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Migrant Workers Rights under the Ethiopian Legal System

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Introduction- The FDRE Constitution clearly states that freedom of movement as one of the basic human rights is protected in Ethiopia (Art 32). Using this right many Ethiopians have and are moving from place to place for earning a living or various other reasons within the country and abroad. Ministry of Labour and Social Affairs (MoLSA) estimates that around 1.5 million Ethiopians had left the country illegally between the years 2008 and 2014. While, 480,480 Ethiopians went to Arab countries legally during these years.¹ It is only a recent phenomenon that the 30 Ethiopian migrant workers were beheaded in Libya by ISIS, whose evil act put all Ethiopians in deep sorrow. Furthermore, when terrible stories and the sufferings of a huge number of Ethiopians particularly women living and working in Middle East countries had become common phenomena, the government had banned (Human Rights Watch, 2012) the travel for Middle East countries with a view to protecting its citizens from harsh treatments and sufferings in the hands of illegal Foreign Employment agencies and irresponsible employers as well. Following these and other similar events the Ethiopia government has taken and is taking different legal, political and practical measures that aimed at protecting Ethiopia migrant workers abroad. The main objective of this term paper is, therefore, to critically evaluate the Ethiopia legal system in respect to the protection it makes available to the rights of migrant workers.

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Migrant Workers Rights under the Ethiopian Legal System

Kidus Meskele Ashine

I. INTRODUCTION

The FDRE Constitution clearly states that freedom of movement as one of the basic human rights is protected in Ethiopia (Art 32). Using this right many Ethiopians have and are moving from place to place for earning a living or various other reasons within the country and abroad. Ministry of Labour and Social Affairs (MoLSA) estimates that around 1.5 million Ethiopians had left the country illegally between the years 2008 and 2014. While, 480,480 Ethiopians went to Arab countries legally during these years.¹

It is only a recent phenomenon that the 30 Ethiopian migrant workers were beheaded in Libya by ISIS, whose evil act put all Ethiopians in deep sorrow. Furthermore, when terrible stories and the sufferings of a huge number of Ethiopians particularly women living and working in Middle East countries had become common phenomena, the government had banned (Human Rights Watch, 2012) the travel for Middle East countries with a view to protecting its citizens from harsh treatments and sufferings in the hands of illegal Foreign Employment agencies and irresponsible employers as well. Following these and other similar events the Ethiopia government has taken and is taking different legal, political and practical measures that aimed at protecting Ethiopia migrant workers abroad. The main objective of this term paper is, therefore, to critically evaluate the Ethiopia legal system in respect to the protection it makes available to the rights of migrant workers.

II. BRIEF OVERVIEW ABOUT MIGRATION, MIGRANT WORKERS AND INTERNATIONAL PROTECTING TO THEIR RIGHTS

AS long as human beings exist in the earth they migrate and, share goods, cultures and ideas across the globe.² In this era of globalization, almost all countries in the world are virtually involved in migration either as countries of origin, destination, or transit or all three³

According to the 2015 World Bank report the number of international migrants is estimated at 247 million in 2013, significantly larger than the previous estimate of 232 million, and is expected to surpass 250 million in 2015.⁴ According to ILO estimation 105 million people are migrant workers. Among these around 50 million are undocumented or irregular.⁵

The term "Migrant worker" has been defined as a person who is to be engaged, is engaged or has been engaged in a remunerated activity in a state of which he or she is not a national.⁶

Both countries of origin and countries of destinations are beneficiary from migration. For countries of origin, migration, reduce underemployment. It also prospects them of remittances. For countries of destination, migration can be a solution to labour shortages and it usually provides access to relatively cheap labour.⁷ This benefit cumulated with human rights issue requires countries to protect migrant workers. "Migrants can make their contribution when their fundamental rights and freedoms are respected and protected. This primarily requires States' active enforcement of international human rights and labor standards".⁸ Practically, however, because of their status of being 'foreigners' and non-nationals of the country they are working in, migrant workers are sustaining violations of their rights. The situation is worst when they are undocumented people or illegal migrants.⁹ As with all vulnerable groups migrant workers

² UNITED NATIONS,(2015),Combating violence against migrants: Criminal justice measures to prevent, investigate, prosecute and punish violence against migrants, migrant workers and their families and to protect victims

³ Marius Olivier and Avinash Govindjee, "Labour rights and social protection of migrant workers: In search of a coordinated legal response", (Barcelona, Spain, 2013)

⁴ world bank, migration and development brief, 2015, from <http://www.worldbank.org/migration>.

