> For example, the Trafficking Protocol calls on States to take or strengthen measures to offset *lack of equal opportunity*.<sup>295</sup> The Trafficking Principles and Guidelines, for its part, request states to take particular care to ensure that the issue of gender based discrimination is addressed systematically when anti-trafficking measures are proposed.<sup>296</sup> In particular it requests states to develop programs that offer livelihood options, including basic education, skills training and literacy, especially for women and other traditionally disadvantaged groups.<sup>297</sup> In a similar vein, the Ouagadougou Action Plan urges member states to endeavor to provide viable employment or other livelihood opportunities for youth in general and in particular for young women at risk.<sup>298</sup> It also requests member states to promote the empowerment of girls and

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<sup>290</sup> Obokata, supra note 9, p.163.

<sup>291</sup> Gallagher, supra note 28, p.424.

<sup>292</sup> See, for example, the Trafficking Principles and Guidelines, Guideline 7 para.6; UN Commission on Human Rights, "Report of the Special Rapporteur, Ms. Radhika Coomaraswamy, on Violence against Women, Its Causes and Consequences, on Trafficking in Women, Women's Migration and Violence against Women," UN Doc. E/CN.4/2000/68, Feb. 29, 2000, paras. 42–48, 54–60.

<sup>293</sup> Gallagher, supra note 28, p.426.

<sup>294</sup> Obokata, supra note 9, p.163.

<sup>295</sup> Trafficking Protocol, art.9 (4).

<sup>296</sup> The Trafficking Principles and Guidelines, Guideline 1, para.4.

<sup>297</sup> Ibid, Guideline 7, para.2.

<sup>298</sup> Ouagadougou Action Plan, art.1.

women in their national policies.<sup>299</sup> Moreover it notes that a gender perspective should be applied when adopting and implementing measures to prevent and combat trafficking in human beings.<sup>300</sup>

Finally, the obligation to address gender based discrimination has been duly established under human rights law regime. There are several human rights law instruments calling on states to dismantle gender based discrimination. These are: the ICCPR (art.2), ICESCR (art.2), CEDAW (art. 2), CERD (arts.2and 4), CMW (art.7), and CRC (art.2). At regional level, African Charter (art.2), ACRWC (art.3) and Women's Protocol (art.2) are worth mentioning.

### **3.3.3.2.Public Awareness Raising Campaigns**

Public awareness raising regarding the risk of trafficking is essential component of anti-trafficking strategies since vast majority of victims lured into trafficking owing to lack of information and knowledge. The obligation to undertake public awareness raising in the fight against trafficking is affirmed in several trafficking instruments. Trafficking Protocol, for instance, calls on States Parties to endeavor to undertake measures such as information and mass media campaigns to prevent and combat trafficking in persons.<sup>301</sup> In a similar vein, the Trafficking Principles and Guidelines request states to develop information to raise public awareness.<sup>302</sup> The CRC OPS also requires promoting awareness about preventive measures and harmful effects of the offences such as sale of children.<sup>303</sup> The importance of raising public awareness is also reiterated in Organized Crime Convention.<sup>304</sup> Moreover, Ouagadougou Action Plan requests states to ensure awareness raising and counseling, as key preventive measures to combat trafficking in human beings.<sup>305</sup> The Special Rapporteur in her recent report also reaffirms the importance of awareness raising to prevent trafficking in women and children.<sup>306</sup>

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<sup>299</sup> Ibid.

<sup>300</sup> Ibid.

<sup>301</sup> Trafficking Protocol, art.9 (2).

<sup>302</sup> Trafficking Principles and Guidelines, Guideline 7 para.5.

<sup>303</sup> CRC OPS, art.9 (2).

<sup>304</sup> Organized Crime Convention, art.31 (5).

<sup>305</sup> Ouagadougou Action Plan, art.1.

<sup>306</sup> See Joy Ezeilo, Report on the Prevention of Trafficking In Persons, paras.44-48.

Public awareness should be given to general public at large on the causes and consequences of trafficking. Particularly, the awareness raising should target the people at risk of trafficking such as women and girls.<sup>307</sup> It also should be given to the agencies dealing with anti-trafficking responses.

Regarding the content of obligation of raising public awareness, the following measures could be identified. These are: Raising awareness in forms education i.e., incorporating trafficking into school curriculum,<sup>308</sup> conducting anti-trafficking Media campaigns,<sup>309</sup> engaging civil society in awareness raising,<sup>310</sup> and targeting the potential victims of trafficking in awareness raising.<sup>311</sup> It is interesting to note that a care must be made in awareness raising not employ counterproductive means such scare tactics or distorted information.<sup>312</sup>

What are the indicators of effective awareness raising? In this respect Special Rapporteur identifies the three key elements of effective awareness-raising. These are: First, awareness-raising campaigns must be based on accurate and adequate information. Before embarking on such campaigns, it is important to acquire a solid understanding of the manifestations of trafficking in a given context. Awareness-raising based on inaccurate or insufficient information may leave potential victims off-guard. It is desirable to conduct a needs assessment or study to identify what the target audience already knows and does not know in order to ensure the maximum impact. It is simply not useful or effective to implement broad-brush campaigns to “stop human trafficking” if the populations do not even know what human trafficking really is.<sup>313</sup>

Second, it is important to recognize that awareness-raising is never enough in itself to prevent trafficking and needs to be complemented by programmes that reduce the vulnerability of potential victims and provide them with viable alternatives. Awareness-raising campaigns implemented alone as a preventive measure are based on the assumption that increased

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<sup>307</sup> Ibid.

<sup>308</sup> For example, the model law provides that states should include trafficking in persons in human rights curricula in schools and universities; see UNODC Model Law, art.35, p.68.

<sup>309</sup> Organized Crime Convention, art.31 (5); Ouagadougou Action Plan; Trafficking Protocol, art.9 (2); UNODC Model Law, art.35, p.68.

<sup>310</sup> Trafficking Protocol, art.9 (3); Ouagadougou Action Plan, art.1. See also Joy Ezeilo, Report on the Prevention of Trafficking In Persons, para.77.

<sup>311</sup> CRC OPS art.9 (2); Trafficking Principles and Guidelines, Guideline 7, para.4.

<sup>312</sup> Joy Ezeilo, Report on the Prevention of Trafficking In Persons , para.45.

<sup>313</sup> Ibid, para.46;

awareness of trafficking issues will encourage people to make alternative decisions that minimize their risk of being trafficked. While this may work well in some circumstances, it disregards the dynamic “push” factors that compel people to leave home despite their knowledge of the risks.<sup>314</sup>

Third, the powerful role of the media should be fully acknowledged and exploited in awareness-raising campaigns. The media has tended to sensationalize stories of trafficked persons and highlight their “victimhood” rather than educating the public about the underlying social and economic factors that led to the violation of their human rights. Given its influential role and ability to reach wider audiences, however, the innovative use of media should be built into awareness-raising activities.<sup>315</sup>

### **3.3.3.3. Research and Data Collection**

Research is an essential component of prevention strategies in improving understanding about the nature, causes, magnitude, trend and consequences of trafficking. Research also serves to mobilize persons and resources necessary to combat human trafficking. In this regard, the obligation to conduct research and data collection on the antitrafficking issues that are considered areas of most concern is contemplated in various trafficking specific instruments.<sup>316</sup> Primarily it is critical to collect the accurate data regarding the incidence of trafficking prior to devising anti-trafficking measures so that such measures are based on a realistic understanding about why particular groups of people are being trafficked and how traffickers operate.<sup>317</sup> Secondly, the monitoring and evaluation of effectiveness of prevention measures should be conducted in order to ensure that preventive measures achieve the desired effect while enhancing the human rights of trafficked persons.<sup>318</sup> For example, the Trafficking Protocol requires states to undertake to endeavor to take measures such as conducting research to prevent human trafficking.<sup>319</sup> The Trafficking Principles and Guidelines also requests states to undertake

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<sup>314</sup>Trafficking Principles and Guidelines, Guideline 3, para.6. See also Joy Ezeilo, Report on the Prevention of Trafficking In Persons, para.47.

<sup>315</sup> Ibid, para.48.

<sup>316</sup> Ibid, paras.79-80; Mattar, supra note 42, p.51.

<sup>317</sup> Ibid, para.60.

<sup>318</sup> Ibid, para.61.

<sup>319</sup> Trafficking Protocol, art.9 (2).

research as measures to prevent human trafficking.<sup>320</sup> Further, the model law contemplates the importance of conducting research regarding the nature and scale of trafficking problem and to mark anti-trafficking best practices.<sup>321</sup> The Ouagadougou Action Plan also provides the requirement of conducting research.<sup>322</sup>

In a similar vein it has been confirmed that statistical data collection should also be made in a bid to enhance the understanding of trafficking problem. In this respect the emphasis has been made on the methods of data collection and disaggregated data on basis of sex, age, etc relevant categories instead of providing aggregated and general numbers.<sup>323</sup>

### **Conclusion**

The ineffective of Criminal Justice Approach response to eradicate women trafficking for various reasons noted in this chapter, necessitates examining closely what are in store in human rights regime. Firstly, Human Rights Based Approach which calls for primacy of human rights in anti-trafficking intervention fundamentally shifts the framework of analysis of the problem of contemporary slavery. It views women trafficking as first and foremost a matter of human rights issues. Indeed as discussed in this chapter and previous one women trafficking stem from the deprivation of human rights protection. Women trafficking is caused and sustained by structural causative factors bred from human rights violations. Further, the phenomenon of trafficking in women entails violations of a wide array of human rights guarantees accorded due protection in human rights law system. Such reframing of the causes, processes and consequences of women trafficking leads us to contemplate that any durable, effective and meaningful anti-trafficking response has to be shaped in human rights perspectives. Admittedly, while human rights brand anti-trafficking intervention is not perfect panacea to eradicate women trafficking, it should be made clear that in relative terms it is far better than the traditional Criminal Justice Approach response.

Further, in this chapter an attempt is made to outline the indicators of a Human Rights Based Approach response which could serve as touchstone to scrutinize anti-trafficking initiatives.

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<sup>320</sup> Trafficking Principles and Guidelines, Guideline 3, para.4.

<sup>321</sup> UNODC Model law, art.35, p.69.

