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Combating Trafficking in Women for Labour Purposes and Establishing State  
Responsibility under International law: The Plight of Ethiopian Migrant Domestic  
Workers in Saudi Arabia

JAMM06 Master Thesis

International Human Rights Law and International Labour Rights  
30 higher education credits

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Spring 2015

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## **Summary**

The research explores the protections provided for migrant domestic workers who are highly undervalued and often exposed to trafficking, despite comprising an integral part of the labour force worldwide. Saudi Arabia is a focus destination country for the study, as it emerged from among the top destination countries absorbing 61 percent of recorded Ethiopian migrant domestic workers. Despite such high demand for household help, the Saudi Arabia national labour law excludes domestic workers and follows a strict sponsorship system that gives immense power to the employer and allows for possible abuse of power. The study of Ethiopia as a migrant sending country is also important due to the myriad number of children and women migrating to Saudi Arabia on a yearly basis, at the risk of the exposure to trafficking.

Based on its principal objective, the research has explored and examined the plight of Ethiopian women throughout their labour migration to Saudi Arabia and reasoned towards establishing the concrete obligations of sending and host countries so as to hold States accountable under the International Law Commission Articles for State Responsibility. Accordingly, it has identified that both countries, depending on the circumstances, shoulder various obligations starting from prevention to safe repatriation of victims in the effort towards combating trafficking in women for domestic work purposes. The research further concludes that, with the appropriate analysis of the identified obligations, Ethiopia and Saudi Arabia have not fully complied with the international standards for the elimination of trafficking for the exaction of forced labour and should accordingly be held accountable under international law.

## **Acknowledgment**

I would like to begin by expressing my deepest gratitude to my supervisor Dr. Vladislava Stoyanova, for the useful comments and remarks, which have guided me in completing this Master's thesis. I would also like to give a very special thanks to my mom Zukrufa Tahir, to whom I will be forever indebted, for the utmost faith you have in me even when I doubt myself. A special thanks is also due to all my family members and the wonderful friends I have met at Lund University, for their constant encouragement throughout the writing of the research.

To my dear husband Kulmei Ahmed, I am truly grateful for your support, understanding, and helpful advices that always seem to put me back on track.

This publication is part of my research work at Lund University, thanks to a Swedish Institute Scholarship.

## **Acronyms**

|         |  |
|---------|--|
| ASEAN:  | Association of Southeast Asian Nations                                     |
| ASR:    | Articles on State Responsibility   |
| ACHR    | African Charter on Human Rights  |
| ACHPR   | African Commission on Human and Peoples' Rights                            |
| AfCHR   | African Court on Human and Peoples Rights                                  |
| CAT:    | Convention Against Torture   |
| CEACR:  | Committee of Experts on the Application of Conventions and Recommendations |
| CEDAW:  | Convention on the Elimination of All Forms of Discrimination against Women |
| CERD:   | Convention on the Elimination of Racial Discrimination                     |
| CRC:    | Convention on the Rights of the Child                                      |
| ECHR:   | European Court of Human Right  |
| FDRE:   | Federal Democratic Republic of Ethiopia                                    |
| GAATW:  | Global Alliance Against Traffic in Women                                   |
| ICCPR:  | International Convention for Civil and Political Rights                    |
| ICESCR: | International Convention for Economic Social and Cultural Rights           |
| ICRMW:  | International Convention for Migrant Workers                               |
| ILC:    | International Law Commission   |
| ILO:    | International Labour Organization  |
| IOM:    | International Organization on Migration                                    |
| MOFA:   | Ministry of Foreign Affairs  |
| MOLSA:  | Ministry of Social and Labour Affairs                                      |

MSF: Médecins Sans Frontières

NGO: Non-governmental Organization

OHCHR: Office of the United Nations High Commissioner for human  
Right

SAARC: South Asian Association for Regional Cooperation Convention

UAE: United Arab Emirates

UDHR: Universal Declaration of Human Rights

UN: United Nations

# Chapter One - Introduction

## 1.1 Background of the Study

Human migration is a trend that subsisted around the world in its various forms since time immemorial. And labour migration in particular, is one of the most common kinds of movements that exist in the present day globalized world. While many choose their destination countries based on different factors, the Middle East is especially known for being an attractive terminus for those who migrate to work in the domestic work sector.<sup>1</sup> Numerous people, especially women and young girls from poorer African States and Asia have long been migrating to the Gulf countries in the hope of supporting themselves with the wealthiest nations' dire need of cheap domestic labour.

The downside to such type of migration is the strict immigration policies in the destination countries leading to possible exposure to human trafficking and its grim aftermaths. Human trafficking is affecting hundreds and thousands of people every year proving to be one of the major current global problems.<sup>2</sup> The numbers of people trafficked across international borders is increasing. According to the 2005 US State Department report, 600,000 to 800,000 people are trafficked each year. Of these victims, the ILO estimates that at least 1.39 million are victims of commercial sexual servitude, both transnational and within countries. It also indicates that there are about 21 million people who are victims of forced labour, and out of which 11.4 million constitute women and girls. The ILO further highlights that, 56 percent of all forced labor victims are women and girls.<sup>3</sup>

Ethiopia is one of the countries in which an estimated number of 200,000 Ethiopian women have migrated to the Middle East seeking employment as a domestic worker using regular routes. And

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<sup>1</sup> ILO, *Domestic Workers Across the World: Global and Regional Statistics and the Extent of Legal Protection* (2013), available at: [http://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms\\_173363.pdf](http://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms_173363.pdf) (accessed on December 22, 2014) (hereinafter: ILO Statistics).

<sup>2</sup> ILO, *Forced Labour, human trafficking and slavery*, Facts and Figures, available at: <http://www.ilo.org/global/topics/forced-labour/lang--en/index.htm> (accessed on December 19, 2014).

<sup>3</sup> US Department of State, *Trafficking in Persons Report 2009* (Washington, D.C.: U.S. Department of State), available at: <http://www.state.gov/j/tip/rls/tiprpt/2009/123123.htm> (accessed on January 2, 2014).



the number of women that use irregular routes is estimated to double that figure.<sup>4</sup> Most of the women are trafficked and exposed to slave like working conditions in their destination countries. While it is difficult to establish an exact date, it has been stated that the initial stage of Ethiopian women's migration as domestic workers began to Lebanon as early as 1989.<sup>5</sup> The Ethiopian Ministry of Labour and Social Affairs (herein after MOLSA) has put in a statistics that 'in the year between 2008-2009, Saudi Arabia and Kuwait emerged as the top destination countries absorbing 61 percent and 33 percent respectively of recorded Ethiopian migrant domestic workers.<sup>6</sup> For the purpose of this research, Saudi Arabia is a focus destination country mainly because of its high demand for domestic workers and its strict immigration laws. And as many as 784,500 persons have been involved in domestic work, making the country one of the largest employers of domestic workers since 2009.<sup>7</sup>

There are various pull and push factors exacerbating labour migration at the risk of human trafficking in Ethiopia. The annual United States Trafficking in Persons report has repeatedly highlighted Saudi Arabia as one of the worst countries in the world regarding its response to human trafficking.<sup>8</sup> The demand for such high number of domestic workers is for the reason that many people in Saudi Arabia rely heavily on the help for household duties. Although highly undervalued, these domestic workers carry out various works including those that are considered too menial by their host societies. The economic contribution is also immense to their family members in their home countries and as well as their country of origin.

However, due to their vulnerable state and the strict sponsorship system (*Kafala*), the domestic workers have been exposed to poor living conditions, very low or no salary, accidents and to various mischiefs. As a response to these horrific acts of trafficking for the purpose of labour

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<sup>4</sup> ILO, *Development of a Tripartite Framework for the Support and Protection of Ethiopian and Somali Women Domestic Migrant Workers to the GCC States, Lebanon and Sudan* (2013), available at: [http://www.ilo.org/beirut/projects/WCMS\\_226943/lang--en/index.htm](http://www.ilo.org/beirut/projects/WCMS_226943/lang--en/index.htm) (accessed on February 12, 2015).

<sup>5</sup> Fernandez, B. *Cheap and disposable? The impact of the global economic crisis on the migration of Ethiopian women domestic workers to the Gulf*, in *Gender and Development*, 2010, Vol. 18, No. 2. at p 251.

<sup>6</sup> Ministry of Labour and Social Affairs, Unpublished Statistics. 2009 Addis Ababa, Ethiopia.

<sup>7</sup> ILO Statistics, *Supra* at 1.

<sup>8</sup> US Department of State, *Trafficking in Persons Report 2007* (Washington, D.C.: U.S. Department of State, (June 2008), available at: <http://www.state.gov/g/tip/rls/tiprpt/2008/105389.htm> (accessed January 2, 2014).

exploitation, many International Organizations, NGO's and Government Institutions have issued reports and recommendations on how the situation can be improved. However, the responsibility of States (be it Saudi Arabia or Ethiopia) under international law for these wrongful acts is an issue seldom raised or pursued.

## **1.2 Statement of the Problem**

Although a large proportion of foreign domestic workers that migrate to the Middle East come from Asia, particularly from Sri Lanka, the Philippines, Indonesia and India, women from African countries particularly from Ethiopia also migrate to work in the domestic sector at a higher rate, every year.<sup>9</sup> The representative of the Ethiopian Ministry of Foreign Affairs estimated in 2010, that there are about 130,000 Ethiopians living in Saudi Arabia, in which most of them are irregular migrant workers.<sup>10</sup>

Numerous human rights violations directed against migrant domestic workers in Saudi Arabia have been documented by the media and human rights organizations. The fact that Saudi Arabia's national labour law excludes domestic workers from its protection creates a safe haven for employers to abuse their power and result in impunity from any responsibility. The horrific situation of the migrant domestic workers has sometimes been described as modern day slavery.

Indonesia and Philippines have recently secured strict bilateral agreements with Saudi Arabia to protect their nationals working as domestic workers in terms of improved labour and human rights.<sup>11</sup> Following such agreements, Saudi Arabia has turned to Ethiopia where many people struggle beneath the poverty line. The case of Ethiopian migrant domestic workers in Saudi Arabia is unique in the sense that in addition to the struggle they face during their journey until the destination, there is no bilateral agreement between Ethiopia and Saudi Arabia to protect

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<sup>9</sup> ILO Statistics, p 32.

<sup>10</sup> ILO, *Trafficking in Persons Overseas for Labour Purposes : The Case of Ethiopian Domestic Workers*, 2011 ed. Animaw Anteneh, ILO Country Office, Addis Ababa, p. 49, available at: <http://www.molsa.gov.et/English/EPro/Documents/ILO-Trafficking%20in%20Persons%20Overseas%20for%20Labour%20Purposes%20-%20The%20Case%20of%20Ethiopia.pdf> (accessed on June 20, 2014).

<sup>11</sup> Human Rights watch, *Dispatches: New Protection for Saudi Arabia's Domestic Workers*, 2014, available at: <http://www.hrw.org/news/2014/02/19/dispatches-new-protection-saudi-arabia-s-domestic-workers> (accessed on May 1, 2014).

them from any unfair treatment during the employment period. Ethiopia also lacks a comprehensive system of legislation to tackle trafficking.

While much has been said and reported about the obligation of Saudi Arabia as a host country and the role of the migrant sending countries towards combating trafficking and the protection of the migrant workers within the country, not many have pushed and called out both countries to be held responsible under international law. The technique of exposing human rights violators by nongovernmental organizations such as Human Rights Watch and Amnesty International cannot be the only method that can influence States or political parties to respond in the affirmative. It will be difficult to expect any groundbreaking change, when the responsibility of both States under international law or the consequences of the breach of such laws relating to trafficking is not clearly identified. Hence, the problem lies as to what extent the ‘naming and shaming’ will be effective in getting redress and abating the plight of the women and children in the long run. Shouldn’t States be finally called out for their violations of crucial human rights that still persist within our community at much higher rate?

On November 2013, there has been a crackdown on irregular migrants in Saudi Arabia that were deemed to have stayed in violation of the national labour law. Several thousands of Ethiopians were victims of the expulsion and two people lost their lives while some others were injured in the process. The Ethiopian Government had condemned Saudi Arabia for its brutal crackdown but has not called for a bilateral agreement to secure their rights.<sup>12</sup> The horrific slave like situation of the Ethiopian domestic workers where they lack protection from either their host State or home country in Saudi Arabia should be a wakeup call to the grim reality that thousands fall outside of the protection of International Labour law and human rights. As laudable as the responses are towards the appalling increase of trafficking, it is important to point out that they are disproportionate in addressing the continuing sufferings of the women and children who are still migrating in increased numbers and on a daily basis.

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<sup>12</sup> Ethiopian Legal Brief, *Ethiopia Condemns Saudi Crackdown on Workers* (2013), available at: <http://chilot.me/tag/tedros-adhanom/> (accessed on May 1, 2014).