⁵ Marius Olivier and Avinash Govindjee, supra note 2

⁶ International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990) Article 1)

⁷ Wouter van Ginneken, "Social protection for Migrant workers: National and international Policy challenges" European Journal of Social Security, Volume 15 (2013), No. 2, p.210

⁸ Yeshiwas Degu Belay, "Migration and State Responsibility: Ethiopian Domestic Workers in Lebanon, Ethiopia" International Journal of Scientific and Research Publications, Volume 4, Issue 5, 2014, p.2

⁹Id.

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¹ Protecting labour migration through legal means, The Ethiopia Herald, vol. XIX, No.67 29August 2015

are in need of special protection given that they are outside the jurisdiction of their state of nationality.¹⁰

Migrants in an irregular situation are even more vulnerable, as they can be denied access to public services in law, or are unable to access such services in practice through fear of detection.¹¹ This scenario may lead to slavery-like working conditions. Since they are at the mercy of their employer, the issue receives more attention. "Combating violence against migrants requires that legislative, policy and practical measures be taken in accordance with relevant norms and standards governing criminal justice response as well as human rights norms and standards".¹²

The issue of migrant workers' human rights has been the subject of increasing concern throughout the UN system in the recent years. Numerous international legal instruments are established to provide parameters for the protection of human and labor rights that can be applicable to all migrant workers¹³

Generally, international law rules provide a dual form of protection for migrants: general protection under human rights treaties applicable to all persons and specific protection applicable to migrants. Thus, migrants, like all rights holders, are protected by the International Bill of Human Rights, as well as a number of other international instruments note.¹⁴ The two ILO instruments that explicitly provides for the protection of migrant workers are the Migration for Employment Convention of 1949 (No. 97) and the Migrant Workers Convention of 1975 (No. 143) as well as their accompanying Recommendations. Convention No. 97 is applicable for legal migrants and focuses on recruitment and working conditions of migrants and their equal treatment with citizens of the state Whereas, the Convention No.143 addresses issues of migrants under abusive conditions and provides specific rights.

With regard to coverage for migrant workers in a country depend on whether such country has ratified the ILO and UN Conventions on migrant workers, and, in particular, what it has defined in its national legislation. Ethiopia, being a party to relevant UN and ILO conventions, recently, in addition to revising the existing one, has enacted new law, to enforce the migrant workers rights as provided under these international instruments.

Legal Framework that protect migrant workers in Ethiopia comprises international conventions that ratified by Ethiopia, International customary laws (if any) and domestic laws.

¹⁰ Omar Grech, " Migrants' and Refugees' Rights: A Brief International Law Perspective"

¹¹ Marius Olivier and Avinash Govindjee, supra note

¹² United Nation, supra note 1

¹³ 7Yeshiwas, supra note 7 p.3

¹⁴ United Nation, supra note 1

¹⁵ ILO, "Trafficking in Persons Overseas for Labour Purposes: The case of Ethiopian domestic workers, Addis Ababa, 2011, p.75

III. LEGAL REGIMES FOR PROTECTION OF MIGRANT WORKERS

a) *International Regimes applicable in Ethiopia*

Article 9 of the FDRE Constitution stipulates that international instruments ratified by Ethiopia became part of the law of the land.