<sup>322</sup> Ouagadougou Action Plan, art. 3.

<sup>323</sup> Trafficking Principles and Guidelines, Guideline 3, para.3. See also Ouagadougou Action Plan, art. 3.

Accordingly, the main markers of states obligations derived from international legal and policy frameworks including human rights regime have been fleshed out in detail. These standards though some of them do not impose binding obligations strictly speaking, the prosecution, protection and prevention of women trafficking interventions ought to be informed and inspired by these standards in order to implement Human Rights Based Approach anti-trafficking national response. This leaves us to explore whether national anti-trafficking initiatives in place in Ethiopia are line with these standards or not. Hence, the next chapter tries to respond to this issue.

## **Chapter Four: Analysis of Antitrafficking Initiatives in Ethiopia**

### **4.1. Introduction**

This chapter seeks to discuss antitrafficking measures so far adopted in Ethiopia to prosecute trafficking cases, protect victims of trafficking and prevent trafficking in women. It starts by providing a brief overview of the scale of trafficking in women in Ethiopia. In connection to this, it describes the push factors and the pull factors causing and sustaining trafficking in women and the abuses faced by trafficked women in destination countries.

The chapter deals at length with the prosecution, protection and prevention measures undertaken in Ethiopia, and this will be evaluated against Human Rights Based Approach Standards identified in chapter three. In particular, the chapter tries to review the legislative frameworks available and practical measures implemented to combat trafficking in women. In so doing it outlines the positive aspects and loopholes exhibited in both legislative and practical measures undertaken in Ethiopia to combat trafficking in persons.

### **4.2. A Brief Overview of Women Trafficking In Ethiopia**

While exact data is hard to come by, trafficking in persons is highly prevalent in Ethiopia. According to the recent IRIN UN News agency report, some 20,000 to 25,000 Ethiopians are trafficked to various countries annually.<sup>1</sup> While men are also subjected to trafficking in Ethiopia, women constitute the majority of those victimized by traffickers.<sup>2</sup> Further, the study indicates that women and girls aged between 19-30 years comprise the significant share of victims of trafficking in persons in Ethiopia.<sup>3</sup> Poor, less educated, residents of major regional towns are identified as the obvious victims of trafficking.<sup>4</sup>

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<sup>1</sup> IRIN News on 16 March 2010, available at, <http://www.irinnews.org/report.aspx?reportid=88438>(last accessed on September 15, 2011).

<sup>2</sup>Trafficking in Persons Overseas for Labour Purposes: The Case of Ethiopian Domestic Workers, ILO CO Addis Ababa (2011) (hereinafter ILO Study), p.ix.

<sup>3</sup> Ibid,p.26

<sup>4</sup>Yoseph Endashew etal, Assessment of Trafficking In Women and Children in and from Ethiopia, IOM (2006), p.38-40.

Majority of female migrants are mainly trafficked outside of the country for household labour purposes.<sup>5</sup> However, some female migrants may also be trafficked for commercial sex work, particularly in Djibouti, Yemen, and Sudan.<sup>6</sup>

Poverty, lack of employment opportunities, lack of prospect at home country, failure in educational endeavors, gender based discrimination, and the search for better opportunities and income to support themselves and their families are critical push factors behind high prevalence of human trafficking.<sup>7</sup> On the other hand, there are pull factors which attract women and girls into trafficking business. These include rapid changes in the local and regional economies, restrictive immigration laws, weak protection regimes for migrant workers, an aging population in the receiving countries, the role of traffickers in artificially expanding demand for cheap labour, increased demand for unskilled labor in Middle East countries,<sup>8</sup> and the expansion of service sector requiring women involvement.<sup>9</sup>

Trafficking in women has been mostly conducted by brokers (known as *delala* in local vernacular), unlicensed employment agents, travel agents, import and export owners, relatives and family members of migrant workers.<sup>10</sup> Further, a number of reports identify that Private Employment Agencies (PEAs) are also actors in the trafficking of migrants contrary to the law regulating their operation.<sup>11</sup>

Popular destination countries for most of trafficked women outside Ethiopia are mainly Middle East countries including Lebanon, UAE, Saudi Arabia, Kuwait, and Bahrain, while Yemen serves mainly as a transit country.<sup>12</sup> The Middle East is a popular destination due to its proximity

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<sup>5</sup> ILO Study, supra note 2, p.viii.

<sup>6</sup> Ibid.

<sup>7</sup> Ibid; Yoseph, supra note 4, p.37.

<sup>8</sup> For instance the Saudi government announces recently to recruit 30,000 labor workers from Ethiopia, Saudi gazette, on June 15, 2011 <http://www.thebigprojectme.com/2011/06/15/ksa-to-employ-30000-ethiopian-labourers/> (last accessed on September 3, 2011).

<sup>9</sup> Yoseph, supra note 4, p.38; ILO Study, supra note 2, p.24.

<sup>10</sup> Yoseph, supra note 4, p.41.

<sup>11</sup> Ibid; ILO Study, supra note 2, p.33.

<sup>12</sup> US Trafficking in Persons Report 2011 (hereinafter US TIP Report, 2011), p.158; Yoseph, supra note 4, p.46.

and high demand for domestic workers.<sup>13</sup> Besides Middle Eastern countries, other destinations for Ethiopian women and girls include Sudan, South Africa, Djibouti, and Egypt.<sup>14</sup>

Ethiopian women in the destination countries face severe human rights abuses, inter alia, physical and sexual assault, denial of salary, sleep deprivation, confinement, incarceration, and murder.<sup>15</sup> Further, some commit suicide due to despair and mental illness.<sup>16</sup> For instance, from 1999-2005 the Quarantine Office of the Addis Ababa International Airport reported 129 female bodies returned from Jeddah, Dubai, and Beirut.<sup>17</sup> In all cases the cause of death was determined to be suicide.<sup>18</sup> Having said this, the following section examines the antitrafficking measures adopted in Ethiopia to address the problem of trafficking in women.

### **4.3. Antitrafficking Measures in Ethiopia**

The high prevalence of trafficking in women and ensuing socio-economic problems necessitate strong and concerted anti-trafficking initiatives to eradicate the problem. As repeatedly argued in this study trafficking in women constitutes a human rights issue and as such it requires a human rights oriented intervention measures. In chapter three the main standards of a Human Rights Based Approach Anti-trafficking Response have been identified. Hence, the purpose of this section is to examine antitrafficking initiatives so far adopted in Ethiopia in light of these standards. To this end, the prosecution, protection and prevention measures available and the gaps therein will be discussed as follows.

#### **4.3.1. Prosecution of Trafficking Cases**

Prosecution of trafficking cases to combat trafficking in women requires enacting comprehensive legislative framework that proscribes trafficking as a punishable offence. It also requires establishing procedures and institutions adequately mandated, staffed and funded to undertake investigation and prosecution of trafficking cases. Effective investigation and prosecution of traffickers also lie at heart of the prosecution of trafficking. Further, enhancing international cooperation in investigation and prosecution of trafficking plays important role to combat

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<sup>13</sup>Yoseph, supra note 4, p.46.

<sup>14</sup> Ibid.

<sup>15</sup> Ibid, p.48.

<sup>16</sup> US Trafficking In Persons Report 2010, (hereinafter US TIP Report, 2010), p.144.

<sup>17</sup> Yoseph, supra note 4, p.53.

<sup>18</sup> Ibid.

trafficking in persons. This section seeks to examine the prosecution of trafficking cases in Ethiopia. In so doing an attempt is made to review laws, institutions and practices of prosecution of trafficking cases in Ethiopia in light of human rights based approach discussed in the preceding chapter.

#### **4.3.1.1.Criminalization of Trafficking and Related Offences**

While trafficking in persons is widespread and causing socio-economic problems, ironically Ethiopia has not adopted a comprehensive antitrafficking law. But this does not lead one to assume that trafficking in persons is not addressed under Ethiopian legal frameworks at all. While scattered and lack common policy consideration, there are laws in Ethiopia of particular relevance to combat trafficking in persons. Before discussing Ethiopian laws dealing with trafficking in persons, it is worth to say some words regarding the place of international treaties in the Ethiopian legal landscape.

Ethiopia has ratified most of the international and African regional legal instruments relevant to combat human trafficking and related offences.<sup>19</sup> According to the FDRE Constitution international treaties ratified by Ethiopia are recognized as integral part of law of the land.<sup>20</sup> Art. 13 (2) of the Constitution also states that human rights chapter of the Constitution shall be interpreted in light of international human rights instruments. Thus far, Ethiopia is bound by the obligations emanating from ratified international and regional legal instruments in combating women trafficking.

Turning to anti-trafficking domestic laws of Ethiopia, the FDRE Constitution under Art. 18 (2) states that “trafficking in human beings for whatever purpose is prohibited”. The Constitution prohibits trafficking in persons encompassing trafficking in children, women and men. It also prohibits trafficking in persons for whatever purposes. This can be interpreted to mean that it

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<sup>19</sup>However, Ethiopia has not yet ratified some of the treaties, notably Trafficking Protocol and CRC Optional Protocol on Sale of Children.

<sup>20</sup>Art.9 (4). but it is beyond the scope of this thesis to resurface the debate regarding the status of international treaties visa-a- vis the constitution and subsidiary of laws, for further discussion on this point see Ibrahim Idris, *The Place of International Human Rights Conventions in The 1994 FDRE Constitution*, *Journal of Ethiopian Law*, Vol.20, (2000); Rakeb Messele, *Enforcement of Human Rights in Ethiopia*, *Action Professionals' Association for the People (APAP) Research* (2002); Sisay Alemahu, *The Protection of Economic and Social Rights in the Constitution of Federal Democratic Republic of Ethiopia*, *Journal of Ethiopian Law*, Vol.22, No.2, (2008); Takele Soboka Bulto, *The Monist-Dualist Divide and the Supremacy Clause: Revisiting the Status of Human Rights Treaties in Ethiopia*, *Journal of Ethiopian Law*, Vol.23, No.1 (2009).

prohibits all exploitation purposes enumerated under the Trafficking Protocol. Further, the Constitution made the prohibition against trafficking non-derogable right which implies that the right can't be suspended even during the state of emergency.<sup>21</sup>

Apart from the Constitution, there are some subsidiary laws that have prohibited trafficking in persons. The Criminal Code of the Federal Democratic Republic of Ethiopia of 2004,<sup>22</sup> for example, proscribes trafficking in persons as punishable act. Accordingly, trafficking in women and children for purpose of exploitation of prostitution is criminalized under Art. 635. It says that “[w]hoever, for gain, or to gratify the passions of another: a) traffics in women or minors, whether by seducing them, by enticing them, or by procuring them or otherwise inducing them to engage in prostitution, even with their consent; b) keeps such a person in a brothel to let him out to prostitution, is punishable with rigorous imprisonment not exceeding five years, and fine not exceeding ten thousand Birr, subject to the application of more severe provisions, especially where there is concurrent illegal restraint.”