### **1.3 Objectives of the Study**

The principal objective of the research is, to explore and examine the dilemmas faced by Ethiopian women throughout their labour migration to Saudi Arabia and reason towards establishing the obligations of sending and host countries in order to identify State responsibility under the International Law Commission Articles for State Responsibility. Accordingly, it will assess whether the countries live up to the international norms with respect to migrant domestic worker's exposure to trafficking and their fundamental rights at work. In addition, the thesis will have the following specific objectives:

- To examine the legal framework for the protection of the rights of migrant domestic workers (both at the international and national levels).
- To analyze the gender perspective of domestic work in Saudi Arabia.
- To examine whether the acts of trafficking are attributable to the States
- And identify the obligations of Ethiopia and Saudi Arabia in the efforts to combat trafficking of the Ethiopian women for the exaction of forced labour.
- To analyze as to whether both Ethiopia and Saudi Arabia should be held responsible internationally under the ILC Articles for State Responsibility

Accordingly, the research will try to tackle three main research questions:

1. What are the challenges faced by Ethiopian women starting from the early stages of recruitment to their journey to Saudi Arabia? Exposure to trafficking?
2. Are the Saudi Arabia and Ethiopia domestic laws and national practice relating to migrant domestic workers in conformity with international labour standards and human rights law?
3. What are the obligations of Saudi Arabia as a host country and Ethiopia as a migrant sending country under the relevant primary rules and in relation to the ILC articles for State responsibility?

## **1.4 Methodology**

In the course of the research, the writer will be in a position to undertake mainly qualitative data analysis owing to its objectives and scope. It will make use of survey of literature to solicit conceptual and theoretical discourses. It will also analyze existing laws and regulations, reviewed press reports, and examined studies by the Ethiopian and Saudi Arabia Governments, International Organizations and Civil Society.

## **1.5 Significance of the Study**

It is a current issue and dilemma that domestic workers in many Gulf countries are excluded from the protection of labour laws while being exposed to various mischiefs. The workers are not often able to access justice as there are instances where their existence is not even legalized. The study of the Saudi Arabia national legal framework and the status accorded to domestic workers, helps understand the country's responsibility and the practice when employing domestic workers migrating from developing countries. Moreover, Ethiopia as one of the migrants sending countries, has witnessed thousands of children and women migrate to Saudi Arabia using dangerous routes while risking their lives at the hands of traffickers.

Hence, the research will be relevant in terms of identifying the current gross human rights violations that Ethiopian domestic workers face during their journey to and in Saudi Arabia. It will accordingly identify the obligations of both countries: internationally, nationally and bilaterally to eliminate the plight of the women as they migrate for labour purposes. The study will also be beneficial to all stakeholders engaged in the anti-trafficking and abolition of forced labour projects such as: Government institutions, NGOs, researchers and UN Agencies, in the understanding of the role of both sending and host countries under international law and in taking responsibility for any violations of primary rules pertaining to trafficking for forced labour.

## **1.6 Disposition and Delimitation**

Although it is highly relevant to assess the conditions of all migrant domestic workers in Saudi Arabia, due to limited time and space, the scope of the thesis will be limited to focus only on the status of the Ethiopian workers and the responsibility of the States concerned. Furthermore, the research will also assess in brief the exaction of forced labour in Saudi Arabia on Ethiopian domestic workers who were not necessarily exposed to trafficking, as it is crucial to the understanding of the dynamics that all Ethiopians undergo in a Saudi Arabia domestic household. Nevertheless, the primary focus of the research will be analyzing the plights of the women who are trafficked for the exaction of forced labour.

The thesis is composed of five sections. Chapter one (the current section) includes the introduction which is composed of sections which will help establish an overview and background to the main issues that the research tries to tackle. Chapter two analyses the plight of the Ethiopian women starting from recruitment to their arrival to Saudi Arabia to understand their exposure to trafficking in order to show the gap between the law and the practice. The chapter also has a section in which a comparative analysis is made with domestic workers of Indonesia and Philippines nationals to show the dire condition that the Ethiopian women are placed in. Chapter three examines the legal framework for the protection of the rights of migrant domestic workers (both at the international and national levels). The study of the international legal framework helps understand the established primary rules on the obligation of both the host and sending country's responsibility towards trafficking in women for labour purposes. And the study of the national labour laws will help analyze the protection provided for the migrant domestic workers at the national level (if any) and whether it's in conformity with the appropriate international human rights law. Chapter four will provide an overview of the rules on state responsibility by explaining concepts such as attribution and the responsibility for trafficking related breach of obligations. Chapter five will answer the main research questions of the thesis and identify: whether the acts of trafficking migrant women are attributable to any of the countries: assess the obligation of the States under international law and establish accountability in relation to the ASR. The research will finally conclude and propose

recommendations to on how to specifically undertake the identified respective obligations of the States.

## **1.7 Definitions**

### **Trafficking**

The research will employ the definition often used for trafficking that is provided in The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, also known as the Palermo Protocol under its article 3(a) which provides that:

*“Trafficking in persons” shall mean the recruitment, transportation, transfer, harboring or receipt of persons, by means 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 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 others or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery or practices similar to slavery, servitude or the removal of organs.”*

The above definition is deemed suitable for this research as it includes several components that make up the overall application of the term ‘trafficking’ and its application throughout the whole process. It stipulates the initial components may include: recruitment, transportation, transfer, harboring or receipt of a person. According to the Protocol, “the consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used”.<sup>13</sup> It is also important to note that trafficking may not only occur through illegal routes and means, but sometimes through legitimate institutes performing such acts in disguise or through deception.

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<sup>13</sup> UN General Assembly, *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime*, 15 November 2000, art 3 (b).

However, there has been some skepticism about the Trafficking protocol and its approach to human rights.

Trafficking human beings is a concept often confused with smuggling. However, it is important to distinguish the two as they may have different outcomes, which are relevant in prosecuting a case. Article 3 of the Smuggling of Migrants Protocol supplementing the United Nations Convention against Transnational Organized Crime defines the smuggling of migrants as the:

*"Procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident."*

Although undertaken under horrific circumstances, smuggling does not have the purpose of exploitation in the end. But this does not necessarily mean that a person smuggled into a State will at all times be spared from the exposure to trafficking.<sup>14</sup> In cases of trafficking, migrants may enter a country through legal or illegal means to with the intent of exposure to exploitation. However, smuggling always involves facilitation of illegal migration through irregular routes.<sup>15</sup>

## **Slavery and Forced Labour**

### **Slavery**

Article 1 of the Slavery Convention of 1926 defines slavery as:

*(1) Slavery is the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised.*

*(2) The slave trade includes all acts involved in the capture, acquisition or disposal of a person with intent to reduce him to slavery; all acts involved in the acquisition of a slave with a view to selling or exchanging him; all acts of disposal by sale or exchange of a slave acquired with a view to being sold or exchanged, and, in general, every act of trade or*

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<sup>14</sup> ILO, *Human Trafficking and Forced Labour Exploitation, Guidelines for Legislation and Law Enforcement*, 2005, ILO Geneva Office, p 13.

<sup>15</sup> Ibid.



*transport in slaves.*

### **Forced Labour**

The ILO Convention 29 under its article 2 has defined Forced Labour as:

*“All work or service that is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily.”*

The three main central elements asserted in this provision are: ‘work or services’ ‘under the menace of any penalty’, and ‘voluntarily’ which will be discussed in detail in Chapter three.

### **Domestic Work**

It is important to note that for the purpose of establishing international State responsibility, it is crucial to make use of an internationally accepted definition of a certain concept and as adopted by the parties concerned. Domestic work in particular, has only been recently defined under the ILO Domestic Workers Convention NO. 189 which not been highly ratified. And, the Convention’s definition of domestic work below will not be used to establish State responsibility, but rather to illustrate the meaning of term as used throughout the research. This is for the reason that neither Ethiopia nor Saudi Arabia has ratified the Convention.

Accordingly, the Convention’s article 1(a) provides that:

*“The term domestic work means work performed in or for a household or households”*

A work performed for a household as ‘domestic work’ may include tasks such as: cleaning the house, cooking, washing and ironing clothes, taking care of children, or elderly or sick members of a family, gardening, guarding the house, driving for the family, even taking care of household pets. While an individual domestic worker may be expected to undertake all of these tasks from an employer, the work in many countries is not acknowledged as a ‘formal’ work and the fundamental rights of the women at work are not often guaranteed. Due to the persisting perception that the tasks that women traditionally carry out are innate than acquired, and due to the fact that domestic work involves tasks that women have traditionally shouldered in the home without pay, such as cleaning, cooking, shopping and

laundry, as well as caring for children and the elderly, will more likely lead to the underestimation of the value of their domestic service.

## **Chapter Two - Trafficking in Women for Labour Purposes: The Case of Ethiopian Migrant Domestic Workers in Saudi Arabia**

### **2.1 Ethiopian Women's Labour Migration to Saudi Arabia**

The prevalence of cross-border human trafficking in Ethiopia has time and again been documented in several reports. Countless number of men and women migrate to Saudi Arabia through irregular routes, making it difficult for appropriate data to be collected on their conditions and whereabouts. In 2011, the ILO and the Ministry of Labour and Social Affairs (MOLSA) estimated that about 100,000 Ethiopian regular migrants have moved to Saudi Arabia,<sup>16</sup> which ranks at number four from the list of top immigration countries.<sup>17</sup> While migrant domestic workers from other countries such as: Indonesia, Philippines, Sri Lanka and India move to Saudi Arabia, Ethiopia has recently become one of the top migrant sending countries from Africa.<sup>18</sup>

There are numerous push and pull factors that drive thousands of women to leave their home countries and move to Saudi Arabia to work as a domestic worker. And many of the women that migrate are exposed and victimized to trafficking.<sup>19</sup> Some of the push factors are: lack of employment opportunity, escape from poverty, conflict and pressure from the society and

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<sup>16</sup> Regional Mixed Migration Secretariat, *Regular and Irregular migration in Saudi Arabia in a Context of Rapid Change*, 2014, p. 15, available at: [http://www.regionalmms.org/fileadmin/content/rmms\\_publications/RMMS\\_Letter\\_of\\_the\\_Law\\_-\\_Saudi\\_Arabia\\_report.pdf](http://www.regionalmms.org/fileadmin/content/rmms_publications/RMMS_Letter_of_the_Law_-_Saudi_Arabia_report.pdf) (accessed on January 20, 2015) (hereinafter: Regional Mixed Migration Secretariat).

<sup>17</sup> World Bank, 2012, *Migration and Remittances Facebook 2011*, Washington: World Bank.

<sup>18</sup> Regional Mixed Migration Secretariat, p. 15.

<sup>19</sup> ILO, *Trafficking in Persons Overseas for Labour Purposes: The Case of Ethiopian Domestic Workers*, 2011 ed. Animaw Anteneh, ILO Country Office, Addis Ababa, p. ix, available at: <http://www.molsa.gov.et/English/EPro/Documents/ILO-Trafficking%20in%20Persons%20Overseas%20for%20Labour%20Purposes%20-%20The%20Case%20of%20Ethiopia.pdf>, (accessed on June 20, 2014) (herein after, ILO Study).

family.<sup>20</sup> On the other side, the pull factors have been identified to include by the ILO as: ‘rapid changes in the local and regional economies, weak protection regimes for migrant workers, and the role of traffickers in artificially expanding demand’.<sup>21</sup> Saudi Arabia has experienced a boost in its economic development launching the way for Ethiopian and other migrants to come and avail from the high demand for domestic workers, that is also considered ‘a status symbol of a luxurious life’ by the nationals.<sup>22</sup> The ILO has noted that such high demand for migrant workers has in many cases proven to be detrimental resulting in the ‘creation and a shortage in low paying, informal and dangerous sectors such as domestic work, construction, agriculture and sex work’.<sup>23</sup> In particular, the case of domestic workers who often have very low salaries and are excluded from the country’s national labour law has drawn the attention of the ILO, NGOs and civil societies. According to the 2013 Global Slavery Index, ‘there are currently 651,110 Ethiopians in modern slavery (albeit both within Ethiopia and abroad) which ranks Ethiopia fifth in the world in terms of the largest absolute numbers of the population in slavery.’<sup>24</sup>

The overall profile of the victims of trafficking in Ethiopia varies from: age, sex and educational background. In a study conducted by the IOM in 2004, women comprise the majority from the overall profile of the Ethiopian migrant workers moving to Saudi Arabia, Yemen, Egypt and Lebanon. And out of the women, ‘7.5 percent included girls between the ages of 13-17 years at the time of migration.’<sup>25</sup> The study further indicated that 87.1 percent of the migrants were trafficked.<sup>26</sup> Many of the underage girls falsify age to get official travel documents and passport migrate to Saudi Arabia, making them child victims of trafficking.<sup>27</sup> With regards to education background in Ethiopia, the ILO indicated that both educated and uneducated women might be

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<sup>20</sup> Ibid. p. 21.

<sup>21</sup> Ibid. p. 24.

<sup>22</sup> Fernandez, B., *Cheap and disposable? The impact of the global economic crisis on the migration of Ethiopian women domestic workers to the Gulf*, in *Gender and Development*, 2010, Vol. 18, No. 2.at p 251.