Ethiopia has ratified and hence has made part of the law of the land many international instruments that have direct and indirect importance to protection of migrant workers. Though Ethiopia is a state party to many UN & ILO conventions, it has not ratified the following important international instruments that give maximum protection to migrant workers¹⁵

- Palermo Protocol, the first international instrument that provided an internationally accepted definition of trafficking in persons.
- The two ILO conventions on migrant workers: the Migration for Employment Convention of 1949 (No. 97) and the Migrant Workers Convention of 1975 (No. 143)
- The UN Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICMW)

b) *National regimes*

Under this section national laws that have direct relevance to migration will be disused briefly.

i. *FDRE Constitution*

Art 6 & 33 of the Constitution deals with the issue of nationality. While Art 6 provides about acquiring Ethiopian nationality, Art 33 gives protection to rights of Ethiopian nationality. According to Art 6(1) of the constitution "Any person of either sex shall be an Ethiopian national where both or either parent is Ethiopian". This right is protected by the constitution so that no Ethiopian national shall be forced to deprive it against his or her will. And he or entitled to the enjoyment of all rights, protection and benefits derived from Ethiopian nationality as prescribed by law (Art 33(1 & 2)).

Furthermore, freedom of movement is guaranteed under Art 32 of the constitution. Accordingly, any Ethiopian or foreign national lawfully in Ethiopia can move, choose his/her residence, within the national territory, and can leave the country at any time he/she wishes. Also any Ethiopian national has the right to return to his/her country.

More importantly, trafficking in human beings for whatever purpose and forced or compulsory labour is prohibited under Art 18 (2 & 3) of the constitution.

ii. *Labour Proclamation no 377/2003*

This proclamation, being the major legal regime that regulates domestic labour relation, has given supplementary and gap filling role in overseas

employment issues. The Labour Proclamation further refers in its Preamble to international labour standards ratified by Ethiopia.

However, it excludes domestic workers from coverage. Although Article 3 (sub article 3) of the proclamation states that the council of ministries will issue a special, regulation, no such kind of regulation is issued so far. "This exclusion is contrary to CEDAW's demand of states to abolish all other private instruments of any kind with a legal effect which is directed at restricting the legal capacity of women shall be deemed null and void"¹⁶

Though there are considerable numbers of internal migrant workers, the Ethiopia legal system does not give special attention to them. Because of this they, particularly these domestic migrant workers are often abused.¹⁷

iii. *Employment Exchange Services Proclamation no 632/2009*

This proclamation, which repealed the Private Employment Agency Proclamation No. 104/1998, contains the major legal regimes of Ethiopia that protects migrant works. The proclamation, among other things, define the role of public and private employment agencies in employment exchange, aimed at providing protection of the rights, safety and dignity of Ethiopians going abroad for employment, strengthen the mechanism for monitoring and regulating domestic and overseas employment exchange services.

Among others, Art 16(4) authorizes the Ministry of labour and social affairs, to approve and register contractual agreements that made between a private employment agency sending worker abroad and worker. The proclamation also contains number of provisions that regulating about the obligations and responsibilities of private employment agencies that are legally engaged in business of sending workers for employment abroad. Interestingly and contrary to the accepted principles of evidence rules, the proclamation under its Art 26 shifts the burden of proof to respondents. It says "Where a worker who is deployed abroad by a private employment agency institutes an action relating to conditions of work, the agency or the employer shall, if it challenges the allegation, be responsible to disprove it".

iv. *Prevention and Suppression of Trafficking in Person and Smuggling of Migrants Proclamation no 909/2015*

In order to deter persons engaged in the act of trafficking in persons and smuggling migrants penalties provided in criminal code, both imprisonment and fine

are increased. According to the proclamation persons convicted of trafficking in persons and smuggling migrants may be punished up to life imprisonment(Art 3(2) & 5(2) even, in aggravated circumstances, death penalty (Art 6) and fined up to 300,000 Eth, Birr. In a case of legal persons fine ranges up to 5,000,000 Eth. Birr and dissolution of the organization (Art 13 (1) (a & c)).

In expense of personal liberty and privacy the proclamation gives much power to the police to protect persons exposed the danger of trafficking and smuggling (Art 17-20).