Similarly, trafficking in women and children for labor exploitation is also criminalized under Art. 597 of Criminal Code. It reads [w]hoever 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.

Furthermore, unlawfully sending Ethiopians abroad for work is also penalized pursuant to Art. 598. It states that [w]hoever, without having obtained a license or by any other unlawful means, sends an Ethiopian woman for work abroad, is punishable with rigorous imprisonment from five years to ten years, and fine not exceeding twenty-five thousand Birr. Similarly the Employment Exchange Services Proclamation criminalizes sending Ethiopians abroad without license.<sup>23</sup>

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<sup>21</sup>Adem Kassie, Human Rights under the Ethiopian Constitution: A Descriptive Overview, *Mizan Law Review*, Vol. 5 No.1, (spring 2011), p.62.

<sup>22</sup> Hereinafter, Criminal Code.

<sup>23</sup>Art.40 of Employment Exchange Services Proclamation No.632/2009(hereinafter Employment Exchange Proclamation).

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<sup>22</sup> Hereinafter, Criminal Code.

<sup>23</sup>Art.40 of Employment Exchange Services Proclamation No.632/2009(hereinafter Employment Exchange Proclamation).

None of the aforementioned laws comprehensively defined what constitutes trafficking in persons. The lack of comprehensive legal definition of trafficking in persons has seriously hampered the effective investigation and prosecution of human trafficking cases.<sup>24</sup> It has been noted that cases of trafficking have been prosecuted under different types of crimes.<sup>25</sup> In some instances astonishingly enough traffickers have been charged with petty offences.<sup>26</sup>

In terms of the scope the Criminal Code is limited to trafficking in women and children unlike the Trafficking Protocol. Another caveat is that the Criminal Code criminalizes trafficking for prostitution and labor exploitation alone. Thus, trafficking for exploitative purposes other than prostitution and labor exploitation including other forms of sexual exploitation,<sup>27</sup> slavery or practices similar to slavery, servitude, and the removal of organs is not criminalized under Criminal Code. If we draw a comparison against the scope of trafficking in persons under the Trafficking Protocol, the Ethiopian criminal law falls short of international standards. Further, the issue of consent is not dealt with as established in Trafficking Protocol. While Art.635 makes the consent of the victim irrelevant in trafficking for exploitation of prostitution of others, Art.597 kept silent as far as the consent of the victim is concerned. But the requirement of coercion or fraud in the latter provision complicates the issue of consent.

Not only trafficking in persons but also acts related to trafficking are outlawed under Ethiopian laws. The Constitution, for example, prohibits acts related to trafficking such as cruel, inhumane or degrading treatment, slavery and compulsory labor.<sup>28</sup> It also prohibits exploitative child labor under Art. 36 which provides that “ every child has the right not be subject to exploitative practices , neither to be required nor permitted to perform work which may be hazardous or harmful to his or her education or well-being”.<sup>29</sup> Further the Criminal Code prohibits forcible enslavement of persons under Art.596. It also proscribes exploitation of prostitution of others for gains pursuant to Art.634.

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<sup>24</sup> ILO Study, supra note 2, p.71.

<sup>25</sup> While article 598 on unlawful sending of Ethiopians for work abroad is commonly used to prosecute cases of trafficking in persons, some cases of trafficking of persons are charged using article 692 of the Criminal Code dealing with fraudulent misrepresentation, ILO, Study, supra note 2, p.72.

<sup>26</sup> Yoseph, supra note 4, p.77.

<sup>27</sup> Note trafficking in women and children for exploitation of prostitution is penalized under Art.635; but trafficking for other forms of sexual exploitation is not covered under this provision.

<sup>28</sup> Art. 18 of the Constitution.

<sup>29</sup> Ibid, Art. 36(1(e)).

#### 4.3.1.2. Investigation and Prosecution of Trafficking Cases

While there is no specialized institution established to deal with trafficking in all its aspects, nevertheless there are specialized investigation and prosecution (adjudication) units in federal judiciary and federal police commission. Accordingly, the Federal High Court's 11th Criminal Bench entertains all cases of external trafficking, as well as internal trafficking cases reported and investigated in Addis Ababa. And in 2009 the Federal Police established a Human Trafficking and Narcotics Section under its Organized Crime Investigation Unit.<sup>30</sup> The organized crime investigation team which works mainly on trafficking in persons has 30 staff members.<sup>31</sup> Since the establishment of the team there is relative improvement as most of the cases are successfully decided. For example, among the total cases of 111 investigated in 2003 E.C the Federal High Court successfully rendered verdict in 86 cases.<sup>32</sup>

Capacity building trainings have been given to law enforcement agencies though in a piecemeal and limited manner. The MoJ in collaboration with IOM has provided training for police, prosecutors, judges and immigration officials on the law, investigation techniques and services available to victims of human trafficking.<sup>33</sup> The Federal Justice Professionals Training Centre has also incorporated a module on trafficking in human beings into its routine training programs since 2009.<sup>34</sup> However, training needs are huge and the training provided is offered in a piecemeal basis, and is only provided depending on available resources and experts.

Further, there is a low rate of prosecuting trafficking offenders compared to the scale of the problem. There are some factors that have contributed to low rate of prosecuting trafficking offenders. These include: the low rate of reporting the commission of offence, lack of evidence to hold offenders responsible, work load on law enforcement agencies and judiciary, low level of

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<sup>30</sup> US TIP Report 2010, p.145.

<sup>31</sup> Interview with Wondimu, Senior Coordinator at Organized Crime Investigation Division of Federal Police Crime Investigation Sector (Monday September 3, 2011).

<sup>32</sup> Ibid.

<sup>33</sup> ILO Study, supra note 2, p.73.

<sup>34</sup> US TIP Report 2010, p.145

victim cooperation, lack of coordination with regional law enforcement agencies, and less attention given to internal trafficking in persons.<sup>35</sup>

#### **4.3.1.3.Rights of the Suspects in the Prosecution of Trafficking Cases**

As far as the rights of suspects of trafficking cases is concerned, the Constitution enshrines basic rights of fair trial for accused and arrested persons in arts.19 and 20.<sup>36</sup> More or less the Constitution echoes the rights provided under the ICCPR regarding fair trial entitlements. As gathered from interviews with law enforcement officials, more or less, the constitutional guarantees of fair trial are respected in investigation and prosecution of suspects of trafficking crime.<sup>37</sup>

#### **4.3.1.4.Proportionality of Sanctions**

The Criminal Code prescribes five years imprisonment for trafficking in women and children for prostitution,<sup>38</sup> and twenty years imprisonment for forced labor.<sup>39</sup> While the punishments set by law are more or less sufficiently stringent, in practice, often, the lesser penalties are handed down. For instance, among the 13 cases of trafficking in persons reported and prosecuted in 2010, the maximum sentence passed is: three years and four months of rigorous imprisonment.<sup>40</sup> According to one informant in one recent case, one year and six months imprisonment has been rendered to the criminal found to be trafficking women to the Middle East.<sup>41</sup> Moreover, in some cases punishments are passed in the form of a fine instead of imprisonment. There are also various instances where sentences passed are suspended. This is due in part of relatively strong financial capacity of the majority of suspects who are able to evade from the criminal liability. In several instances the suspects meticulously tamper with the evidence. Thus far, the sentences

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<sup>35</sup>Interview with Wondimu Chama, supra note 31, and Nabit Girma, deputy head of MoJ Arada Justice Office, (Friday September 29, 2011).

<sup>36</sup>On the rights of accused persons in Ethiopian legal system, see generally, Wondwossen Demissie (ed.), Human Rights in Criminal Proceedings: Normative and Practical Aspects, Ethiopian Human Rights Series, Vol.3 (2010).

<sup>37</sup> Interview with Wondimu Chama, supra note 31 and Nabit Girma, supra note 35.

<sup>38</sup> Art.635 of the Criminal Code.

<sup>39</sup> Art.597 of the Criminal Code.

<sup>40</sup> ILO study, supra note 2, p.73.

<sup>41</sup> Interview Nabit Girma, supra note 35.

rendered in practice are very low that does not outweigh the benefit accrued and cannot deter others from engaging in similar crimes in the future.<sup>42</sup>

On the other hand, in the Ethiopian Criminal Code what is intriguing is: the fact that different punishments are set for trafficking for prostitution and labor exploitation. While the former is punishable with five years imprisonment, the latter is made punishable with 20 years imprisonment.<sup>43</sup> This may be attributed to the designing of the code that opted to criminalize trafficking based on the purpose of exploitation. While trafficking for prostitution is designated under crimes against morals, the trafficking for labor exploitation is put under crimes against liberty. Such designing does not only deviate from international standard, but also purports to deny that trafficking for prostitution is not violation of human rights. This sends a wrong signal that trafficking for prostitution is less severe crime than trafficking for forced labor.

On a positive note, it has to be mentioned that aggravating circumstances are set to increase the punishment of culprit convicted of trafficking in persons. For instance, in case of trafficking in women and children for prostitution the punishment is increased up to ten years rigorous imprisonment where the conditions laid down under Art. 636 are met.<sup>44</sup> In similar vein, in case of crime of unlawfully sending of Ethiopian abroad for work without a license, twenty years rigorous imprisonment is set where the victim suffers an injury to her human rights, or to her life, body or psychological make-up.<sup>45</sup>

#### **4.3.1.5.Asset Recovery(Confiscation and Seizure)**

The Ethiopian Criminal Code contemplates about confiscation of proceeds and instrumentalities of criminal activities. Art. 98 of Criminal Code says that '[a]ny property which the criminal has acquired, directly or indirectly, by the commission of the crime for which he was convicted shall be confiscated'. The Criminal Justice Administration Policy adopted in 2011 also states under section 2.2.1.10 that property and money relating to serious offences such as especially

<sup>42</sup> Ibid and interview with Wondimu Chama, supra note 31.