<sup>23</sup> ILO Study, p. 24.

<sup>24</sup> Walk Free Foundation. *The Global Slavery Index 2013*. Dalkeith, Western Australia: Walk Free Foundation.

<sup>25</sup> AGRINET, *Assessment of the magnitude of women and children trafficked within and outside of Ethiopia*. 2004, pp.8 and 12, (IOM, Addis Ababa).

<sup>26</sup> ILO Study, p. 19.

<sup>27</sup> Ibid. p. 25.

potential migrants and victims of traffickers. Nevertheless, women from poorer families have been identified to be more vulnerable to be trafficked.<sup>28</sup>

### **2.1.1 The Gender aspect of domestic work in Saudi Arabia**

Saudi Arabia began the recruitment of domestic workers in the early 1980's in response to the rapid growth of wealth in country when a large number of migrant workers were recruited to undertake the type of work that most Saudi's will not engage in. The total percentage of the Saudi households that rely on migrant domestic workers for household tasks comprises of about 80%.<sup>29</sup> And the majority of migrant domestic workers in Saudi Arabia are always women, often migrants and children. The latest ILO statistics indicates that the rate of women's participation in the labour force in Saudi Arabia is only 20.1% while men consist of the large majority of 78.2%.<sup>30</sup> Even if migrant domestic workers are crucial part of the work force, they are not included in the selection of statistics as women labour participants.

The gender aspect of labour in general in Saudi Arabia is a topic that needs its own research and time, as it is a complicated and a multifaceted issue. The country's restriction on women's mobility and their inclusion in the labour force has two likely outcomes that are: increase in demand for domestic workers and continuous isolation of these migrant domestic workers from one another in the homes of their employers. The segregation of the sexes outside of the home and the restriction imposed upon women's mobility is a reflection of Saudi Arabia's strict application of the Sharia law.<sup>31</sup> The socially constructed gender ideology of domestic work and the resulting stereotype contribute to the image that housework will always belong to women. As rightly stated by Parrenas, "the process of labour migration pushes women outside the home, but also paradoxically reaffirms the belief that women belong inside the home".<sup>32</sup> Women also become highly vulnerable to different kinds of abuses and exploitation due to the gender targeted

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<sup>28</sup> Ibid. p. 26.

<sup>29</sup> Michael O'Kane, *Saudi Arabia Labor Law Outline*, Riyadh: The Law Firm of Salah al-Hejailan, 2009.

<sup>30</sup> ILO, Country Profiles, Saudi Arabia, available at: [http://www.ilo.org/ilostat/faces/home/statisticaldata/ContryProfileId?\\_afLoop=700461376591617&\\_adf.ctrl-state=16ej78y5k9\\_198](http://www.ilo.org/ilostat/faces/home/statisticaldata/ContryProfileId?_afLoop=700461376591617&_adf.ctrl-state=16ej78y5k9_198) (accessed on February 20, 2015).

<sup>31</sup> Rachel Silvey, *Transnational domestication State power and Indonesian Women in Saudi Arabia*, 2004, University of Colorado, USA, p. 255.

<sup>32</sup> Rhacel Salazar Parrenas, *The Force of Domesticity: Filipina Migrants and Globalization*, NYU Press, 2008, p. 1630.

operation of human trafficking such as the “feminized” economic sectors of commercial sex and other domestic work that are hazardous in condition with lack of collective bargaining mechanism.

All in all, just as the existentialist philosopher de Beauvoir said, ‘oppression of women can socially be constructed and can be dismantled socially and politically,’<sup>33</sup> and as such the advocacy for the betterment of domestic workers both socially and politically can serve as the key to the emancipation of women everywhere.

### **2.1.2 Recruitment Practices**

Recruitment is one of the first steps throughout the process of human trafficking. Different actors such as: local brokers, returnees and visitors from destination countries may initiate the recruitment of domestic workers and victims of trafficking.<sup>34</sup> The Ethiopian Ministry of Foreign Affairs indicated in a report that ‘there are more than 1000 illegal brokers in Addis Ababa alone, while there are between 8 and 25 illegal brokers in the regions’.<sup>35</sup> However, the ILO has pointed out that these numbers may not match the practice, as there are very limited numbers of trafficking cases reported in the Ethiopia.<sup>36</sup>

The ILO identifies six types of categories of traffickers in Ethiopia distinguishable in terms of their identity, mode of operation and their role in the trafficking process. These are: local brokers, brokers for transportation, harboring and smuggling, unlicensed employment agencies, licensed private employment agencies, returnees, visitors and their representatives, destination point traffickers.<sup>37</sup> These traffickers use various methods and techniques to select their potential victims. Vulnerable women and girls may initially be contacted by local brokers who play an important role in persuading them to make use of their services. Some local brokers often use

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<sup>33</sup> Thomas R. Flynn, *Existentialism: A Very Short Introduction*, Oxford University Press New York, US, 2006, p. 117.

<sup>34</sup> Regional Mixed Migration Secretariat, p. 31.

<sup>35</sup> Ministry of Foreign Affairs (MoFA) of FDRE, *The situation, causes of and recommendations to eliminate human trafficking and smuggling in Ethiopia*, 2010, paper presented on Irregular Migration to the Ethiopian National Discussion Forum.

<sup>36</sup> ILO Study, p. 31.

<sup>37</sup> Ibid. p. ix.

false propaganda to persuade their potential victims in to believing that they provide the best and cheapest offer for a job that may change their lives for the better.

Victims are forced to undergo through network of brokers and transporters who may exploit them repeatedly until they reach their destination. The ILO has indicated that brokers employ some widely used means of recruitment such as: the promise of a speedy process, being able travel on credit, the possibility of changing employers if they would not be happy with working conditions.<sup>38</sup> However, some brokers often ask for additional payment in the middle of the process, leading the victims to suffer from credit that usually leads to debt bondage.

Another common way of recruitment is using success stories. This can either be the returnees themselves or the local brokers who will try to influence the potential victims into using the opportunity their fellow country mates have had if they ever want to change theirs and their family's life. It has also been shown that by holding on to their client's passports, traffickers or local brokers ensure that they would be the sole beneficiaries from the process. The MOFA has indicated cases where traffickers have used 'bribe to corrupt the *kebelle* (district) administration officials and border control officials to transport their victims to borders'.<sup>39</sup>

### **2.1.3 Transportation and Transfer**

There are three common known routes/channels taken by Ethiopian migrant domestic workers to travel to Saudi Arabia.<sup>40</sup> The first channel is 'public migration' which is through the Ethiopian MOLSA in which workers travel to Saudi Arabia by officially registering as migrant workers.<sup>41</sup> Legally registered Private Employment Agencies (PEAs) undertake the second way of migration channel by securing an agreement with employers in Saudi Arabia in a form of a contract for domestic workers seeking to undertake the job by sometimes using the services of other recruitment agencies in Saudi Arabia.<sup>42</sup> The third and the riskiest one is undertaken through the

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<sup>38</sup> Ibid. p. 43.

<sup>39</sup> Ibid.

<sup>40</sup> Regional Mixed Migration Secretariat, p. 18.

<sup>41</sup> Ibid.

<sup>42</sup> Ibid.

services of illegal agents and brokers, or even sometimes legally existing agencies providing illegal services of recruitment to migrants.<sup>43</sup>

In relation to transport routes, the ILO has identified specific routes that migrants use to exit Ethiopia and may be exposed to trafficking. It stated that they either buy an air ticket to take a flight from Bole International Airport to the destination country or cross the border to neighboring countries using the ‘desert route’.<sup>44</sup> The major trafficking routes from Ethiopia to Saudi Arabia are:

- To Saudi Arabia through Bossaso
- To Saudi Arabia and UAE through Afar and Djibouti
- Irregular migration to Lebanon, Saudi Arabia and UAE through Bole International Airport

Some of the women that use the route to Saudi Arabia through Bossaso are as young as 15 years old seeking out employment in the domestic service.<sup>45</sup> Those who cannot afford to buy an air ticket for a direct travel to Saudi Arabia, find this route to be a much cheaper option. Despite the risks, migrants continue to travel through Bossaso to the Gulf of Aden by using boats.<sup>46</sup> Some brokers offer to accompany migrants in return for extra money or for their boat to Yemen and/or for safe passage through check points along the way to Buro. And those migrants who refuse to make payments may be abused or threatened.<sup>47</sup>

With regards to the route to Saudi Arabia and UAE through Afar and Djibouti, a baseline survey conducted by the Bureaus of Labour and Social Affairs of Tigray, Amhara and Afar regional states in March 2010 indicated that ‘10–80 persons are smuggled/trafficked daily into Djibouti through Afar region, further into Yemen and then to Saudi Arabia or UAE’.<sup>48</sup>

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<sup>43</sup> Ibid.

<sup>44</sup> ILO Study, p. 44.

<sup>45</sup> Ibid. p. 45.

<sup>46</sup> Ibid. p. 45, See also the documentary film by Daniel Grandele’ment ‘*Les Martyrs du Golf d’Aden*’.

<sup>47</sup> Ibid. p. 46.

<sup>48</sup> Ibid.

## **2.2 Exploitation in the Form of Forced Labour in Saudi Arabia**

Not all Ethiopian migrant domestic workers face abuse, but not all of them live to come back to share their success stories in their hometown. While there are migrant women who are satisfied with their jobs and their employers,<sup>49</sup> they unfortunately make up the minority. Reports by NGO's and interviews with victims have evidenced that Ethiopian migrant domestic workers have been subjected to several different forms of abuse such as: labour abuse and exploitation, low and unequal pay, unpaid wages and salary deductions, excessive workload, long working hours, lack of rest periods, inadequate living accommodations, beatings, indentured labour not receiving food, not receiving payment, sexual harassment, verbal abuse, and restricted movement.<sup>50</sup> However, there has not been much ground breaking change for the status of the women and thousands of Ethiopians that still keep migrating to Saudi Arabia using dangerous routes.

Several factors contribute to the abuse, mistreatment and vulnerability of the domestic workers in Saudi Arabia and allow employers to hold power over the worker. Some of the impediments to the rights of migrant domestic workers are: the strict immigration and sponsorship system, employer's immense power over the finance of the employee, restricted movement, lack of access to justice or fair trial, labour abuse and exploitation, physical and psychological abuse.<sup>51</sup>

### **2.2.1 The *Kafala* System**

*Kafala* is a sponsorship system that ties migrant workers' employment visas to their employers with a strict two-year contract.<sup>52</sup> The system gives immense power to an employer over employees and foments exploitation of the women who become trapped and helpless. The employer is basically in charge of the hired migrant domestic worker who must at all times secure explicit written permission from the employer before coming to Saudi Arabia, changing

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<sup>49</sup> Human Rights Watch, *As If I Am Not Human: Abuses against Asian Domestic Workers in Saudi Arabia* (2008), available at: <http://www.hrw.org/reports/2008/saudiarabia0708/saudiarabia0708webwcover.pdf> (accessed on December 20, 2014), p 72. (hereinafter: Human Rights Watch, *As if I am Not Human*).

<sup>50</sup> Maastricht Graduate School of Governance, *Shattered Dreams and Return of Vulnerability: Challenges of Ethiopian Female Migration to the Middle East*, IS Academy Policy Brief/No.18 (2014), p. 2.

<sup>51</sup> Vlieger, A.R, *Dissertation: Domestic workers in Saudi Arabia and the Emirates: a socio-legal study on conflicts*. 2011.

Amsterdam: Amsterdam Law School Legal Studies Research Paper No. 2011-49 General Subserie Research Paper No. 2011-08.p 248 (hereinafter: Vlieger).

<sup>52</sup> Human Rights Watch, *As if I am Not Human*, p. 3.



jobs or leaving the country.<sup>53</sup> The sponsor or employer in such arrangement will be in charge of the worker's recruitment fee and will confiscate their *iqama* (national ID card) and their passports.<sup>54</sup>

The sponsor will also have the liberty in this case to end the contract and send the employee back to the home country whenever he/she wishes or deems the worker's ability in general are below expectations<sup>55</sup>. Those workers, who manage to hide and stay within Saudi Arabia after dismissal from employment, become "illegal" aliens.<sup>56</sup> Such an unbalanced power relation also results in workers being trapped in an abusive work environment. Human Rights Watch has documented several cases where workers were 'unable to escape from abusive conditions or even to return home upon completion of their contracts because their employer denied them permission to leave the country'.<sup>57</sup> This system enables recruiters with ulterior motives to take advantage of the workers by advising them to flee their employers to make more money by finding them new employment, since the original employers are responsible for covering recruitment cost.<sup>58</sup>

### **2.2.2 Labour Abuse and Exploitation**

A Human Rights Watch report indicates various persistent abuses and labour exploitation, including 'excessively long working hours, unpaid wages for months or years; forced confinement in the workplace; food deprivation; verbal, physical, and sexual abuse; and forced labor including debt bondage'.<sup>59</sup> The US State Department has also noted that recruitment abuses, the *Kafala* system, and employers' treatment of migrant workers contribute to trafficking for forced labor.<sup>60</sup> The Department has further confirmed the horrific abuse of Ethiopian migrant domestic workers in the Middle East.<sup>61</sup>

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<sup>53</sup> Ibid.