Prosecution for the crime of trafficking in persons and smuggling migrants could not barred by period statutory limitation (Art 25).

The proclamation imposes an obligation on the government to redeem the victims. It is the ministry for foreign affairs mandated to carry out the task by coordinating other governmental and non governmental bodies (Art 26 & 27).

As an important Progress it established the "Found" that could enable the government to protect, control and rehabilitate victims of crime of trafficking in persons and smuggling of migrants (Art 32&34).

The proclamation also contains provisions aimed to consolidate bilateral relations between governments thereby creating favorable conditions for the migrants (Art 43 &44).

In general the proclamation will help the efforts to fight human trafficking and smuggling migrants that has become serious crime.

Furthermore the proclamation helps to make joint effort with state governments thereby managing and supervising overseas employment effectively and efficiently.

IV. POLICIES AND INSTITUTIONS FOR PROTECTION OF MIGRANT WORKERS RIGHTS

a) *Policies*

Having a clear and coherent migration policy is crucial to manage the issues of migrant workers. Ethiopia does not have a comprehensive migration policy.¹⁸

Ethiopia as a country whose citizens are suffered more from illegal migration, strongly condemn illegal migration. So if a citizen decides to migrate he/she must do it in legal way. Recently it has put in to place many measures that aims at preventing, and protecting rights of migrant workers as well as prosecuting violators. To this end, among others, national committee and task force that are established and their functions are also distinguished. National committee which comprises many stake holders, lead by deputy prime minster and accountable to prime

¹⁶ Kidist Mulugeta Gebre , "Vulnerability, Legal Protection and Work Conditions of Domestic Workers in Addis Ababa", A Research Paper presented by The Hague, The Netherlands December 2012, p.13
¹⁷Id.

minster is established by the proclamation (Proclamation no 909/2015 Art 39). The committee is established in a view to coordinate over all activities that the government should perform to protect the rights of migrant workers. Also, task force, led by minister of ministry of justice and consists other stake holders is established. The task force is accountable to the national committee. It is mandated to perform more of professional activities under the national committee. (Proclamation no 909/2015 Art 40)

b) *Institutions*

There are several government institutions that have a role in dealing with migration issues. The Ministry of Foreign Affairs and the Ministry of Labour and Social Affairs are the two institutions that involved in protecting migrant workers. The Ministry of Justice and the Federal police work more in the area of legal issues dealing with migrants and investigations of crimes.

i. *Ministry of Foreign Affairs*

The Ministry of Foreign Affairs has the overall responsibility to, in cooperation with the appropriate organs, safeguards the interests and rights of the country, and ensures that they are respected by foreign States and that the interests and rights of Ethiopian nationals abroad are protected.¹⁹ Also it has the mandate to coordinate other governmental and non governmental bodies for the same purpose (Proclamation no 909/2015 Art 27).

ii. *Ministry of Labour and Social Affairs*

The Ministry assumes number of powers and responsibilities in relation to protecting the rights of migrant workers. Among others it has the authority to control and supervise private employment agencies. Particularly, it is empowered to Issue, renew, suspend and cancel license for private employment agencies that operates in sending workers abroad for work.

The ministry is responsible for checking on the labour conditions and ensuring their employment contract conditions when a person wants to work aboard. Also it has the responsibility to provide pre-departure orientation and training for emigrants.²⁰

iii. *Ministry of Justice*

The Ministry of Justice has recently become involved in the area of migration. The Ministry has a mandate dealing with prosecution and legal counsel, drafting laws, prosecuting criminals, legislating laws and crime prevention.²¹ The ministry of Justice is empowered to, among others, to sign international legal cooperation agreements and serve as a central authority (Proclamation no 909/2015 Art 44/1)

iv. *Federal Police*

The Federal police entrusted with the obligation of investigation, information exchange, capacity building

to prevent and suppression of crimes under the proclamation and the authority to sign a memorandum of agreements with foreign similar bodies (Proclamation no 909/2015 Art 43&44/3)