<sup>43</sup> Compare art.635 with art.597 of the Criminal Code.

<sup>44</sup> These circumstances include: the victim is child, the victim is relative of the criminal, where the criminal has abused his position, the criminal employed tricks, fraud and violence, the victim is intended for a professional procurer or where the victim's whereabouts cannot be established, the commit suicide by shame or distress, see art.636(a-f) of the Criminal Code. There is no aggravating circumstance provided for trafficking in women and children for forced labor under Art. 597 of Criminal Code.

<sup>45</sup> Art.598 (2) of Criminal Code.



terrorism, corruption, drugs, contraband, trafficking in children and women shall be attached and confiscated. In addition, an order of confiscation may also apply to any property lawfully acquired by the criminal. While this provision could be applicable in asset recovery of traffickers, nonetheless the practice shows no record of asset confiscation with regard to trafficking cases.<sup>46</sup>

#### **4.3.1.6.Extradition of Suspects of Trafficking Cases**

The Criminal Code makes extraditable any ordinary crimes committed by foreigners outside Ethiopia. It requires the formal application made in proper form by requesting state to grant extradition given that the crime does not concern directly and principally the Ethiopian state.<sup>47</sup> Although the specific provisions that criminalize trafficking in persons do not explicitly make the offence extraditable, the rule provided under Art.21 could be applicable to such cases. It follows from this that trafficking in persons is extraditable offence under Ethiopian law. Thus, since Ethiopia is member of Interpol, it can make use of this provision in facilitating extradition of suspect of trafficking offence.

#### **4.3.2. Protection of Trafficked Persons**

Victims of trafficking presumably need proper protection support to recover from their experience of trafficking. As most of VoT suffer from multiple violation and abuse of rights, the protection efforts must seek to respond to heal the wounds. Further, the proper protection services contribute to the prevention of trafficking by avoiding likelihood of re-trafficking. Having said this, the ensuing sections try to discuss protection measures available in Ethiopia to help trafficked persons.

##### **4.3.2.1.Identification of Victims of Trafficking**

Protection of VoT requires accurate and rapid identification of victims. Such identification, in turn, primarily requires active engagement of law enforcement and coordination with victim

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<sup>46</sup> Interview with Nabit Girma, supra note 35 and Wondimu Chama, supra note 31.

<sup>47</sup> Art.21 (1) of the Criminal Code. The Criminal Justice Administration Policy says under Section 5.1.3 that International legal cooperation including the provision of legal support and extradition of criminals and shall be implemented based on bilateral treaties concluded by Ethiopia.

support agencies. In Ethiopia, in this regard, there are rare cases undertaken on the initiatives of police or prosecutorial office. The majority of cases are reported to law enforcement agencies either by the victims or their families and relatives.<sup>48</sup> Hence, there are low rates of proactive investigation of trafficking cases by law enforcement agencies. In a similar vein, there is low level of coordination between criminal justice agencies and victim support agencies in the process of identification of VoT. Consequently, the referral mechanism between criminal justice and victim support agencies (mainly NGOs) is of negligible significance.<sup>49</sup>

#### **4.3.2.2. Non-prosecution of Trafficked Persons**

There is the trend of non-prosecution of trafficked persons for status related offences in Ethiopia. According to US TIP Report of 2011 there were no cases of trafficked persons' arrest or prosecution reported so far.<sup>50</sup> Criminal justice agencies seldom prosecute the trafficked persons. As law enforcement officials interviewed note the most important thing for them is to arrest and punish the illegal brokers, whether they are traffickers or smugglers, and not the travelers because most of them are forced by poverty to use the services of traffickers or smugglers.<sup>51</sup> This indicates that the prime concern of law enforcement agencies is to search and hunt for traffickers not to put the victims behind the bars who fall into prey of traffickers for socio-economic structural problems. Thus, the practice is in line with human rights based approach standards regarding non-prosecution of trafficked persons.

#### **4.3.2.3. Protection and Support for VoT**

Victims of trafficking in destination countries are presumably in need of various protection and support services. Among other things, they require protection of safety and provision of psychological, medical and shelter services. This section seeks to examine protection and support services provided to VoT in Middle East.

In Ethiopia protection and support services to VoT in destination countries, i.e. Middle East countries are primarily provided by the MoFA. According to the official in consular affairs

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<sup>48</sup> Interview with Nabit Girma, supra note 35.

<sup>49</sup> Interview with Wondimu Chama, supra note 31 & Nabit Girma, supra note 35, as they put it most NGOs or victim support agencies are not interested in referring the victim to criminal justice agencies.

<sup>50</sup> US TIP Report 2011, p.159.

<sup>51</sup> ILO, study, supra note 2, p.71 and interview with Wondimu Chama, supra note 31 and Nabit Girma, supra note 35.

directorate of the MoFA, the ministry provides temporary shelter for VoT in Kuwait and Lebanon via its embassies.<sup>52</sup> It provides among other things, food, clothing, free telephone calls, and medical support for VoT in these countries. For example, the shelter run by the Ethiopian Consulate General in Beirut provided services to 300 women in 2010.<sup>53</sup> But it has been noted that the resources of running the shelters is very scarce.<sup>54</sup> In addition, the consulate provides services such as: mediation with domestic workers' employers, and visitation of workers held in the detention center.<sup>55</sup> Accordingly, this Consulate General secured the release and repatriation of 117 victims in 2009, who were being held in Lebanon for immigration violations.<sup>56</sup> Further, Ethiopian embassies in Kuwait and Yemen also provide limited services, though specific information regarding these efforts was not made available.<sup>57</sup> Thus far, there exists an urgent need to enhance protection and support to VoT in abroad and at home to avoid the risks of re-trafficking of victims.

#### **4.3.2.4. Legal Assistance and Participation of VoT in Legal Proceeding**

The Ethiopian government provides limited legal assistance to VoT in destination countries unlike some labor sending countries.<sup>58</sup> For instance, the Philippines has established a legal assistance fund under its Migrant Workers Act of 1995, to be used exclusively to provide legal services to migrant workers and overseas Filipinos in distress.<sup>59</sup> This could partly be attributed to the lack of bilateral labor agreements in enforce with most of destination countries.<sup>60</sup> But the situation is relatively better at home as far as providing legal information to VoT is concerned. According to the interview with official in MoLSA the staff of the ministry offers legal information to returned VoT regarding the relevant court, procedure and remedies available to vindicate their claims against wrong doers.<sup>61</sup> EWLA also provides legal aid to VoT through its

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<sup>52</sup>Interview with Zaleke Hirpa, officer at Consular Support and Monitoring Directorate of MoFA, (Tuesday September 27, 2011).

<sup>53</sup> US TIP Report 2011, p.159.

<sup>54</sup> ILO study, supra note 2, p.69; interview with Zaleke Hirpa, supra note 52.

<sup>55</sup> US TIP Report 2010, p.145.

<sup>56</sup> Ibid.

<sup>57</sup> US TIP Report 2011, p.159.

<sup>58</sup> Philippine is case in point, ILO study, supra note 2, p.70.

<sup>59</sup> Ibid.

<sup>60</sup> Ibid.

<sup>61</sup>Interview with Tsegabirhan Solomon, Employment Inspection, Follow up and Support Expert at MoLSA, (Wednesday September 21, 2011).

volunteers.<sup>62</sup> According to the representative of EWLA the organization provides free legal aid and representation to VoT in both criminal and civil court proceedings.<sup>63</sup>

Regarding the participation of VoT in criminal proceeding instituted against traffickers while the criminal justice agencies are keen to involve them often time the victims failed to appear and testify in court. The VoT are influenced or compromised by traffickers against cooperating with prosecution of the latter in court of law.<sup>64</sup> According to the official at federal police traffickers easily bound victims from participating in criminal proceeding.<sup>65</sup> On top of this, the resource constraints also prevent law enforcement authorities from covering travel costs or providing other material resources to enable such testimony in case the victims show up.<sup>66</sup> Such problem often arises in cases of VoT residing outside the capital. As a result, there exists low level of participation of VoT in legal proceedings which, in turn, results in either withdrawal or suspension of several cases.

#### **4.3.2.5.Repatriation and Reintegration of VoT**

The MoFA facilitates the repatriation of VoT from destination countries including mainly Middle East countries. The ministry conducts the process of verifying victims' nationality or residence and issuing necessary travel documents. It has been noted that recently 2,000 Ethiopians had been repatriated from Tanzania, Yemen, Libya and other Gulf countries, with the support of the IOM, the UN Refugee Agency and other stakeholders.<sup>67</sup> The key challenge has been to determine the status of nationality particularly in cases of lack of pass port either lost or confiscated by employer. Further, as several trafficked persons change their Christian names into Islamic names to facilitate their visa process, henceforth, the verification of nationality is a bit challenging.<sup>68</sup>

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<sup>62</sup>Interview Genet Shume, program coordinator at EWLA,(Tuesday ,October 11, 2011) she notes that owing to CSO the overall work of the organization is seriously affected, regarding legal aid the incentives used to be paid to cover travel costs, etc of the volunteers are stopped.

<sup>63</sup> Ibid.

<sup>64</sup> Interview with Nabit Girma, supra note 35 and Wondimu Chama, supra note 31.

<sup>65</sup> Interview with Wondimu Chama, supra note 31.

<sup>66</sup> US TIP Report 2011, p.159.

<sup>67</sup> IRIN, supra note 1.

<sup>68</sup>B Dessalegn 'FMO country guide: Ethiopia' (2004) 22 available at <[www.forcedmigration.org/guides/fmo033/fmo033.pdf](http://www.forcedmigration.org/guides/fmo033/fmo033.pdf)> (last accessed on September 5, 2011).