<sup>54</sup> Ibid. p. 26.

<sup>55</sup> Nurchayati, *Bringing Agency Back In: Indonesian Migrant Domestic Workers in Saudi Arabia*, 2011, Asian and Pacific Migration Journal, p. 485 (hereinafter: Nurchayati).

<sup>56</sup> Ibid.

<sup>57</sup> Human Rights Watch, *As if I am Not Human*, p. 3.

<sup>58</sup> Nurchayati, p. 485.

<sup>59</sup> Human Rights Watch World Report, *The Domestic Workers Convention: Turning New Global Labor Standards into Change on the Ground*, 2012.

<sup>60</sup> US Department of State, *Trafficking in Persons Report 2007* (Washington, D.C.: U.S. Department of State, June 2008), <http://www.state.gov/g/tip/rls/tiprpt/2008/105389.htm> (accessed June 10, 2008).

<sup>61</sup> Ibid.

The Saudi Ministry of Social Affairs, embassies of migrant-sending countries and the Human Rights Watch have been said to receive numerous complaints relating to unpaid wages.<sup>62</sup> Additionally, the average working hour on a daily basis is 18.7 hours per day without set resting periods.<sup>63</sup> Overworking and withholding of payments have been among the common challenges that the migrant domestic workers had to face.<sup>64</sup> The UN Special Rapporteur on Violence against women in its report describing the condition of migrant domestic workers in Saudi Arabia has stated that “upon arrival, all migrants have their passports and residency permit taken away from them ...and some find themselves in slave-like conditions”.<sup>65</sup> Moreover, “female domestic workers who are among the most vulnerable to abuse and are sometimes locked up in the house with no possibility to make or receive phone calls, or are prohibited from leaving the abuse at their will”.<sup>66</sup> The fear of criminal prosecution and being reported as ‘absconding’ prevents migrant domestic workers from escaping from their abusive employers.<sup>67</sup>

### **2.2.3 Other Forms of Abuse**

In the field research conducted in Ethiopia by the ILO, it is confirmed that the migrant domestic workers may ‘repetitively be physically, sexually, and psychologically abused’ during transportation and upon arrival at the destination.<sup>68</sup> The isolation in private homes and the confiscation of passports in Saudi Arabia fuels up the exposure to abuse and the employer’s impunity. Some workers have also complained of being deprived of food.<sup>69</sup> Furthermore, there were also cases in which a migrant domestic worker had to be hospitalized suffering from severe physical abuse and injuries.<sup>70</sup>

As the number of cases of abuse documented against most migrant domestic workers increased, the number of incidents of Ethiopian migrant workers being subjected to degrading, cruel and

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<sup>62</sup> Human Rights Watch, *As if I am Not Human*, p. 74.

<sup>63</sup> *Ibid.* p. 73.

<sup>64</sup> *Ibid.* p. 78.

<sup>65</sup> United Nations, *Report of the Special Rapporteur on Violence against women, its causes and consequences, Yakin Ertuk, Mission to Saudi Arabia A/HRC/11/6/Add.3*, 14 April 2009, para 57 and 59.

<sup>66</sup> *Ibid.*

<sup>67</sup> ILO Study, p. 14.

<sup>68</sup> *Ibid.* p. 15.

<sup>69</sup> Human Rights Watch, *As if I am Not Human* p. 65.

<sup>70</sup> *Ibid.* p. 64.

inhumane treatment in Saudi Arabia also increased on a higher rate. Between 1999 and 2005, the Quarantine Office of the Addis Ababa International Airport reported 129 female bodies returned from Jeddah, Dubai and Beirut.<sup>71</sup> Unfortunately, it is not clear and confirmed how many of these deaths are related to abuse, and not natural causes.

#### **2.2.4 Access to Justice**

The exclusion of domestic workers from the labour law is an impediment for victims seeking to access justice in time of difficulties.<sup>72</sup> The workers are also often hesitant to escape abusive employers and approach the police in fear of facing counter criminal charges or abuse from law enforcing agents. Interestingly, Vlieger indicates that “in Saudi Arabia the Governor’s office, the National Society for Human Rights, the Human Rights Commission and sometimes the Sharia courts function as some sort of ombudsman, but they are rather prejudiced against domestic workers when and if they handle cases”.<sup>73</sup> This shows that other conflict resolution mechanisms hardly compensate for the exclusion of domestic workers from the labour law.

Workers, who manage to escape or are trying to escape from an abusive employer, sometimes use the help of friends or family to return to their home country or ‘disappear’ on the black market. Those who manage to contact an agency may be exposed to further abuse or taken advantage of by being transferred to another employer. Vlieger points out that the other places to turn to for help would be the two (or possibly three) government shelters in Saudi Arabia, although these are reported to be ‘overcrowded, dirty and prison-like and deportation usually follows swiftly’.<sup>74</sup> On November 2013, there has been a crackdown on irregular migrants in Saudi Arabia that were deemed to have stayed in violation of the national labour law. Several thousands of Ethiopians were victims of the expulsion and two people lost their lives while some others were injured in the process.

The criminal justice system in Saudi Arabia is also known for exposing migrant domestic workers to further victimization. Runaway workers who manage to report to the police on their abusive employers may face counter-charges often spurious ones of theft, or witchcraft.

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<sup>71</sup> Supra at 1, p. 22.

<sup>72</sup> Vlieger, p. 208.

<sup>73</sup> Ibid.

<sup>74</sup> Ibid. p. 209.

Moreover, Human Rights Watch has confirmed that these domestic workers who are already victims of rape or sexual harassment may also be subject to prosecution for immoral conduct, adultery, or fornication. And the criminal justice system addresses such charges with punishments ranging from imprisonment, lashes, and, in some cases, death.<sup>75</sup> Furthermore, the system fails in ensuring the trafficked persons are well informed of their rights and get access to the diplomatic and consular representatives from their home countries<sup>76</sup>

All in all, migrant domestic workers have very limited access to justice in Saudi Arabia. Consequently, they are barred from ever getting proper redress while living outside of the shadow of the law resulting in the impunity of traffickers and abusive employers who will continue to exploit and victimize the women.

### **2.3 Comparative Analysis: Philippines and Indonesian Domestic Workers**

In 2013, the ILO estimated that there are over 2 million migrant domestic workers in the Middle East. And the majority of the workers are found in Saudi Arabia alone, on average one per household.<sup>77</sup> Philippines and Indonesia are two of the top labour sending countries to Saudi Arabia. In 2012, the Saudi Arabian Embassy processed about 800 applications for jobs and visas for Filipinos daily, making the country one of the largest employer of Filipino workers.<sup>78</sup> Most of the Filipino women migrate to Saudi Arabia to work in the domestic work sector. Indonesians on the other hand, started to migrate to Saudi Arabia to work as domestic workers following the oil boom in 1982.<sup>79</sup>

The Philippines and Indonesian embassies in Saudi Arabia have handled several complaints of abuse against domestic workers.<sup>80</sup> In particular, Indonesian migrant domestic workers have been reporting various forms of abuse by recruiting agents and employers.<sup>81</sup> The countries demanded

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<sup>75</sup> Human Rights Watch, *As if I am Not Human*, p. 83.

<sup>76</sup> Ibid.

<sup>77</sup> Regional Mixed Migration Secretariat, p. 15.

<sup>78</sup> Ibid.

<sup>79</sup> Nurchayati, p. 479.

<sup>80</sup> Human Rights Watch, *As if I am Not Human* p. 23.

<sup>81</sup> Nurchayati, p. 480.

for a better payment and treatment of their nationals following such reports in Saudi Arabia.<sup>82</sup> This act by the laboring sending countries, led Saudi Arabia to suspend issuing work permits for Filipino workers for a short period of time. However, Saudi Arabia eventually agreed on a USD 400 per month minimum wage with few other legal protections, and migration from the Philippines resumed.<sup>83</sup> Ultimately, both countries were able to secure bilateral agreements with Saudi Arabia in 2013 (Philippines) and 2014 (Indonesia).

The bilateral agreements constituted cooperation with Saudi Arabia in terms of guaranteeing decent work conditions such as: not confiscating passports of workers, proper resting periods, and salary payment on a regular basis.<sup>84</sup> Indonesia, the Philippines also operate emergency shelters in their missions abroad for migrant domestic workers with complaints of unpaid wages, poor working conditions, or physical abuse.<sup>85</sup> Countries with fewer resources such as Nepal and Ethiopia may not be able to establish such shelters as needed. It has also been indicated that the Philippines typically meets the highest standards in terms of shelter operations, whereas others often have extremely overcrowded conditions where a small staff without enough relevant training are totally overwhelmed with the high numbers of complaints each day.<sup>86</sup>

Such strict bilateral agreements with top labour sending countries made Saudi Arabia turn to other nationalities such as Ethiopia, with whom no agreement exist indicating a shift to cheaper sources of labour. In fact, the Chairman of the Jeddah Chamber of Commerce and Industry's Recruitment Committee has noted that 'Ethiopians are a good alternative, perhaps because they are less expensive and because of Ethiopia's lax labour requirements'.<sup>87</sup> This has led to discrepancies in the amount of wages paid to different nationalities and their treatments thereof. The labor recruitment industry discriminates against workers by setting pay scales according to nationality, rather than work experience, skills, or the nature of the work.<sup>88</sup> This hierarchy is

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<sup>82</sup> Regional Mixed Migration Secretariat, p. 58-59.

<sup>83</sup> Ibid.

<sup>84</sup> HRW, *Dispatches: New Protection for Saudi Arabia's Domestic Workers*, 2004, available at: <http://www.hrw.org/news/2014/02/19/dispatches-new-protection-saudi-arabia-s-domestic-workers> (accessed on December 17, 2015).

<sup>85</sup> HRW, *Slow Reform Protection of Migrant Domestic Workers in Asia and the Middle East*, 2010, p 10.

<sup>86</sup> Ibid.

<sup>87</sup> Migrant Rights. *Avoiding Reform, GCC States Seek Alternative Sources of Labor*. 2013, available at: <http://www.migrantrights.org/2013/02/11/avoiding-reform-gcc-states-seek-alternative-sources-of-labor/>.

<sup>88</sup> Human Rights Watch, *As if I am Not Human*, p. 73.

further reflected in the amount of charges paid to mediating agencies and brokers. Depending on nationality and experience, for example between an inexperienced Ethiopian and experienced Indonesian domestic worker; the one-time fee would be 340 USD and 370 USD, respectively.<sup>89</sup>

For reasons unknown, the Ethiopian government has still not secured any bilateral agreement with Saudi Arabia despite continuous suffering of its nationals residing abroad. In fact, during the course of writing this research the writer was informed that the government was drafting an agreement with the UAE with regards to domestic workers, but not with Saudi Arabia.<sup>90</sup> Although the government has still suspended labor migration to Saudi Arabia, many women still take the irregular routes and get exposed to trafficking while they try to reach to their destination. Such prohibition will not provide any long-term solution to the problem of trafficking for forced labour, as Ethiopia has still not secured any standard contract for its citizens, protections from forced labour or establish enforcement mechanisms for any abuse of their human rights.

### **Chapter Three – The Legal Framework for the Protection of Migrant Domestic Workers**

Human trafficking is a complex issue with a multifaceted trait that can be considered from a number of different angles such as: human rights; crime control and criminal justice; migration; sexual exploitation and labour. From the labour perspective, trafficking in for exploitative labor purposes has taken on a terrible and enormous profile in recent years due to several factors that contribute to the vulnerability and abuse of victims. Migrant domestic workers in particular are important parts of the work force susceptible to trafficking and exploitation in various forms calling for the need to a comprehensive international and national legal framework to tackle the issues. This has been emphasized in the US Department of State Reports that urges for a universal policy framework and action to combat the problem of trafficking that has become ‘a

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<sup>89</sup> Regional Mixed Migration Secretariat, p. 15.

<sup>90</sup> Ethiopian Ministry of Foreign Affairs, Department of International Law Directorate General, April, 2015.

global crime against humanity.<sup>91</sup> Accordingly, the international community has acknowledged certain inalienable rights that States are obliged to respect at all times.

Before analyzing the relevant international, regional and national laws that are applicable to migrant domestic workers who work at a sector which is particularly vulnerable to various forms violations of their human rights, it is crucial to understand the difference and relations among the principal concepts such as: slavery, servitude and forced labour and human trafficking.

To begin with, it is important to note that slavery involves a complete form of ownership, which is much broader than forced labor. Although all cases of slavery involve forced labour, not all cases of forced labour involve slavery. This is mainly because there are exceptions listed under the ILO C29 art 2(2) in which there are instances where certain works are acceptable to be required of people,<sup>92</sup> while slavery remains to be absolutely prohibited in whatever circumstances. In cases of slavery, the person is reduced to mere property under the ownership of the ‘master’ ripped off any rights with the possibilities of being sold to other owners in exchange for money or other items.