V. CONCLUDING POINTS AND RECOMMENDATIONS

a) *Concluding points*

As long as we live on our planet earth we migrate for different reasons. Economically speaking, persons migrate in search of better life. Countries can't totally stop this movement. What can they do is providing mechanisms to protect the rights of migrant workers. The issue of migrant workers' human rights has been the subject of increasing concern throughout the UN system in the recent years. Numerous international legal instruments are established to provide parameters for the protection of human and labor rights that can be applicable to all migrant workers. In Ethiopia, though it is constitutionally guaranteed to move and work overseas, citizens are expected to do it only in legal and safe way. The Ethiopia legal system has devised political, legal and institutional mechanism to protect the rights of nationals who prefer to go overseas to find jobs. Recently the increasing prevalence of Migration in Ethiopia has led to many legal and logistical changes to provide adequate protection and support to migrant workers.

In Ethiopia laws that aims to fight illegal migration and ensure citizens rights are respected in the destination countries especially in the Arab nations has been put in to force. In this regard the... Employment Exchange Services Proclamation No. 632/2009 and Prevention and Suppression of Trafficking in Person and Smuggling of Migrants Proclamation no 909/2015 has great importance. For they contains relevant provision aimed to protect migrant workers human and labour rights. Furthermore they give considerable powers and responsibilities to governmental and non governmental institutions that have relation with migrant works. The Ethiopia legal system, under Art 31 of the employment service exchange proclamation, has established public employment service with many functions that aimed to deal with issue of migrant workers. This mechanism is devised to protect migrant workers in all stages of migration:

¹⁹Minelik Alemu, The Protection of Ethiopian Nationals Abroad Fighting Discrimination and Promoting Integration: Human Rights Challenges for Migrants and Societies (Ministry of Foreign Affairs of Ethiopia, 2009)

²⁰Melissa Siegel & Katie Kuschminder, "A Who's Who in Ethiopian Migration? Migration policy brief No.5 Maastricht Graduate School of Governanc" available at <http://mgsog.merit.unu.edu/ISacademie>

¹⁸ILO, supra note 15

pre-departure, post-departure and return stages Restrict obligations are put on private employment agencies sending workers abroad and workers.

These laws maximize protection for migrant workers by requiring agencies or their local affiliates to maintain a shelter for abused workers in each destination country, increasing agencies' cash and bond deposits as collateral in the event the worker's contract is broken, and mandating the establishment of labor attaché positions in diplomatic missions abroad. However, the legal instruments and frameworks in Ethiopia are still not sufficient to provide the needed support to migrants abroad. For one thing Ethiopia does not signed the most important international UN and ILO conventions that provide for maximum protection for migrant workers. Even if the legal frameworks are updated there is still a question of capacity for enforcement. Therefore the Ethiopia government has to exert its maximum effort to protect the migrant workers rights.

b) Recommendations

- To have strong legal system that provides adequate protection to migrant workers rights, clear and comprehensive national policy and action plan must be prepared. The policy should take into account internal migrants, particularly, migrant domestic workers.
- Laws that provide adequate protection for internal migrant workers, specially, domestic workers should be enacted
- Ethiopia, in addition to improving her legal system, must work hard to minimize root cause for migration in the country, Poverty, unemployment, lack of good governance, favoritism and corruption.
- To provide effective protection for the rights of migrant workers, the government needs to establish strong national, regional and international cooperation
- The Government should ratify ILO and UN conventions that have direct relevance to migrant workers.
- To ensure the rights of Ethiopian migrant workers are protected, the government should negotiate and conclude bilateral agreements with major destination countries
- To support the victims of trafficking in persons and crime of smuggling migrants financial and other materials, as envisaged in legal provisions, should commence its function. Specially the "Fund" that established by the proclamation must be put in practice.
- To improve the quality of investigation, prosecution and conviction the government should work on plans that aimed to build the capacity of police, prosecutors, judges and other stake holders both at the national and regional levels.

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