Once the verification of nationality is made, then the MoFA undertake the verification of whether the victim is sent by PEAs, and if so requires the latter to facilitate the return of victim.<sup>69</sup> If the victim is not sent by PEAs the ministry facilitates the return of VoT through raising funds from Ethiopian community in destination country.<sup>70</sup> However, there are complaints raised from PEAs and victims that the assistance provided by Ethiopian missions is minimal and staff members are not necessarily caring and understanding.<sup>71</sup> In general, the lack of financial and human resources have been reported as factors affecting assistance and support to VoT.<sup>72</sup>

Returned women VoT relied heavily on the few NGOs<sup>73</sup> working with adult victims and psychological services provided by one government's Mental Health Hospital. In 2004 victims rehabilitation shelter called Addis Hiwot Centre has been established in Addis Ababa by the fund from USAID. The centre helps the victims to reintegrate in the society.<sup>74</sup> It provides VoT with, inter alia, counseling and skills training activities so that victims will not be re trafficked. However, it can only give service to persons not more than 12 persons at a time. In 2009, the Addis Ababa City Administration provided land for use by 10 female victims repatriated from Djibouti as a site for a self-help project. In addition, the Ministries of Foreign Affairs and Women's and Children's Affairs provided assistance to 75 victims repatriated from Lebanon in 2009, and assisted 12 victims repatriated from Israel with starting a cleaning business.<sup>75</sup>

Further, some NGOs such as AGAR provide vocational training to VoT to reintegrate into society.<sup>76</sup> However, it has to be emphasized that compared to the needs for services by victims of trafficking, and the challenges of returnees, the services available are very minimal, and are neither comprehensive nor immediate.<sup>77</sup> Here, it is fair to point out that the Charities and

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<sup>69</sup> ILO study, supra note 2, p.69.

<sup>70</sup> Ibid.

<sup>71</sup> Ibid.

<sup>72</sup> Ibid.

<sup>73</sup>The US TIP Report of 2011 notes that 'the government's over-reliance on donor-funded NGOs to provide direct assistance to most trafficking victims resulted in unpredictability in the availability of adequate care in the country. Many of these facilities lack sustainability as they depend on project-based funding for continued operation' *ibid*, p.159.

<sup>74</sup> The rehabilitation of victims of trafficking in group residential facilities in foreign countries: A Study Conducted Pursuant to the Trafficking Victim Protection Reauthorization Act, 2005 (2007), p.15.

<sup>75</sup> US TIP Report 2010, p.145.

<sup>76</sup> ILO study, supra note 2, p.70.

<sup>77</sup> Ibid.



Societies Proclamation<sup>78</sup> which prohibits, inter alia, foreign-funded NGOs from informing victims of their rights under Ethiopian law or advocating on their behalf, poses a negative impact on the ability of NGOs to adequately provide protective services.<sup>79</sup> It has noted that as a result of this Proclamation, for instance, the joint police-NGO identification and referral units, known as Child Protection Units (CPUs) ceased formal operation in all Addis Ababa police stations as of 2010.<sup>80</sup> This includes the CPU at the central bus terminal that identified and obtained care for 1,134 trafficked children in 2009.

#### **4.3.2.6. Access to Remedies**

While there is no separate law meant to deal with access to remedies of VoT in Ethiopia, nonetheless some provisions of the existing laws provide framework for victims of any crime to claim remedies from criminals that are also relevant for VoT.<sup>81</sup> Accordingly, the cumulative reading of Art. 101 of Criminal Code and Art. 2035 of Civil Code entitles the victim of trafficking to claim compensation from offenders of crime of trafficking.<sup>82</sup> Furthermore, Art. 2105 of Civil Code provides for compensation for moral harms.<sup>83</sup> As far as the practice is concerned, in August 2010, the Federal High Court has rendered the decision of restitution of \$3,300 to each victim for three women trafficked to china where they were forced into prostitution.<sup>84</sup> However, it is relevant to note that in the face of huge numbers of victims of trafficking in Ethiopia who faced various human rights violations, the provision of the remedial measures must be bolstered.

#### **4.3.3. Prevention of Trafficking in Women**

Although effective prosecution of trafficking cases and proper protection of trafficked persons contribute to prevention of women trafficking, addressing the root causes of the problem is

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<sup>78</sup> The Charities and Societies Proclamation No.621/2009 (hereinafter CSO Proclamation).

<sup>79</sup> US TIP Report 2010, p.145.

<sup>80</sup> US TIP Report, 2011, p.159.

<sup>81</sup> For discussion on the scope of the right of victim of crime to remedy under Ethiopian law see, generally, Khushal Vibhute, *Adjudicating and Compensating Civil Claims of Victims of Crime in Criminal Proceedings in Ethiopia* in Wondwossen, supra note 36, pp.175-202.

<sup>82</sup> Art. 101 of Criminal Code allows claiming compensation from criminal by joining civil claim with criminal suit while Art. 2035 of Civil Code of the Empire of Ethiopia Proclamation No. 165 of 1960 provides that 'a person commits an offence where he infringes any specific and explicit provision of a law, decree or administrative regulation'. And pursuant to art.2028 whosoever causes damage to another by an offence shall make it good.

<sup>83</sup> Similarly, Art.610 of the Criminal Code provides compensation for moral injury done to the injured party.

<sup>84</sup> US TIP Report 2011, p.159.

essential to eradicate trafficking in women by drying up the push factors exposing women to trafficking. Besides addressing root causative factors, prevention strategies entail conducting public awareness raising campaigns regarding the causes, process and consequence of the trafficking in women and undertaking research and data gathering about the scale of the problem and antitrafficking intervention measures available. This section seeks to expound prevention strategies undertaken in Ethiopia to eradicate trafficking in women. In so doing, the chapter attempts to analyze the available legal frameworks and practical measures adopted in an effort to do away with the problem of trafficking in women. In this connection, an attempt is made to assess prevention measures adopted in Ethiopia in light of human rights based approach standards discussed in the preceding chapter.

#### **4.3.3.1. Addressing Root Causes of Trafficking in Women**

As thoroughly discussed in chapter three of this thesis, prevention of trafficking in women naturally requires addressing the underlying root causes. Poverty, lack of education opportunities, unemployment, and gender based discrimination are identified as major causative factors of trafficking in women. This section seeks to scrutinize prevention measures adopted in Ethiopia to address the root causes of trafficking in women. Accordingly, an attempt is made to discuss to what extent the existing legal frameworks, and practical measures taken to prevent trafficking in women in Ethiopia are in line with human rights based approach standards. However, it has to be submitted at the outset that prevention is at the lowest level of all three Ps implemented in Ethiopia. The lack of comprehensive national policy or national action plan on trafficking in persons and the absence of institution<sup>85</sup> specifically mandated to deal with trafficking in persons can be cited as indication of less attention given to prevention aspect of antitrafficking measures. Even worse the existing policy frameworks do not entertain prevention of trafficking in persons as policy objectives. Having said this, the following discussion seeks to expound the available legislative framework relevant in the prevention of trafficking in women and practical measures undertaken in the country in this regard.

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<sup>85</sup>Although Inter-Ministerial Task Force on Trafficking has been established in 2004, so far it has yielded no significant achievement. For instance, a much awaited National Action Plan proposed in 2009 has not been adopted to date. See, ILO Study, *supra* note 2, p. 62.

### **a. Poverty Reduction**

In order to discuss the poverty reduction efforts to prevent trafficking in women in Ethiopia, it is worth to state what is enshrined in the Constitution in this regard. To begin with, the Constitution imposes obligation on the state to allocate ever increasing resources to provide social services such including health, education and other similar services.<sup>86</sup> The Constitution also provides guidelines to the government to formulate policy that aims at providing all Ethiopians access to public health and education, clean water, housing, food and social security.<sup>87</sup> This could be helpful to some extent in a bid to alleviate poverty and deprivation of social services, i.e., root causes of women trafficking. However, this is general constitutional guideline that needs specific laws and policies to be implemented to prevent trafficking in persons. Such measures are not yet adopted in Ethiopia in spite of the ever growing problems of trafficking in persons across the country.

On the other hand, it has to be submitted that there is no policy framework in Ethiopia that aimed at prevention of trafficking in persons. The existing policies are not couched in the way to address poverty and underdevelopment to prevent trafficking in persons. Coupled with lack of institution mandated squarely to address trafficking in persons, the absence of policy framework to address root causes of the problem leave a lot to be desired to eradicate the root causes of trafficking in women. In similar vein, it has been noted that a limited measures is taken to address poverty as the root cause of trafficking in women.<sup>88</sup>

### **b. Education Opportunities**

While the right to education is not provided explicitly in the chapter of bill of rights of the Constitution, but there are some provisions which the right can be read into.<sup>89</sup> For instance, Art. 41(3) states that “[e]very Ethiopian national has the right to equal access to ‘publicly funded social services’. Education can be considered as one of the publicly funded social services.

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<sup>86</sup> Art.41 (4) of FDRE Constitution.

<sup>87</sup> Art.90 of FDRE Constitution.

<sup>88</sup> Concluding observations of the Committee on the Elimination of Discrimination against Women, CEDAW/C/ETH/CO/6-7(July 2011), para.24.

<sup>89</sup> Sisay Alemahu, The Protection of Economic and Social Rights in the Constitution of Federal Democratic Republic of Ethiopia, *Journal of Ethiopian Law*, Vol.22, No.2, (2008).

Art.41 (4) provides that the State has the obligation to allocate an ever increasing resources to provide to the public health, education and other social services. Further, the Constitution urges the government to devise the policies that aim to provide all Ethiopians access to public health and education, clean water, housing, food and social security.<sup>90</sup> In practical terms it has been noted that the government has taken commendable measures to increase women's and girls' access to all levels of education, such as affirmative action, awareness raising, support to disadvantaged girls, and incentives for parents to send their daughters to school, in particular in rural and pastoralist areas.<sup>91</sup>

To the contrary, regarding the participation of women in education there are some shortcomings exhibited in the country. Specifically, low enrolment rates of girls in primary education in rural and pastoralist areas and in secondary and higher education, as well as in traditionally male dominated fields of technical and vocational education; the high drop-out and low retention and completion rates of girls, in particular at the primary level and the limited access of poor girls to education due to economic and socio-cultural barriers needs to be addressed to enhance participation of women in education sector.<sup>92</sup> Moreover, there is no special attention given to women and girls who are at risk of trafficking in providing education opportunities.