Forced labour is also a concept that requires being distinguished from other sub-standard or exploitative working conditions. As rightly noted by the ILO, there are several indicators that can be helpful to determine whether a certain working condition amounts to forced labour such as ‘restrictions on workers’ freedom of movement, withholding of wages or identity documents, physical or sexual violence, threats and intimidation or fraudulent debt from which workers cannot escape.’<sup>93</sup> The ILO further highlights that, “Forced labour cannot be equated simply with low wages or poor working conditions. Nor does it cover situations of pure economic necessity, as when a worker feels unable to leave a job because of the real or perceived absence of employment alternatives.”<sup>94</sup> Servitude the condition where a person is required to perform forced

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<sup>91</sup> US Department of State reports, *The Trafficking in persons report*, 2005.

<sup>92</sup> ILO C29 on Forced Labour Art 2 (2) : (a) military service, (b) when it is part of the “normal civic obligations of the citizens,” (c) convict labor performed for a public authority, (d) when necessary in “cases of emergency” and (e) “minor communal services” by members of the community for the community.

<sup>93</sup> ILO, Questions and Answers on Forced Labour, available at: [http://www.ilo.org/global/about-the-ilo/newsroom/comment-analysis/WCMS\\_181922/lang--en/index.htm](http://www.ilo.org/global/about-the-ilo/newsroom/comment-analysis/WCMS_181922/lang--en/index.htm) accessed on May 5, 2015.

<sup>94</sup> ILO (2005), A Global Alliance Against Forced Labour, Report of the Director-General, 93rd Session, Report I (B), p. 5, available at: <http://www.ilo.org/public/english/standards/relm/ilc/ilc93/pdf/rep-i-b.pdf>.

or compulsory labour and also live on another person's property. A person in servitude will not have the choice to change his/her condition.

With regards to human trafficking as defined by the Trafficking protocol, forced labour constitutes as one form of exploitation. However, not all victims of forced labour are necessarily trafficked. And it is important to consider the relevant components of trafficking as defined by the Trafficking Protocol to understand the dynamics in which the process is undertaken in relation to forced labour. This research is mainly focused on analyzing the vulnerabilities of migrant domestic workers as they are exposed to trafficking for the purposes of forced labour.

For ease of reference, the research will analyze the legal framework for the protection of migrant domestic workers against trafficking by dividing it into three sections: the international standards, regional standards and national legislations.

### **3.1 The International Legal Framework**

The International legal frame work is composed of various instruments adopted by prominent organizations engaged in the anti-trafficking and forced labour initiatives such as : the United Nations and the ILO. While the problem of trafficking has a deeply rooted historical background, the issue acquired global recognition dating back to the Paris conference on trafficking in women held in 1895 and the adoption of the International Agreement for Suppression of the White Slave Trade in 1904.<sup>95</sup>

#### **3.1.1 The UN Standards**

The Universal Declaration of Human Rights (UDHR), one of the most significant declarations provides that 'no one shall be held in slavery or servitude; slavery and slave trade shall be prohibited in all their forms'.<sup>96</sup> The Declaration is highly recognized among States and most of the provisions are customary international law. It primarily delineates the human rights of citizens and noncitizens that all states must honor. Additionally, there are several instruments

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<sup>95</sup> Cole A., *Reconceptualizing Female Trafficking: The Inhuman Trade in Women* , 2005, *Cardozo Journal of Law & Gender*, (2005, vol. 6, 789-820) (Cole, 2006).

<sup>96</sup> Universal Declaration of Human Rights (adopted 10 December 1948 UNGA Res 217 A(III) (UDHR), art 4.



that form the international legal framework within which States must define their own laws in order to address effectively the problem of human trafficking.

### ***3.1.1.1 The Organized Crime Convention and its Protocols***

The United Nations Convention against Transnational Organized Crime and its protocols, Trafficking in Persons Protocol and Migrants Protocol are essential for States that plan to tackle the problem of human trafficking. The Organized Crime Convention establishes general measures against transnational organized crime, whereas the two Protocols in question deal with specific crime problems. Each Protocol must be read and applied in conjunction with the Convention. The Organized Crime Convention applies to the two Protocols *mutatis mutandis* “with such modification as the case requires” and all offences established by the Protocols are also considered offences under the Organized Crime Convention itself.

The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime has three basic purposes: the prevention and combating of trafficking; the protection and support of victims of trafficking; and the promotion of cooperation between States parties.<sup>97</sup> During the process of trafficking, the Protocol provides that the consent of a victim of trafficking to the exploitation shall be irrelevant where any of the means of force, threat of, coercion, deception, have been used.<sup>98</sup>

As noted in the earlier Chapter, out of the Ethiopian women migrating to the Gulf Countries, 7.5 percent included girls between the ages of 13-17 years at the time of migration making them child victims of trafficking. International law provides distinct protection for child victims of trafficking, as they need extra safeguards due to their vulnerable state. The Trafficking Protocol provides that State parties should take into account the special needs of child victims in considering measures to assist and protect victims of trafficking.<sup>99</sup>

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<sup>97</sup> Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime, 15 November 2000, art. 2.

<sup>98</sup> Ibid. art 3(b).

<sup>99</sup> Ibid. art 6(4).

Furthermore, article 31 (7) of the Organized Crime Convention requires States to address the adverse social and economic conditions that may contribute to the desire to migrate and hence, to the vulnerability of victims of trafficking. Article 9 (4) of the Trafficking Protocol also urges States to address such vulnerability in order to tackle the root causes of migration and the exposure to trafficking.<sup>100</sup>

### ***3.1.1.2 Other Instruments***

The two major general Human Right instruments : the International Convention for Civil and Political Rights (ICCPR) and International Convention for Economic Social and Cultural Rights (ICESCR) provide important protections for victims of trafficking. While the ICCPR explicitly asserts under article 8 for the elimination of both slavery and forced labour, the ICESCR establishes that everyone has the right to work and to just and favorable conditions of work.<sup>101</sup>

For the protection of women in particular, article 6 of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) refers to traffic in women and exploitation of prostitution of women by obliging States to take all appropriate legislative and other measures “suppress all forms of traffic in women and exploitation of the prostitution of women”. Unlike the Trafficking Protocol, CEDAW does not elaborate other elements of exploitation but it strictly provides that States have an obligation to promote, protect, respect and fulfill the rights enshrined within the Convention. And some of the crucial rights, that are also important elements in the combat against trafficking, are protection against violence and prohibition of discrimination against women.

As noted earlier, in relation to child victims of trafficking, from among the thousands of Ethiopian women who are trafficked to Saudi Arabia, young girls who are under the age of 18 but who falsify their passports to migrate abroad comprise a vast number. Children fall into special category and their conditions need to be distinguished requiring further study and research, nonetheless it is worth mentioning some of the relevant international laws applicable to their case. The Convention on the Rights of the Child (CRC) provides protection for children

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<sup>100</sup> Ibid. art 9(4).

<sup>101</sup> International Covenant on Economic, Social and Cultural Rights, 16 December 1966, United Nations, Treaty Series, vol. 993, art 6 and 7.

against human trafficking by stating under article 35 that States need to “take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form”. It further establishes State party’s responsibilities to ensure protection against trafficking and any form of exploitation nationally, through bilateral and multilateral measures.<sup>102</sup> The protocol to the CRC also provides additional protection by stating ‘State Parties are required to prohibit, criminalize, and appropriately punish the relevant acts and to establish appropriate jurisdiction over offenses.’<sup>103</sup>

### **3.1.2 ILO Standards**

Trafficking in persons is a problem that can result in the infringement of several rights of victims. For instance, basic rights such as: the freedom from forced labour, the freedom to set up associations and bargain collectively, and the freedom from discrimination, will be at stake for victims of trafficking for labour purposes. An example is the exclusion of domestic workers from the labour laws of many Gulf countries, which could amount to an indirect discrimination against women, as the work sector mostly comprises women in particular. And such discrimination can be a contributing factor to the trafficking in women and exploitation in such a way that for example such exclusion from the labour law and the strict sponsorship systems can result in lack of access to any labour courts or remedies for victims of trafficking. It could also result in lack of forming any recognized association particularly for female migrant domestic workers and to collectively bargain their way to decent work conditions.

The ILO in particular has recognized that women migrating to perform domestic work in growing numbers are disproportionately exposed to abuse and exploitation. Accordingly, there are various fundamental conventions that provide protection for the specific rights of workers. Article 2 of the Convention Concerning Forced or Compulsory Labour (C29) has defined forced labour as “all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily”. The three main elements asserted in this provision are ‘work or services’ ‘under the menace of any penalty’, and

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<sup>102</sup> Convention on the Rights of the Child, 20 November 1989, United Nations, Treaty Series, vol. 1577 art 19, 34, 11 and 39.

<sup>103</sup> Ibid. art 4-5, art 4(3), see also CRC Protocol.

‘voluntarily’. While the ‘work or services’ tries to exclude educational training or vocational work, it provides that it should not be under the threat of a penalty, which may also include loss of rights or privileges.<sup>104</sup> As to the third element ‘voluntary offer’, the General Survey on the topic has elaborated that the situation of being submitted to a work without one’s consent or willingness may not only come from the act of authorities (statutory instrument).<sup>105</sup> This is to mean that it can stem from the employer’s practice, e.g. where migrant workers are induced by deceit, false promises and retention of identity documents or forced to remain at the disposal of another employer, such practices represent a clear violation of the Convention.<sup>106</sup>

The General Survey further establishes what has been considered by the Committee of Experts on the Application of Conventions and Recommendations (CEACR) as to the unlawfulness of any law/statutory provision that prevents ‘termination of employment of indefinite duration (or very long duration) upon notice of reasonable length is to turn a contractual relationship based on the will of the parties into service by compulsion of law’.<sup>107</sup> Another essential provision on C29 is, article 25 in which it is expressly asserted that the illegal exaction of forced or compulsory labour shall be punishable as a penal offence. The additional Convention for Abolition of Forced Labour (C105) was adopted to ensure that forced labour was not used for certain prohibited reasons, mostly by governments and the convention supplements C29 without revising it.

Moreover, the International Labour Conference in its 103<sup>rd</sup> session has adopted a new legally binding protocol to C29 designed to strengthen global efforts to eliminate forced labour.<sup>108</sup> The Protocol creates new obligations ‘to prevent forced labour, to protect victims and to provide access to remedy, such as compensation for material and physical harm’.<sup>109</sup> It requires governments to take measures to better protect workers, in particular migrant workers, from

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<sup>104</sup> ILC, 14th Session, Geneva, 1930, *Record of Proceedings*, p. 691; see also *Forced labour*, General Survey of 1968, para. 27; *Abolition of forced labour*, General Survey of 1979, para. 21.

<sup>105</sup> ILO: *Report of the Committee of Experts on the Application of Conventions and Recommendations*, Report III (Part 1B) International Labour Conference, 96th Session, Geneva, 2007, p. 20.

<sup>106</sup> *Ibid.*

<sup>107</sup> *Ibid.* p. 21.

<sup>108</sup> ILO, *ILO adopts new protocol to tackle modern forms of forced labour*, 2014, Press Release, available at: [http://www.ilo.org/global/about-the-ilo/media-centre/press-releases/WCMS\\_246549/lang--en/index.htm](http://www.ilo.org/global/about-the-ilo/media-centre/press-releases/WCMS_246549/lang--en/index.htm) (accessed on April 1, 2015).

<sup>109</sup> Protocol of 2014 to the Forced Labour Convention 1930 (PO29).

fraudulent and abusive recruitment practices and emphasizes the role of employers and workers in the fight against forced labour.<sup>110</sup>

The Private Employment Agencies Convention (No. 181) also a useful instrument as it provides additional protection for domestic workers by obliging States that ratify the convention to adopt appropriate measures to provide adequate protection for and prevent abuses of migrant workers recruited or placed in its territory by private employment agencies.

All in all, the ILO's Declaration on Fundamental Principles and Rights at Work and the four principles, which reflected the eight fundamental ILO Conventions, are central to the fight against trafficking and for the rights of workers, whatever their nationality may be. To summarize, the principles include: the elimination of all forms of forced or compulsory labour, the effective abolition of child labour, the elimination of discrimination in respect of employment and occupation, Freedom of association and the effective recognition of the right to collective bargaining.<sup>111</sup> These standards are vital to the mission of tackling the central issues of trafficking in persons and laying down a strong legal foundation.

## **3.2 Regional Standards**

The regional human rights standards comprise of fundamental concepts of anti-trafficking, slavery and forced labour principles that are also reflected in the universal standards. For the purpose of this research, the regional human rights standards found in Africa and Asia will be discussed below.

### **3.2.1 Africa**

Article 5 of the African Charter on Human and Peoples' Rights provides that 'every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal statuses'. It strongly prohibits 'all forms of exploitation and degradation of man particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment

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<sup>110</sup> Ibid.

<sup>111</sup> ILO, Declaration on Fundamental Principles and Rights at Work, 1998.

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Furthermore, The African Charter on the Rights and Welfare of the Child under article 29 provides that 'States parties shall 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.'

### **3.2.2 Asia**

The South Asian Association for Regional Cooperation Convention on Regional Arrangements for the Promotion of Child Welfare in South Asia (SAARC) is an instrument that has committed to enhance the welfare of children in the region. Article IV, paragraph 3 (a) of this Convention in particular commits States parties to ensure that there are appropriate legal and administrative mechanisms and social safety nets in place to protect children from, among other things, trafficking. Moreover, the 2012 ASEAN Declaration on Human Rights asserts that no person shall be held in servitude or slavery in any of its forms, or be subject to human smuggling or trafficking in persons, including for the purpose of trafficking in human organs.<sup>113</sup>

Furthermore, article 10 of the Revised Arab Charter of Human Rights strictly prohibits slavery and trafficking in persons for the purposes of: forced labour, sexual exploitation, the exploitation of children in armed conflict or any other form of exploitation.

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<sup>112</sup> African Charter on Human and Peoples' Rights ("Banjul Charter"), 1981, art 5.

<sup>113</sup> ASEAN Convention.

### 3.3 National Legal Framework

#### 3.3.1 Ethiopia's National Legislation

Ethiopia does not have a comprehensive national legal framework solely to combat human trafficking or its definition thereof.<sup>114</sup> However, the country has instruments regulating the issue from different aspects. A prominent example is article 18 of the Federal Democratic Republic of Ethiopia's (FDRE) Constitution, which provides that:

1. *Everyone has the right to protection against cruel, inhuman or degrading treatment or punishment.*
2. *No one shall be held in slavery or servitude. Trafficking in human beings for whatever purpose is prohibited.*
3. *No one shall be required to perform forced or compulsory labour.*
4. *For the purpose of sub-Article 3 of this Article the phrase "forced or compulsory labour" shall not include: (a) Any work or service normally required of a person who is under detention in consequence of a lawful order, or of a person during conditional release from such detention; (b) In the case of conscientious objectors, any service exacted in lieu of compulsory military service; (c) Any service exacted in cases of emergency or calamity threatening the life or well-being of the community; (d) Any economic and social development activity voluntarily performed by a community within its locality."*

Ethiopia has also ratified some of the relevant UN and ILO conventions that are instrumental in dealing with trafficking and labour exploitation.<sup>115</sup> These include: the UN Convention for the Suppression of the traffic in persons and the Exploitation of the prostitution of others, The UN Convention Against Transnational Organized Crime, the Palermo Protocol, ICESCR, ICCPR

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<sup>114</sup> ILO, *Trafficking in Persons Overseas for Labour Purposes : The Case of Ethiopian Domestic Workers*, 2011 ed. Animaw Anteneh, ILO Country Office, Addis Ababa, p ix, 58, available at: <http://www.molsa.gov.et/English/EPro/Documents/ILO-Trafficking%20in%20Persons%20Overseas%20for%20Labour%20Purposes%20-%20The%20Case%20of%20Ethiopia.pdf> (accessed on June 20, 2014) (hereinafter: ILO Study).

<sup>115</sup> Ibid.

CEDAW, CRC, C182, C105, C181, C111, and ILO C87. Moreover, the State has ratified the African Charter on the Rights and Welfare of the Child, the African Charter on Human and People's Rights and on freedom of association and protection of the right to organize.

Articles 9 and 13 of the FDRE constitution strictly provides that international instruments ratified by Ethiopia are part of the law of the land and that the fundamental rights enshrined in the Constitution shall be interpreted in a manner conforming to the principles of international human rights law. Article 9 (4) provides that:

*“All international agreements ratified by Ethiopia are an integral part of the law of the land.”*

And Article 13 (2) reaffirms:

*“The fundamental rights and freedoms specified in this Chapter shall be interpreted in a manner conforming to the principles of the Universal Declaration of Human Rights, International Covenants on Human Rights and international instruments adopted by Ethiopia.”*

In addition to the constitution, the 2003 Labour Proclamation further refers in its Preamble to international labour standards ratified by the country. The State however has not ratified the two ILO conventions on migrant workers (These are ILO Conventions No. 97 of 1975 concerning migration for employment and No. 143 of 1975 concerning migrations in abusive conditions and the promotion of equality of opportunity and treatment of migrant workers) and the UN Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

The Ethiopian Revised Criminal Code also addresses the issue of trafficking in persons in its articles 597–598 and 635, and article 596 deals with enslavement but only refers to trafficking indirectly. Article 598 of Criminal Code states that:

*“whoever, 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”.*

The Employment Exchange Services Proclamation No.632/2009 article 40 is almost similar to above provision of the Criminal code as it also criminalizes the mere act of sending Ethiopians



for work without having obtained a license from the relevant authority. However, the terms ‘trafficking’, ‘recruitment’, ‘transport’ and ‘exploitation’ are not mentioned in neither in article 598 of the Criminal Code nor article 40 of the Employment Exchange Services Proclamation. Article 599 (2) of the Criminal Code, criminalizes the participation of juridical persons in human trafficking. From this, it can be understood that there is no clear definition of trafficking in persons in the Ethiopian legal system although the term was being used in the Constitution and the Criminal Code in relation to trafficking for sexual exploitation (articles 634-637 regarding trafficking women and children for the purpose of prostitution). Such lack of a clear definition of human trafficking has extremely impeded the effective investigation and prosecution of human trafficking cases.<sup>116</sup> Consequently, there’s often confusion within the country between smuggling and trafficking, which should be distinguished at all times. And while its plausible, that Ethiopia often prosecutes trafficking with other related crimes, it often results in lenient punishment despite the rigorous nature of the crime

During the course of writing this research, the writer has learned of the fact that Ethiopia is in the process of drafting a new law to stiffen punishments for human trafficking and smuggling.<sup>117</sup>

### **3.3.2 Saudi Arabia’s National Law**

The US Department of State report asserted that Saudi Arabia is a destination country for men and women subjected to trafficking and forced labor.<sup>118</sup> The country applies its interpretation of Sharia (Islamic law) as the governing legal framework. However, the absence of codified Sharia laws and rules of precedent sometimes leaves the government and judiciary significant room for divergent interpretations of the law.<sup>119</sup>

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<sup>116</sup> ILO Study, p. 71.

<sup>117</sup> Ministry of Foreign Affairs see also <http://www.usnews.com/news/world/articles/2015/04/28/ethiopia-ponders-stiffer-penalties-for-human-smuggling>.

<sup>118</sup> US Department of State, *Trafficking in Persons Report*, 2014, available at <http://www.state.gov/j/tip/rls/tiprpt/countries/2014/226806.htm> (accessed on April, 2015).

<sup>119</sup> Human Rights Watch, *As If I Am Not Human: Abuses against Asian Domestic Workers in Saudi Arabia* (2008), p. 24, available at: <http://www.hrw.org/reports/2008/saudiArabia0708/saudiArabia0708webwcover.pdf> (accessed on December 20, 2014).

Saudi Arabia has been a member ILO since 1976 and has ratified fundamental conventions on Forced Labour C29 and C105.<sup>120</sup> Moreover, the State is party to some relevant international instruments such as CERD, CEDAW, CRC and CAT. It has also ratified the Trafficking Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children. Additionally, the Council of Ministers ratified a law on July 13 that adopted a tougher stance on human trafficking.<sup>121</sup> The law defines human trafficking as ‘coercion of a person, threat, deception, deceit or abduction, misuse of position, influence or authority against a person, taking advantage of their weakness, or giving or receiving money or enticements to gain the approval a person for sexual acts, work, coercive service, begging, slavery, practices similar to slavery, organ removal or performance of medical tests on a person’.<sup>122</sup>

However, the strict sponsorship system (*Kafala*) and the exit visa requirement, continue to restrict the freedom of movement of migrant workers and impede the ability of victims of trafficking to pursue legal cases against their abusive employers. Furthermore, the national Labour law excludes domestic workers, making them vulnerable to abuse and exaction of forced labour.<sup>123</sup> The amended Labour law of Royal Decree No. M/51 2005 article (3) provides:

*“Work is the right of every citizen. No one else may exercise such right unless the conditions provided for in this Law are fulfilled. All citizens are equal in the right to work”*

Nevertheless, according to article 7(2) Part I, domestic workers are excluded from the provisions of the Labour Law.<sup>124</sup> The article lists domestic workers among others in the sub-sections by affirming that:

*“The following shall be exempted from the implementation of the provisions of this Law:*

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<sup>120</sup> ILO, Saudi Arabia Country Profile, available at: [http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11110:0::NO::P11110\\_COUNTRY\\_ID:103208](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11110:0::NO::P11110_COUNTRY_ID:103208) (accessed on April 20, 2014).

<sup>121</sup> Council of Ministers Decision number (244) dated 20/7/1430 (June 13, 2009) available at, [http://www.protectionproject.org/wp-content/uploads/2010/09/Saudi-Arabia\\_TIP-Law\\_2009\\_Combined.pdf](http://www.protectionproject.org/wp-content/uploads/2010/09/Saudi-Arabia_TIP-Law_2009_Combined.pdf) (accessed on February, 2015).

<sup>122</sup> Ibid.

<sup>123</sup> Human Rights Watch, Supra at 36, p. 28.

<sup>124</sup> Labour Law, Royal Decree No. M/51, 27 September 2005, available at: [http://www.sagia.gov.sa/Documents/Laws/labor\\_law\\_en.pdf](http://www.sagia.gov.sa/Documents/Laws/labor_law_en.pdf) (accessed on December, 2014).

- (1) The employer's family members, namely, the spouse, the ascendants and descendants who constitute the only workers of the firm.*
- (2) Domestic helpers and the like.*
- (3) Sea workers working on board of vessels with a load of less than five hundred tons.*
- (4) Agricultural workers other than the categories stated in Article (5) of this Law.*
- (5) Non-Saudi workers entering the Kingdom to perform a specific task for a period not exceeding two months.”*

Such exclusion has proven to be problematic in such a way that thousands of women find themselves in circumstances where all their fate in the work place lies under the mercy of their employers and are subjected to forced labour and violence without the opportunity to claim their rights under the national legal system. Such lack of access to justice or the non-availability of courts to entertain the grievance of the workers is in fact contrary to the Saudi Arabia Basic Governance Act Article 47 which states that “both citizens and foreign residents have an equal right to litigation”. It is also contrary to the Arab Charter on Human Rights article 12 that provides “all persons are equal before the courts and tribunals. The States parties shall guarantee the independence of the judiciary and protect magistrates against any interference, pressure or threats. They shall also guarantee every person subject to their jurisdiction the right to seek a legal remedy before courts of all levels.” Article 13: (1) further establishes that “everyone has the right to a fair trial that affords adequate guarantees before a competent, independent and impartial court that has been constituted by law to hear any criminal charge against him or to decide on his rights or his obligations. Each State party shall guarantee to those without the requisite financial resources legal aid to enable them to defend their rights.” (2) “Trials shall be public, except in exceptional cases that may be warranted by the interests of justice in a society that respects human freedoms and rights.”

The Government of Saudi Arabia in its statement to the Committee of Experts on the Application of Conventions and Recommendations (hereinafter CEACR) has made reference to the newly approved regulation Order No. 310 of September 2013 as an improvement to the existing labour law.<sup>125</sup> Indeed the regulation seems promising in the sense that it regulates the relationship

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<sup>125</sup> ILO, Observation (CEACR)-adopted 2013, published 103<sup>rd</sup> ILC Session (2014), Forced labour Convention 1930(No. 29)-Saudi Arabia, available at:

between an employer and a domestic worker, by clarifying the rights and obligation of both parties and by giving better protection to the worker in terms of; better conditions of work, hours of daily rest, sick leave and paid leave and sanction of a fine to employers who violate the Regulation.<sup>126</sup>

Nonetheless, the regulation also states that workers must respect the teachings of Islam and the Kingdom's rules and regulations and carry out their duties 'perfectly'. Workers will also be expected to 'obey the employer and his family members and protect their property and should not harm children or elderly members.'<sup>127</sup> The legislation also states "the worker will not have the right to reject a work or leave the job without any genuine reason."<sup>128</sup> In reverse, the law forbids employers from asking a worker to do any job outside of their contract or which may be harmful to their health. And an employer violating any of the laws provided under the regulation or contract, will be fined 2,000 riyals and banned from recruiting further domestic help for a year.<sup>129</sup> Further incriminations by the employer result in increased fines with a third violation 'costing 10,000 riyals and a lifetime ban on recruiting domestic help'.<sup>130</sup> As to the workers who violate the contract, they will be fined 2,000 riyals and banned from working in the country. They will also have to pay for their own repatriation costs.<sup>131</sup>

While noting that the new Regulation constitutes a first step towards regulating the work of migrant domestic workers, the ILO CEACR has rightly pointed out that it does not address several of the factors that increase the vulnerability of the workers to situations of forced labour. The Committee stresses that these are particularly, in terms of the 'possibility of changing employers or leaving the country without the written consent of the employer, or the issue of the

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[http://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100\\_COMMENT\\_ID:3145835:NO](http://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:3145835:NO) (accessed on April 25, 2014) (hereinafter, ILO ,Observation(CEACR)).