### **c. Employment Opportunities**

Regarding the right to employment while the Constitution does not clearly establish the right to employment incumbent on the state, nevertheless; it recognizes the right to engage freely in economic activity and to choose ones means of livelihood. The relevant provision states that every Ethiopian national has the right to engage freely in economic activity, and the right to choose his or her means of livelihood, occupation and profession.<sup>93</sup> The state is also obliged to pursue policies that aim to expand job opportunities for the unemployed and the poor and shall accordingly undertake programmes and public works projects.<sup>94</sup> Further, the state is put under

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<sup>90</sup> Art.90 (1) of the Constitution.

<sup>91</sup> CEDAW Committee, supra note 88, para.30.

<sup>92</sup> Ibid.

<sup>93</sup> Art.41 (1) &2 of the Constitution. It has to be noted that the Constitution does not provide for entitlement to employment to be sought against the state, rather than guaranteeing the right to get employment, it provides for protection to those have got jobs, read art.42 of the Constitution.

<sup>94</sup> Art.41(6) of the Constitution.

the duty to undertake all measures necessary to increase opportunities for citizens to find gainful employment.<sup>95</sup>

In a bid to enhance access to employment opportunities, particularly MoLSA is undertaking a job fair manual that attempts to provide databases of job seekers and employers. The ministry is also conducting market study to identify employment opportunities. Further, it is drafting national employment policy which if it manages to see the light of the day would be the first of its kind in Africa.<sup>96</sup>

According to the information gathered from the MoWCYA, regarding reducing unemployment of women the ministry is working on: economic empowerment of women, strengthening saving and credit services, creating market linkages, giving training on business (marketing) skills, promoting accessibility of women to socio-economic facilities, organizing exhibitions and trade fares particularly to promote the achievements of small scale and micro association (enterprises).<sup>97</sup> However, as discussed elsewhere in this chapter, the lack of employment opportunities continues to fuel the increase of trafficking in women.<sup>98</sup> It has been also noted that the disproportionately high unemployment rate is exhibited among women.<sup>99</sup> Moreover, there are no special attentions given to those at risk of trafficking in extending employment opportunities.

#### **d. Safe and Nonexploitative Migration**

In order to promote the right to movement<sup>100</sup> for employment and protect the rights and dignity of Ethiopian prospective migrant workers the legal framework has been established. Back in 1998, the Private Employment Agency Proclamation No.104/1998 to regulate the conduct of sending Ethiopian workers abroad for employment was enacted. In 2009, the Employment Exchange Proclamation revising the Private Employment Agency Proclamation is passed to

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<sup>95</sup> Ibid, Art.41 (7).

<sup>96</sup> Interview with Tsegabirhan Solomon, supra note 61.

<sup>97</sup> Interview with Abiy Epherem, Director of Public Relation Directorate of MoWCYA, (Wednesday, October 5, 2011).

<sup>98</sup>The ILO study notes that high rates of unemployment and low levels of earning is cited as the main economic reason behind trafficking in persons in the country, see ILO Study, p.21.

<sup>99</sup> CEDAW Committee, supra note 88, para.32.

<sup>100</sup>Art.32 (1) of the Constitution recognizes that any Ethiopian national has the right to leave the country at any time he wishes to.

enhance the protection of the rights, safety and dignity of Ethiopian workers going abroad for employment, and to strengthen the mechanism for monitoring and regulating the employment exchange services.<sup>101</sup> Accordingly, the new proclamation outlaw extraneous commission fees, requires agencies or their local affiliates to maintain a shelter for abused workers in each destination country, and increases agencies' cash and bond deposits as collateral in the event the worker's contract is broken. The MoLSA is mandated to implement the duties enshrined under the proclamation. Accordingly, it is entrusted with the mandate to oversee the recruitment and sending of workers abroad by PEAs. Plus in addition to ensuring that the requirements set by Proclamation are fulfilled before license is issued, MoLSA has the authority to assign inspectors to oversee that the operations of PEAs are in line with the requirements laid down under article 35 of the Proclamation. PEAs are also required to report to MoLSA regularly on the profile, number and employment of migrant workers. They also have the duty to notify MoLSA if a migrant worker that they have deployed abroad has sustained a bodily injury or died. Moreover, MoLSA together with IOM is establishing a database to track PEAs, as well as worker complaints.<sup>102</sup>

However, the study reveals that there are some irregularities and loopholes in the operation of PEAs which is indicative of some PEAs involvement in trafficking in persons. These are: receipt of payments and benefits regardless of an existing code of ethics and legal prohibition; lack of transparency with regard to their commission from employers and destination country agencies; their claim to cover all expenses, including those that should be covered by migrant workers; inadequate protection mechanisms for migrant workers they send; and their partnership with destination-point agencies and individuals who are known for human trafficking or are working closely with traffickers.<sup>103</sup> This calls for strengthening the monitoring and follow up of operation of PEAs.

The predeparture orientation is regularly conducted by MoLSA to prospective migrant workers. Although boring and one way traffic, predeparture orientation is given for prospective migrant workers regarding causes, process and consequences of trafficking in persons. And how to avoid

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<sup>101</sup> Preamble of Employment Exchange Proclamation.

<sup>102</sup> US TIP Report, 2010, p.146.

<sup>103</sup> ILO study, supra note 2, p.ix.

risk of human trafficking and labor exploitation.<sup>104</sup> It has been reported that between July and December 2009, MoLSA provided three-hour pre-departure orientation to 5,355 migrating workers using two full-time counselors.<sup>105</sup>

While Art. 36 of Employment Exchange Proclamation states that MoLSA shall, in consultation with the MoFA, assign labour attachés as may be required, to ensure the protection of the rights, safety and dignity of workers deployed abroad. However, no labour attaché has been assigned in Ethiopian embassies to date. The state minister of MoLSA noted that the request for appointment of labor attaché has been turned down by MoFA arguing that the staff of the embassies can handle the task of labor attaché.<sup>106</sup>

Further, labor agreements have been concluded with two countries: Kuwait and Sudan.<sup>107</sup> There are some bilateral labor agreements in the pipeline. It has been noted, for instance, that there will be bilateral labor migration agreement with Yemen government very soon.<sup>108</sup> In a similar vein, it is reported that there is talks with Saudi Arabia to sign bilateral labor agreement in the near future.<sup>109</sup> However, it is worth to reiterate that it has been pointed out that the government of Ethiopia does not go far enough in engaging destination countries governments in an effort to improve protections for Ethiopian workers and obtain protective services for victims.<sup>110</sup>

#### **e. Addressing Gender Based Discrimination**

The appropriate place to do away with gender based discrimination is to uphold equality and non-discrimination principles in the Constitution. Accordingly, the FDRE Constitution recognizes equality of all persons before the law.<sup>111</sup> The Constitution also states unequivocally the right to equality of women with men in enjoying the rights and protection provided under the Constitution.<sup>112</sup> It further imposes duty on the government to ensure equal opportunity of citizens to improve their economic conditions and to promote equitable distribution of wealth among

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<sup>104</sup> Observation at MoLSA predeparture orientation hall, on September 21, 2011.

<sup>105</sup> US TIP Report 2010, p.146.

<sup>106</sup> Reporter, (Amharic) on Sunday February 13, 2003 E.C.

<sup>107</sup> Interview with Zaleke Hirpa, supra note 52.

<sup>108</sup> ILO, study supra note 2, p.64

<sup>109</sup> Reporter, (Amharic) on Sunday September 18, 2011.

<sup>110</sup> US TIP Report 2011, p.159.

<sup>111</sup> Art. 25 of the Constitution

<sup>112</sup> Ibid, Art.35(1)

them. On top of this, the Constitution provides affirmative action,<sup>113</sup> as substantive equality to women to enable them to compete equally with men in their economic, political and social life. Affirmative action is guaranteed for women in order to offset the injustice of the old order. It is aimed at providing special attention to women so as to enable them compete and participate on the basis of equality with men in political, social and economic life as well as in public and private institutions.<sup>114</sup> Further, the women are guaranteed equal right to acquire, administer, control, use and transfer property.<sup>115</sup> In particular, they have equal rights with men with respect to use, transfer, administration and control of land.<sup>116</sup> They shall also enjoy equal treatment in the inheritance of property.<sup>117</sup> Women's right to equality in access to employment is entrenched under the Constitution. The relevant provision states that: "Women shall have a right to equality in employment, promotion, pay, and the transfer of pension entitlements."<sup>118</sup> Similarly, it states that women workers have the right to equal pay for equal work.<sup>119</sup> Moreover, the Labour Proclamation No.377/2003 prohibits employment discrimination on grounds of sex. Article 87 provides that 'women shall not be discriminated against as regards employment and payment, on the basis of their sex'.

Apart from this, the Constitution seeks to proscribe laws, customs and practices that discriminate against women.<sup>120</sup> Consequently, any harmful practices which in one way or another contribute to women trafficking such as early marriage and forced marriage are outlawed by the highest law of the land. Similarly, the Criminal Code penalizes harmful practices such as early marriage<sup>121</sup> and marriage by abduction.<sup>122</sup>

However, the practice of gender based discrimination still continues to drive Ethiopian women and girls to trafficking in persons. The ILO study notes that practices of gender discrimination have created 'a climate where migration of women is encouraged and the practice of trafficking

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<sup>113</sup>Ibid, Art. 35(3)

<sup>114</sup> Ibid.

<sup>115</sup> Ibid, Art.35 (7).

<sup>116</sup> Ibid.

<sup>117</sup> Ibid.

<sup>118</sup> Ibid, Art.35 (8).

<sup>119</sup> Ibid, Art.42(1)(d).

<sup>120</sup> Ibid, Art.35 (4).

<sup>121</sup> Art. 648 of the Criminal Code.