<sup>126</sup> Ibid. See also Saudi Arabia, Order No. 310 of Sept 2013, Sections 2, 7, Section 8 , Sections 17 and Section 6, available at: <http://gulfmigration.eu/decision-no-310-of-1434-on-domestic-workers/>, [http://nshr.org.sa/wp-content/uploads/2013/11/696\\_PDF.pdf](http://nshr.org.sa/wp-content/uploads/2013/11/696_PDF.pdf) (Arabic version), (accessed on September 20, 2014).

<sup>127</sup> Saudi Arabia, Order No. 310 of Sept. 2013.

<sup>128</sup> Ibid.

<sup>129</sup> Ibid. art 17 and 18.

<sup>130</sup> Ibid.

<sup>131</sup> Ibid.

retention of passports'.<sup>132</sup> *Moreover, the CEACR notes that the regulation lacks penal sanctions in which article 25 of the Convention No. 29 provides that 'the illegal exaction of forced or compulsory labour shall be punishable by penalties that are really adequate and strictly enforced'.*

In general, there is no confirmed practical evidence that the new reforms in the national laws would address the long history of victims of trafficking in Saudi Arabia coming forward with complaints only to be faced with counter-allegations of theft, witchcraft, or adultery by their far more influential, well-connected, and often wealthy employers.

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<sup>132</sup> ILO, Observation (CEACR).

## Chapter Four - Rules on State responsibility for Trafficking

The ILO, has estimated that at least 2.4 million women, children and men are trafficked annually into severe forms of labour and sexual exploitation in destination countries, in mainstream industries as well as the informal economy, generating an estimated US\$32 billion in annual profits.<sup>133</sup> Although trafficking for labour purposes is a significant hitch that persists throughout the world, Gallagher rightly points out that the connection between trafficking and migration for work is a phenomenon seldom addressed until recent years.<sup>134</sup> She argues that there are some contributing factors that stand out regarding such hesitance by States to address the issues. The first reason is States' reluctance to identify and acknowledge 'common purposes of trafficking such as child labour and enforced prostitution as "work"'.<sup>135</sup> The second one is the 'relative invisibility of the typical forms of exploitation with which trafficking is commonly associated with, in particular within the private sector (domestic servitude, coerced marriage, etc.) and are consequently largely impervious to external regulation'.<sup>136</sup> She rightly points out that such lack of connection between trafficking in persons and labour migration in particular would be an obstacle to assess and formulate the rights and obligations owed to migrants and everyone involved within the subject matter.

Additionally, examining the responsibility of States for violations under international law, in particular to trafficking for labour purposes is essential to understand the dynamics in which the international community addresses the issues and serves justice to victims. It has often been difficult to establish State responsibility for trafficking related acts with the application of the relevant international principles. The fact that trafficking is a criminal act committed by private actors, makes it difficult to attribute the conduct to a State.<sup>137</sup> Moreover, some States could also

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<sup>133</sup> ILO, *Action against trafficking in human beings*, 2008, p. 3.

<sup>134</sup> Anne T Gallagher, *The International Law of Human Trafficking* (CUP 2010), p. 144.

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

<sup>136</sup> *Ibid.*

<sup>137</sup> UN OHCHR, *Recommended Principles and Guidelines on Human Rights and Trafficking Commentary*, 2010 United Nations Publication, p. 75 (herein after UN OHCHR, *Recommended Principles and Guidelines*).

claim that they have done everything they could to tackle the issue of trafficking and the resulting harm.<sup>138</sup>

Unfortunately, international courts and tribunals have also hardly ever dealt with cases involving trafficking in for labour purposes and exploitation, showing the reality that thousands and more are living outside the shadow of the protection of the law. Gallagher describes that this fact is sometimes due to ‘the entailed lengthy procedures, which are very time-consuming and expensive while the establishment of monitoring mechanisms and committees under international instruments may draw a perception, which does not recognize the need for such international recourse.’<sup>139</sup> Furthermore, the lack of clearly defined states responsibilities in terms of trafficking is also one of the major impediments in the combat against trafficking as it leaves a loophole for States to refute any form of responsibility or provide their own interpretations thereof. In the context of these circumstances, it becomes imperative to analyze the concept, definition and consequences of State responsibility and the breach thereof, in order to identify when and how a State could be held responsible for the crime of trafficking in persons for labour purposes.<sup>140</sup>

#### **4.1 The General Concept of International State Responsibility**

Historically, the notion of State responsibility has undergone through various forms of scholarly and legal debate resulting in transformed ways of perception such as : from the treatment of aliens and their property on State territory, to a concept which must be evaluated in order to meet its demands during a time of change in international relations.<sup>141</sup> Gallagher argues that ‘the allocation of responsibility for violations of international law is critical to that system’s effectiveness and credibility’<sup>142</sup> and refers to Dupuy who opines that responsibility is a leading component within every system of law as it fosters organization regarding ‘the nature of rights

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<sup>138</sup> Ibid.

<sup>139</sup> Gallagher, p. 144.

<sup>140</sup> Roberta Avellino, *State Responsibility for Trafficking in Persons and Human Rights Violations*, 2012, *Elsa Malta Law Review*, available at: <http://ssrn.com/abstract=2195884> (accessed on March 5, 2015), p. 23.

<sup>141</sup> Ibid.

<sup>142</sup> Gallagher, p. 144.

and of obligations, the consequences of their infringement’ and finally moulds the ethical and social foundations of the legal framework.’<sup>143</sup>

Brownlie has also considered the concept of State responsibility in relation to States as the normal and ordinary subjects of the law, and argues that ‘responsibility in fact combines a much broader question, which is distinct from that surrounding the legal personality of States.’<sup>144</sup> Several cases have resulted in international courts and tribunals to consider the question of State responsibility for violation of international rules, generating substantial State practice. However, in 1949 formal codification efforts began under the auspices of the UN and the topic was taken up by the International Law Commission (ILC) at its first session, following a referral from the General Assembly.<sup>145</sup> The focus of the ILC was the “secondary rules” that determine by whom an obligation has been violated and the consequences of that violation and on the “primary” rules that define the content of legal obligation (eg. the content of obligations under a particular treaty regime).<sup>146</sup>

The ILC adopted the complete text of the Articles at its fifty-third session in 2001 and was subsequently referred to the General Assembly for consideration. As the major statement of international law of State Responsibility, the Articles on State Responsibility (along with the accompanying Commentaries by the ILC) provide a useful, if not wholly authoritative, framework for the questions to be addressed in this part. With respect to their scope, the ILC Commentary affirms that the Articles provide general principles of State Responsibility applicable to all areas of international law and “to the whole field of international obligations of States, whether the obligation is owed to one or several States, to an individual or group, or to the international community as a whole”.<sup>147</sup> It is also important to note the obligations are limited to only States and not individuals, international organizations or the acts of States for Internal

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<sup>143</sup> Dupuy, *The International Law of State Responsibility: Revolution or Evolution?*, 1989 Michigan Journal of International Law, p. 126.

<sup>144</sup> Ian Brownlie, *Principles of Public International Law* (Seventh Edn, OUP 2003) 433.

<sup>145</sup> Gallagher, p. 220.

<sup>146</sup> Crawford, *The ILC’s Articles on State Responsibility*, at 2. As ILC Rapporteur Ago remarked “it is one thing to define a rule and the content of the obligation it imposes, and another to determine whether that obligation has been violated and what should be the consequences of the violation” R. Ago “Second Report on State Responsibility”, UN Doc.

<sup>147</sup> ILC Commentary, at Introduction para 5.



Organizations.<sup>148</sup> Furthermore, Gallagher notes that ‘it is important to take note that while many of the Articles of the State responsibility has an authoritative customary law status, the authority of the ILC’s work as a source of law is not universally accepted.’<sup>149</sup>

The law on State Responsibility deals with three general issues.<sup>150</sup> First, examining whether there has been a breach by a State of an international obligation. Second, to analyze the consequences of such any breach. Third, identifying the stakeholder who may invoke the responsibility.<sup>151</sup> Article 1 of the ARS provides that ‘Every internationally wrongful act of a State entails responsibility of that State’.<sup>152</sup> The international legal responsibility for breach of an obligation can be engaged through both an act and an omission attributable to the State.<sup>153</sup> There are two elements specified by article 2 of ASR that determine and establish whether an international wrongful act Article 2 ASR specifies two conditions for an international wrongful act of a state. Firstly, the act or omission in question must be attributable to the state. Secondly, the act or omission must constitute a breach of an international legal obligation in force for the state at the time.<sup>154</sup>

#### **4.1.1 Requirement of Attribution**

One of the essential conditions for the international responsibility of a State is that the conduct in question is attributable to the State under international law. There are several principles and rules under international law and in practice that help identify whether a particular situation, act or omission can be legally attributed to a State. There are circumstances where an act or omission can be directly attributed to State such as where an act or omission can be directly tied to a public official or institution. Article 4 of the ASR provides that actions (or inaction) of courts,

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<sup>148</sup> Gallagher, p. 221.

<sup>149</sup> Ibid. p. 222.

<sup>150</sup> James Crawford and Simon Olleson, *The Nature and Forms of International Responsibility*, found in ‘International Law’ (edi, Malcom D Evans) Third Edition, 2010, p. 441.

<sup>151</sup> Ibid.

<sup>152</sup> ILC, ASR art 1.

<sup>153</sup> ASR art 2 and accompanying Commentary (at para 4).

<sup>154</sup> Article 2 ASR. The two elements have been specified and reinstated by the ICJ in several cases. See for instance, United States Diplomatic and Consular Staff in Tehran case (*USA v. Iran*), Judgment, I.C.J. Reports 1980, p. 3, para. 56; Military and Paramilitary Activities in and against Nicaragua (*Nicaragua v. United States of America*), Merits, I.C.J. Reports 1986, p. 14, para. 226; Gabčíkovo-Nagymaros Project (*Hungary/Slovakia*), I.C.J. Reports 1997, p. 7, para. 78.

legislatures, executive bodies and public officials operating in their official capacity are all examples of conduct that are directly attributable to the State. In determining what constitutes an organ of a State for the purposes of responsibility, the internal law and practice of each State are of prime importance. The structure of the State and the functions of its organs are not, in general, governed by international law. It is a matter for each State to decide how its administration is to be structured and which functions are to be assumed by government. Nevertheless, while the State remains free to determine its internal structure and functions through its own law and practice, international law has a distinct role.<sup>155</sup> Whether the body/official is operating in an “official capacity” will be easily answered in the affirmative where “the conduct complained of is systematic or recurrent, such that the State knew or ought to have known of it and should have taken steps to prevent it”.<sup>156</sup> In terms of trafficking, Gallagher gives examples of other acts potentially attributable to the State (subject to the requirement set out in the second point above ) could include :direct involvement of public officials in trafficking through protection or patronage of commercial premises using the services of victims of trafficking : substantial involvement or effective control by public officials or entities over organized criminal groups implicated in trafficking ; and corruption of the judicial process through bribery.<sup>157</sup>

#### **4.1.2 Is the Conduct of Private Persons or Entities Attributable to a State?**

International law is clear that as a general principle the conduct of private persons or entities is not attributable to the State under international law.<sup>158</sup> However, there are exceptions to this rule in which for example, if private individuals or entities are authorized by the State to exercise elements of governmental authority or are under the direction or control of the State.<sup>159</sup> It is especially difficult for an act or omission to be attributed to a State for trafficking cases, since private actors or organized criminal groups often undertake it. However, this does not completely free States from any responsibility as there is alternative basis of establishing an obligation, known as the standard of “due diligence”.

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<sup>155</sup> ITUC, *How to Combat Forced Labour and Trafficking : Best Practices Manual for Trade Unions*, 2009, p. 28.

<sup>156</sup> UN OHCHR, *Recommended Principles and Guidelines*, p. 76 (also look at ASR art. 7, commentary, para. 8).

<sup>157</sup> Gallagher, *Supra* at 2, p. 273.

<sup>158</sup> ASR art 8, commentary, para. 1.

<sup>159</sup> *Ibid.* see also examples at Gallagher *Supra* at 2, p. 228.

Gallagher rightly argues that ‘a rigid application of the standard of non-attribution of acts of private entities to States would in fact render almost totally ineffective the complex web of international rules that have evolved to protect trafficked and other vulnerable groups from exploitation and abuse’.<sup>160</sup> This is important mostly because a State is in charge of securing the overall accountability and justice for any harm that may come against its people, and denying such responsibility will result in chaos and impunity for traffickers thus fomenting exploitation and abuse.

Moreover, international Human Rights law as a general rule imposes a wide range of obligations on States such as: to protect, to respect, to promote and fulfill. Consequently, the ILC acknowledges, “a State may be responsible for the effects of the conduct of private parties, if it failed to take necessary measures to prevent those effects.”<sup>161</sup> This rightly widens the scope of the responsibility of a State to also include the conduct of private entities and the resulting harms of trafficking. There are various instances in which a State’s inaction can fuel the act of trafficking by private entities in particular with domestic workers in the Middle East. Examples are: failure to criminalize the act of trafficking, failure to provide legislative protection, rehabilitation for victims, the right to return etc.