<sup>122</sup> Art. 587 of the Criminal Code.



in women is perceived as morally acceptable.<sup>123</sup> Similarly, the CEDAW Committee points out that the discrimination against women is still perpetuated in the country and are reflected in women's disadvantageous and unequal status in many areas, including in public life and decision making, economic life, sexual and reproductive health, and in marriage and family relations.<sup>124</sup>

#### **4.3.3.2. Public Awareness Raising Campaigns**

Public awareness raising campaigns have been conducted by governmental, intergovernmental and non-governmental organization regarding the causes and consequences of trafficking in persons for several years. While MoLSA, MoWCYA and MoJ engage in public awareness raising campaign,<sup>125</sup> it is the IOM that is doing the lion's share in this respect. Accordingly, starting from 2001 onwards, IOM conducted several public awareness raising campaigns on legal migration and the risks of trafficking for a number of years using tools such as radio programs, drama, and posters.<sup>126</sup> Nonetheless, most of the projects save for the weekly 20-minute radio program on Ethiopian Radio aired on Friday, have phased out owing to constraints in financial resources.<sup>127</sup> At this juncture, it is relevant to reiterate that the CSO law seriously hampers the capacity of NGOs to raise awareness regarding women trafficking and promotion and protection of women's rights.<sup>128</sup> This suggests that a lot have to be done to increase the awareness raising campaigns to alert the potential victims of trafficking in persons as the problem is on the rise in the country.

#### **4.3.3.3. Research and Data Collection**

There is a significant dearth of research and data on trafficking in persons in Ethiopia. According to the finding of recent ILO study there is lack of detailed and regular research and surveys that document the prevalence of trafficking, the routes and patterns of trafficking, methods used by traffickers, services available, measures taken by the Government and non-governmental organizations, and the impacts of the responses.<sup>129</sup> Similarly, the CEDAW Committee noted that

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<sup>123</sup> ILO study, supra note 2, p.22.

<sup>124</sup> CEDAW Committee, supra note 88, para.18.

<sup>125</sup> Interview Tsegabirhan Solomon; supra note 61; Abiy Epherem, supra note 97 and Nabit Girma, supra note 35.

<sup>126</sup> ILO study, supra note 2, p.65.

<sup>127</sup> Ibid.

<sup>128</sup> Interview with Genet Shume, supra note 62.

<sup>129</sup> ILO study, supra note 2, p.65.

it is concerned about the lack of data in relation to trafficking of women and children for forced labour and sexual exploitation.<sup>130</sup>

### **Conclusion**

This chapter analyzed antitrafficking measures adopted in Ethiopia to counteract trafficking in women. It showed that while trafficking in women is widespread and causing multiple human rights violations, nonetheless the antitrafficking measures are not adequately devised to address the problem effectively. While there is no comprehensive legislative framework enacted to deal with the trafficking in persons, the crime is proscribed by the existing scattered various provisions of the laws, including the Constitution, Criminal Code and Employment Exchange Proclamation. But the lack of comprehensive legal definition of trafficking in persons and the narrow scope of criminalization of trafficking particularly in criminal law can be cited as draw backs in legislative frameworks in the prosecution of trafficking cases.

Regarding the investigation and prosecution of trafficking cases, it is shown that, while there is no specialized institution established to deal with trafficking in all its aspects, there are specialized investigation and prosecution (adjudication) units in federal judiciary and federal police commission. Accordingly, while the Federal High Court's 11th Criminal Bench is devoted to hear all cases of trafficking reported and investigated in Addis Ababa, the Federal Police established a Human Trafficking and Narcotics Section under its Organized Crime Investigation Unit to investigate trafficking in persons cases.

Contrary to this, it is shown that there is low rate of prosecuting trafficking offenders. The responsible factors are: the low rate of reporting the commission of offence, lack of evidence to hold offenders responsible, work load on law enforcement agencies and judiciary, low level of victim cooperation, lack of coordination with regional law enforcement agencies, and less attention given to internal trafficking in persons. Moreover, while the punishments set by law are more or less sufficiently stringent, in practice, often, the lesser penalties are handed down. This is due in part of relatively strong financial capacity of the majority of suspects who are able to evade from criminal liability. While the Ethiopian criminal code contemplates about confiscation of proceeds and instrumentalities of criminal activities, nonetheless the practice shows no record

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<sup>130</sup> CEDAW Committee, *supra* note 88; similar concern has been raised by Human Rights Committee, para.11, CCPR/C/ETH/1, Concluding Observation on Ethiopia, (July 2011).

of asset confiscation with regard to trafficking cases. Further, law enforcement officials are given capacity building training in a piecemeal and limited level. In general, measures for the effective prosecution of trafficking cases that seek to end impunity and deliver justice to the victims are not yet established.

It has also been discussed that limited and infrequent protection services are provided to VoT. In particular, although identification of VoT is considered as a starting point to provide protection services, in Ethiopia there exists no proactive and coordinated identification mechanism. Besides, there is low level of coordination between criminal justice agencies and victim support agencies in the process of identification of VoT. Consequently, the referral mechanism between criminal justice and victim support agencies (mainly NGOs) is of negligible significance. In terms of actual protection services a limited psychological, medical, material and legal assistance is provided to VoT. The MoFA provides temporary shelter for VoT in Kuwait and Lebanon via its embassies. But it has been noted that the resources of running the shelters is very scarce. Besides, the Ethiopian government provides limited legal assistance to VoT in destination countries unlike some labor sending countries. This could partly be attributed to the lack of bilateral labor agreements with most of destination countries. But the situation is relatively better at home as far as providing legal information to VoT is concerned. Although on limited level some government institution and NGOs provide legal aid to VoT to vindicate their cases in court of law. The MoFA in collaboration with IOM and UN Refugee agencies undertake to facilitate the repatriation of VoT from destination countries including mainly Middle East countries. But it is noted that there are complaints raised from PEAs and victims that the assistance provided by Ethiopian missions is minimal and staff members are not necessarily caring and understanding. While some NGOs offer rehabilitation and reintegration protective services, the CSO proclamation negatively impacts their operation. On top of this, the lack of repatriation fund and protection center for VoT leave several trafficked persons to the risk of re-trafficking. As far access to remedies is concerned, while there is no separate law meant to deal with access to remedies of VoT in Ethiopia, some provisions of the existing laws provide framework for victims of any crime to claim remedies from criminals that are also relevant for VoT.

Moreover, this chapter has discussed that the prevention is perhaps at the lowest level of all the three Ps namely prosecution, protection and prevention antitrafficking strategies implemented in Ethiopia. The lack of comprehensive policy or national action plan on trafficking in persons and the absence of institution specifically mandated to deal with trafficking in persons is cited as indication of less attention given to prevention aspect of antitrafficking measures. In addition, even the existing policy regimes do not entertain prevention of trafficking in persons as policy objectives. It is also argued that while the Constitution stipulates certain obligations and policy guidelines that are worth to address the root causes of trafficking, there remains a lot to be done to realize constitutional aspirations and entitlements.

Further, it is shown that there are some commendable measures taken to promote the right to movement for employment and protect the rights and dignity of Ethiopian prospective migrant workers. For example, the Employment Exchange Proclamation is passed to enhance the protection of the rights, safety and dignity of Ethiopian workers going abroad for employment, and to strengthen the mechanism for monitoring and regulating the employment exchange services. The MoLSA is mandated to implement the duties enshrined under the proclamation. Accordingly, it is entrusted with the mandate to oversee the recruitment and sending of workers abroad by PEAs. Although boring and one way traffic, predeparture orientation is given for prospective migrant workers regarding causes, process and consequences of trafficking in persons. And how to avoid risk of human trafficking and labor exploitation. Further, labor agreements have been concluded with two countries: Kuwait and Sudan. There are some bilateral labor agreements in the pipeline.

However, there exists still significant draw backs in monitoring the operation of PEAs and ensuring the protection of migrants workers rights in destination countries. The irregularities and loopholes in operation of PEAs, reluctance of engaging with destination countries to protect the rights and dignity of Ethiopian migrant workers, and the failure of appointing labor attaché in overseas embassies are discussed as the main factors behind perpetuation of trafficking and exploitation of many Ethiopian women and girls.

Finally, the lack of data and research on the scale of the problem and antitrafficking measures available, as well as a low level of the awareness raising campaign to alert potential victims of trafficking call for reinvigorating antitrafficking measures in this respect.

To sum up, it is fair to say that, while there some positive initiatives and efforts, antitrafficking measures adopted in Ethiopia as discussed in this chapter fall short of human rights based antitrafficking approach standards. The lack of legislative, policy and institutional frameworks coupled with deficiencies in prosecution, protection and prevention strategies prove this assertion. Therefore, it is a high time to adopt A Human Rights Based Approach Antitrafficking Response in the country to see the effective and meaningful eradication of trafficking in women.

## **Chapter Five: Conclusion and Recommendations**

### **5.1. Conclusion**

Human trafficking, which is considered as a contemporary form of slavery, is affecting thousands of persons across the entire world. While boys and men can be exposed to trafficking, the majority of victims of modern day slavery happen to be women and girls. After many false starts, the international community has managed to come up with comprehensive international legal rules to address the problem of trafficking in persons in 2000. Accordingly, the Trafficking Protocol, *inter alia*, has broadly and comprehensively defined trafficking in persons for the first time at the international level. The definition consists three constituent elements: action, means and purposes which have to be established to prove the commission of trafficking in persons. Importantly, it expands the scope of the definition to encompass all victims regardless of age and sex by proscribing trafficking in persons in general. In other words, it prohibits not only trafficking in children and women but also trafficking in men as well. Further, it declares that the consent of the victim is irrelevant as long as means (use of force, abduction, fraud, deception, etc) of trafficking are present. So it is no longer tenable to invoke the consent of the victims to be exonerated from criminal liability of the crime of trafficking crime as stipulated under the Trafficking Protocol.

Overtime the conceptual discussion on human trafficking has been to strike the distinction between trafficking and smuggling in human beings. It is shown in this study that while an attempt is made to draw the distinction between trafficking and smuggling in UN Protocols and scholarly writings by identifying certain distinguishing features, it is argued in this thesis that there is only a thin line between the two criminal activities. Hence, it is commended that unless a thorough and competent investigation is undertaken to identify the smuggled and trafficked persons, it is in the best interest of the protection of human rights to err on the side of caution and to presume all illegal immigrants as potential victims of trafficking crime.

The most important issue discussed in this thesis is how to approach counter-trafficking measures in general, and in Ethiopia in particular. The two main approaches identified to combat trafficking in persons are: criminal justice approach and human rights based approach. While the former approach considers human trafficking predominantly as crime and immigration issue that

should be addressed by tightening law enforcement measures, the latter views human trafficking as first and foremost a human rights issue requiring responses anchored on protection and promotion of human rights.

A criminal justice approach fails to effectively address trafficking in persons for various reasons. While it can be essential to address the process and consequences of human trafficking, it is not best equipped to up root the structural causative factors responsible for perpetuation of human trafficking. Contrary to this, A Human Rights Based Approach by underscoring the primacy of human rights has the potential of eradicating human trafficking through addressing both the consequences and causes of human trafficking. In the first place A Human Rights Based Approach conceptualizes human trafficking as consequence and causes of human rights violations: It provides that antitrafficking measures have to be informed and inspired by the promotion and protection of human rights. Accordingly, the human rights norms and principles should guide the prosecution, protection and prevention antitrafficking strategies.

A Human Rights Based Approach Antitrafficking Response is largely drawn from international human rights norms and principles. As such under a human rights-based approach, every aspect of the national, regional and international response to trafficking is anchored in the rights and obligations established by international human rights law. Thus, national governments are required to observe their obligations derived from international human rights law in devising and executing anti-trafficking response informed by A Human Rights Based Approach. Henceforth, Human Rights Based Approach antitrafficking standards requires effective prosecution of trafficking cases, proper protection services to victims of trafficking, prevention root causes of trafficking in persons.

It is argued in this thesis that A Human Rights Based Approach antitrafficking which meet the standards discussed in chapter three of the thesis is essential to combat trafficking in women for any country. This thesis thoroughly analyzed antitrafficking measures adopted in Ethiopia to counteract trafficking in women. It showed that while trafficking in women is widespread and causing multiple human rights violations, the antitrafficking measures are not adequately devised to address the problem effectively. While there is no comprehensive legislative framework enacted to deal with the trafficking in persons, the crime is proscribed by the existing scattered various provisions of the laws, including the Constitution, Criminal Code and Employment

Exchange Proclamation. But the lack of comprehensive legal definition of trafficking in persons and the narrow scope of criminalization of trafficking particularly in criminal law can be cited as draw backs in legislative frameworks in the prosecution of trafficking cases.

Regarding the investigation and prosecution of trafficking cases, it is shown that, while there is no specialized institution established to deal with trafficking in all its aspects, there are specialized investigation and prosecution (adjudication) units in federal judiciary and federal police commission. Accordingly, while the Federal High Court's 11th Criminal Bench is devoted to hear all cases of trafficking reported and investigated in Addis Ababa, the Federal Police established a Human Trafficking and Narcotics Section under its Organized Crime Investigation Unit to investigate trafficking in persons cases.

Contrary to this, it is shown that there is low rate of prosecuting those involved in the trafficking of persons. The responsible factors are: the low rate of reporting the commission of offence, lack of evidence to hold offenders responsible, work load on law enforcement agencies and judiciary, low level of victim cooperation, lack of coordination with regional law enforcement agencies, and less attention given to internal trafficking in persons. Moreover, while the punishments set by law are more or less sufficiently stringent, in practice, often, the lesser penalties are handed down. This is due in part of relatively strong financial capacity of the majority of suspects who are able to evade from criminal liability. While the Ethiopian criminal code contemplates about confiscation of proceeds and instrumentalities of criminal activities, nonetheless the practice shows no record of asset confiscation with regard to trafficking cases. Further, law enforcement officials are given capacity building training in a piecemeal and limited manner. In general, measures for the effective prosecution of trafficking cases that seek to end impunity and deliver justice to the victims are not yet established.

It is also discussed that limited and infrequent protection services are provided to VoT. In particular, although identification of VoT is considered as a starting point to provide protection services, it is argued that in Ethiopia there exists no proactive and coordinated identification mechanism. Besides, there is low level coordination between criminal justice agencies and victim support agencies in the process of identification of VoT. Consequently, the referral mechanism between criminal justice and victim support agencies (mainly NGOs) is of negligible significance.



In terms of actual protection services a limited psychological, medical, material and legal assistance is provided to VoT. The MoFA provides temporary shelter for VoT in Kuwait and Lebanon via its embassies. But it has been noted that the resources of running the shelters is very scarce. Besides, the Ethiopian government provides limited legal assistance to VoT in destination countries unlike some labor sending countries. This could partly be attributed to the lack of bilateral labor agreements with most of destination countries. But the situation is relatively better at home as far as providing legal information to VoT is concerned. Although on limited level some government institution and NGOs provide legal aid to VoT to vindicate their cases in court of law.

Further, it is noted that the MoFA in collaboration with IOM and UN Refugee agencies undertakes to facilitate the repatriation of VoT from destination countries including mainly Middle East countries. But it is mentioned that there are complaints raised from PEAs and victims that the assistance provided by Ethiopian missions is minimal and staff members are not necessarily caring and understanding. Regarding reintegration of VoT, while some NGOs offer rehabilitation and reintegration protective services, the CSO proclamation negatively impacts their operation. On top of this, the lack of repatriation fund and protection center for VoT leave several trafficked persons to the risk of re-trafficking. As far access to remedies is concerned , while there is no separate law meant to deal with access to remedies of VoT in Ethiopia, some provisions of the existing laws provide framework for victims of any crime to claim remedies from criminals that are also relevant for VoT.

Moreover, this thesis has discussed that the prevention is perhaps at the lowest level of all the three Ps namely prosecution, protection and prevention antitrafficking strategies implemented in Ethiopia. The lack of comprehensive policy or national action plan on trafficking in persons and the absence of institution specifically mandated to deal with trafficking in persons is cited as an indication of less attention given to prevention aspects of antitrafficking measures. In addition, even the existing policy frameworks do not entertain the prevention of trafficking in persons as policy objectives. It is also argued that while the Constitution stipulates certain obligations and policy guidelines that are relevant to address the root causes of trafficking, there remains a lot to be done to realize constitutional aspirations and entitlements.

Further, it is shown that there are some commendable measures taken to promote the right to movement for employment and protect the rights and dignity of Ethiopian prospective migrant workers. For example, the Employment Exchange Proclamation is passed to enhance the protection of the rights, safety and dignity of Ethiopian workers going abroad for employment, and to strengthen the mechanism for monitoring and regulating the employment exchange services. The MoLSA is mandated to implement the duties enshrined under the proclamation. Accordingly, it is entrusted with the mandate to oversee the recruitment and sending of workers abroad by PEAs. Although boring and one way traffic, predeparture orientation is given for prospective migrant workers regarding causes, process and consequences of trafficking in persons. And how to avoid risk of human trafficking and labor exploitation. Further, labor agreements have been concluded with two countries: Kuwait and Sudan. There are some bilateral labor agreements in the pipeline.

However, there exists still significant draw backs in monitoring the operation of PEAs and ensuring the protection of migrants workers rights in destination countries. The irregularities and loopholes in operation of PEAs, reluctance of engaging with destination countries to protect the rights and dignity of Ethiopian migrant workers, and the failure of appointing labor attaché in overseas embassies are discussed as the main factors behind perpetuation of trafficking and exploitation of many Ethiopian women and girls.

Finally, the lack of data and research on the scale of the problem and antitrafficking measures available, as well as the low level of awareness raising campaign to alert potential victims of trafficking call for reinvigorating antitrafficking measures in this respect.

In sum, it is fair to say that, while there are some positive initiatives and efforts, antitrafficking measures adopted in Ethiopia as discussed in this thesis fall short of Human Rights Based Approach antitrafficking standards. The lack of legislative, policy and institutional frameworks coupled with deficiencies in prosecution, protection and prevention strategies prove this assertion. Therefore, it is a high time to adopt A Human Rights Based Approach antitrafficking response in the country to see the effective and meaningful eradication of the trafficking in women.

## 5.2. Recommendations

After having discussed above that antitrafficking measures adopted in Ethiopia fall short of human rights based approach antitrafficking response, the following recommendations, with no particular order of priority, are made.

- Adopting comprehensive antitrafficking law that is based on a human rights approach providing for the primacy of human rights in prosecution, protection and prevention of trafficking is necessary.
- Adopting a comprehensive antitrafficking national policy framework to guide the overall effort to combat trafficking in women in a coordinated and holistic manner is called for.
- Establishing institution mandated exclusively to deal with the combating of trafficking in persons.
- Concluding bilateral labour agreements with at least major destination countries.
- Strengthening coordination between criminal justice agencies and victim support agencies to enhance the prosecution of traffickers and protection of victims of trafficking.
- Facilitating alternative employment opportunities available at home to women and girls so that they are not forced to fall prey of traffickers.
- Providing regular and systematic capacity building training to law enforcement agencies to enhance understanding on trafficking in persons.
- Improving the quality of investigation, and prosecution of trafficking cases.
- Appointing labor attaché in Ethiopian embassies.
- Strengthening the monitoring and inspection of PEAs.
- Improving the cooperation with destination countries in combating of Trafficking in Persons and protection of the rights of migrant workers.
- Undertaking data collection and nationwide research on the scale, causes, and consequence of trafficking, and measures to combat trafficking in women.
- Strengthening coordination between federal and regional law enforcement agencies to enhance the prosecution of trafficking cases.
- Ratifying international legal instruments relevant to combat trafficking in women including Organized Crime Convention and Trafficking Protocol.
- Taking proactive measures against traffickers by law enforcement agencies.

- Paying due attention to combat internal trafficking which feeds transnational trafficking in women.
- Establishing protection center that facilitate the effective physical, psychological, social and economic recovery of victims and allocating fund for rehabilitation and reintegration of VoT to avoid re trafficking.
- Creating favorable environment for NGOs to enhance their participation in prevention and protection of trafficking in women including amending charity and civil society proclamation.
- Enhancing awareness raising particularly to the potential victims of trafficking regarding the risk of trafficking.
- Improving penalty handed to traffickers, making it commensurable with the gravity of the crime and harm caused.
- Ensuring the provision of temporary shelter for victims of trafficking and exploited migrant workers both in countries of destination and Ethiopia.
- Undertaking comprehensive effort to promote the rights of vulnerable groups, inter alia, access to education, information, employment and other social services, the right to equality and to be protected against gender based discrimination.
- Establishing coordination and cooperation with neighboring countries to enhance the effective eradication of trafficking in women.

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