#### **4.1.3 Breach of an International Obligation**

The second element in identifying State responsibility is examining whether there has been a breach of an international obligation of a State. This task is mainly dependent on objective assessment of the primary rules of international law.<sup>162</sup> It involves consideration of crucial aspects such as : finding out whether an obligation exists through treaty law, custom or other recognized source and whether that State in question is bound by that obligation at that specific time.<sup>163</sup>

For an international State responsibility to be established, it is crucial that both elements of: attribution and breach of an international obligation must be proven. However, it also important

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<sup>160</sup> Gallagher, p. 241.

<sup>161</sup> ILC Commentary Part One, Chapter II, para 4.

<sup>162</sup> Supra at 4, p. 76.

<sup>163</sup> Ibid.

to note that there are special circumstances that preclude wrongful acts of a State that was otherwise liable under international law such as: consent, self-defense, countermeasures, *force majeure*, distress and necessity.<sup>164</sup>

Article 12 of the ASR provides that “there is a breach of an international obligation by a State when an act of that State is not in conformity with what is required of it by that obligation, regardless of its origin or character.”<sup>165</sup> From the readings article 3 of the ASR and article 27 of the Vienna Convention on the Law of Treaties, it can be understood that : the question of the existence of an obligation is purely a matter for international law: characterization of an act as lawful under national law is not relevant. Furthermore, human rights treaties often impose a general obligation on States to “protect”, “respect” and/or “ensure”. In other words, States are required to guarantee rights as opposed to merely refraining from interfering with their enjoyment. This will usually require at least some action by the State party to prevent and respond to non-State interference with established rights.

#### **4.2 The Due Diligence Standard**

The standard of “due diligence” for trafficking in particular will help establish whether a State could be held responsible for its failure to prevent, investigate, prosecute or compensate for the commission of the act.<sup>166</sup> These obligations can be found scattered in the various international and regional human rights instruments such as: ICCPR, ECHR, and the American Convention for Human Rights, and the African Charter for Human Rights.<sup>167</sup>

When a State fails to fulfill one of the aforementioned obligations and more, the act or omission can be attributed to it and, therefore, it becomes sufficient to trigger its international legal responsibility. Despite the general rule of non-attribution of an act of a private actor to a State, the standard of due diligence obliges States to exercise a measure of care in preventing and responding to acts by private entities that interfere with established rights. And failure to prevent

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<sup>164</sup> ILC ASR, art 20, art 21, art 22, art 23, art 24, art 25.

<sup>165</sup> ILC ASR art 12.

<sup>166</sup> UN OHCHR, *Recommended Principles and Guidelines*, p. 77.

<sup>167</sup> Ibid. also see: art 6(1) of the ICCPR, art 1 of the ECHR, art 1 of the American Convention on Human Rights and art 1 of the African Charter.

an anticipated human rights abuse by a private individual or entity will therefore invoke the responsibility of the State.<sup>168</sup> In other words, liability arises where the State could have improved situation for the victim but failed to do so.

The Special Rapporteur on violence against women in the context of a discussion on domestic violence has proposed a test, which is relevant to assess State responsibility. The test involves assessing: statistics, relevant data and laws to see whether a State is undertaking its duty seriously. And if statistics show that existing laws are insufficient in protecting women from violence, ‘States must find other complementary mechanisms to prevent domestic violence.’<sup>169</sup> It also is very important to examine the relevant primary rules in order to assess whether a decision or action of a State was “reasonable or appropriate” in the case of prevention of trafficking.<sup>170</sup> Examining what is “reasonable or appropriate” will differ in the context of the various obligations bestowed upon a Government, as it requires careful case-by-case analysis of the facts, the surrounding circumstances, the capacities of the State and the relevant primary rules. In other words, applying such test will show that the scope of a State’s obligation is broader than it appears, as it requires a sensible effort from the side of a Government to tackle an issue taking into account its various resources accordingly.

All in all, in the context of human rights, the standard of “due diligence” is becoming a recognized benchmark against which State actions to prevent or respond to violations originating in the acts of third parties are to be judged.

#### **4.2.1 Obligations Owed by States to Victims of Trafficking**

Gallagher points out that ‘finding the exact obligations owed by States to victims of trafficking is an issue which is far from settled.’<sup>171</sup> This is because for instance, even if there is a general agreement on the need for victim protection, ‘the precise contours and limits of that protection have not yet been firmly established.’<sup>172</sup> However, there has been much progress in recent years

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<sup>168</sup> UN OHCHR, *Recommended Principles and Guidelines*, p. 77.

<sup>169</sup> UN, “Report of the Special Rapporteur on violence against women, its causes and consequences, Ms. Radhika Coomaraswamy” (E/CN.4/1996/53, paras. 37 and 141).

<sup>170</sup> UN OHCHR, *Recommended Principles and Guidelines*, p. 95.

<sup>171</sup> Gallagher, p. 276.

<sup>172</sup> *Ibid.*

in identifying certain State obligations based on the assessment of the relevant: international, regional and national laws. Accordingly, there are certain obligations that may fall upon host or migrant sending countries in relation to trafficking for labour purposes such as: ‘non-discrimination’<sup>173</sup>, ‘prevention of trafficking’<sup>174</sup>, ‘obligation to strengthen legislative measures (including securing a bilateral agreement)’<sup>175</sup> and protection of child victims’<sup>176</sup>.

### **4.3 Consequences after establishing State responsibility**

Once the responsibility of a State is identified, the next steps are finding out what the consequences are and understanding who may invoke responsibility and international law prescribes the governing principles for these steps.<sup>177</sup>

Cessation comes as the immediate and often automatic obligation in relation to consequences of finding state responsibility.<sup>178</sup> The second obligation of the responsible State is to make full reparation for injury caused by the internationally wrongful act.<sup>179</sup> There are various elements recognized under the obligation for reparation such as: restitution, compensation, and satisfaction.<sup>180</sup> Rehabilitation and guarantees of non-repetition also constitute important elements of the obligation that follows consequences of establishing responsibility, in particular to respond to trafficking associated breach of obligations.

With regards to invocation, international law generally recognizes the right of an “injured” State to invoke responsibility on its own account.<sup>181</sup> Nevertheless, in relation to collective obligation owed to a group of States or the international community, direct injury may not always be a

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<sup>173</sup> Charter of the United Nations, Preamble, Article 1 (3); International Covenant on Civil and Political Rights, articles 2, 3, 26; International Covenant on Economic, Social and Cultural Rights, articles 2, 3, 7; African Charter, articles 2, 18 (3); American Convention on Human Rights, article 1; European Convention on Human Rights, article 14, See also the Committee on the Elimination of Discrimination against Women, general recommendation No 19: Violence against women, para. 9.

<sup>174</sup> Trafficking Protocol article 9.

<sup>175</sup> Ibid. art 9(5).

<sup>176</sup> Ibid. art 9(b).

<sup>177</sup> Gallagher, p. 251.

<sup>178</sup> ILC ASR art 30.

<sup>179</sup> ILC ASR art 41.

<sup>180</sup> ILC ASR art 34-39.

<sup>181</sup> Gallagher, Supra at 2, p. 264.

prerequisite to invoke responsibility. Furthermore, Gallagher rightly states that ‘in both treaty law and custom, there is usually no damage requirement and no requirement for a connection of nationality between the “victim” and the invoking State.’<sup>182</sup>

Pursuant to an individual right to invoke State responsibility, the ILC did not directly address the issue of as to who may be able to invoke such responsibility other than States. Edith Brown rightly notes “The Commission's overall approach to individuals and non-State entities was to leave this matter to *lex specialis* rather than to enunciate a general rule. As a result, whether and to what extent entities other than states may invoke responsibility vary depending on the primary rule involved.”<sup>183</sup> Article 33(2) of the ASR is where there is explicit reference to individuals and non-state entities in relation to the obligations of the responsible State set out in Part Two which states: “it is without prejudice to any right, arising from the international responsibility of a State, which may accrue directly to any person or entity other than a State.” And the Commentaries for Article 33 Para 4 notes that:

*“...This is true, for example, under human rights treaties, which provide a right of petition to a court or some other body for individuals affected. It is also true in the case of rights under bilateral or regional investment protection agreements.”*

The Commentaries further emphasize that, “The articles do not deal with the possibility of the invocation of responsibility by persons or entities other than States, and paragraph 2 makes this clear. It will be a matter for the particular primary rule, to determine whether and to what extent persons or entities other than States are entitled to invoke responsibility on their own account. Paragraph 2 merely recognizes the possibility: hence the phrase “which may accrue directly to any person or entity other than a State”.”<sup>184</sup> Therefore, the ASR article recognizes that the primary rule may provide rights for non-state entities with their respective regional or bilateral protection agreements.

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<sup>182</sup> Ibid. p. 275.

<sup>183</sup> Edith Brown Weiss, *Invoking State Responsibility in the Twenty First Century*, Georgetown University Law Center, 2010, p. 815.

<sup>184</sup> ILC Commentaries, art 33 para 4.

In relation to trafficking in particular, the various regional courts such as the : European Court of Human Rights, the Inter-American Court of Human Rights and the African Commission on Human and Peoples' Rights (ACHPR) and African Court on Human and Peoples Rights (AfCHPR), provide their own respective procedures in which individuals can make a complaint against a State.

The African Commission gives access to NGOs, and individuals to protect human and peoples' rights through a communications procedure, friendly settlement of disputes, national and shadow reporting, urgent appeals and special mechanisms. NGOs and individuals are also allowed to request the Commission to interpret and clarify the African Charter on Human Rights. The Commission gives its final decision in the form of a recommendation, which is not binding on State parties. The African Court on Human and Peoples Rights (AfCHPR) is a complementary organ of the Commission to interpret and insure the respect of the African Charter. The Court can receive complaints from both States and the African Commission, while individuals may submit them only if the State in question has ratified the Protocol to the African Charter on Human and Peoples' Rights on the establishment of the Court. Although Ethiopia has adopted the African Charter on Human Rights, it has not accepted Court's jurisdiction. Hence, the State cannot be held responsible and there is no mechanism to institute an individual complaint through the Court as well.



## **Chapter Five - The International Responsibility of Ethiopia and Saudi Arabia for the Trafficking of Ethiopian Domestic Workers**

As noted previously, Ethiopian migrant domestic workers are vulnerable to abuse and exploitation resulting from trafficking and forced labour in Saudi Arabia. There are various contributing factors exacerbating migration for domestic labour purposes to Saudi Arabia at the risk of exposure to trafficking. Some of these factors can be linked to Ethiopia as a migrant sending country while others can be connected to Saudi Arabia as a destination State which will in turn help understand as to where the responsibility for the consequences of trafficking can be attributed to.

Although the efforts made to combat trafficking made by the ILO, UN, Human Rights Watch and several NGO's are commendable, it is somehow disproportionate to the ever growing nature of the heinous crime that is in constant violation of human rights. This is mainly because only the States concerned have the ultimate power to tackle the issue from the grassroots. And it has been difficult to establish State responsibility against the applicable international law for the States concerned. This is mainly because the lack of clearly identified and established responsibilities of each State in particular is an important set back in the effort towards combating trafficking for labour purposes and the plight of Ethiopian women in Saudi Arabia. Once such obligations are identified, it opens the door for respective States to invoke responsibility, acknowledge and accept the consequences of their actions thereof.

The rules on State responsibility as provided under the ILC Articles for State Responsibility plays a vital role providing the required elements to identify the responsibility of States for their wrongful acts. This Chapter will accordingly apply these rules to identify and establish the responsibilities of Ethiopia and Saudi Arabia for the plights of the women resulting from trafficking for domestic work purposes.

## 5.1 Ethiopia as a Migrant Sending Country

Ethiopia is a developing country with many living under poor living conditions. And labour migration is often considered as the only way to improve once livelihood. Thus it has become one of the major labour sending countries to the Middle East. Despite the demand for cheap labour in the countries of destination, most of the Gulf States have restrictive immigration policies, exposing migrant workers to a range of human rights abuses, including labour exploitation, violence, trafficking, mistreatment in detention, and even killings. The ILO identifies in particular ‘poverty and lack of opportunities, failure in educational endeavors, gender stereotypes, and the ‘culture of migration’ as critical factors behind the migration of Ethiopians and human trafficking.<sup>185</sup>

In 2013, the Ethiopian Government imposed a ‘provisional’ moratorium on migration to Saudi Arabia for domestic work, following the mass expulsion of Ethiopian workers who were staying ‘illegally’ in Saudi Arabia.<sup>186</sup> However, it is important to note that the ban on migration to Saudi Arabia is only effective on the regular routes through registered PEA’s and Bole International Airport, and migration through unregulated chains of informal brokers and facilitators by using irregular routes such as Yemen and Sudan is still happening. This means that the exposure of Ethiopian women and girls for trafficking in for domestic work and exploitative working condition is still an ongoing trend, be it for the Ethiopians within the country or the domestic workers ‘legally’ staying in Saudi Arabia.

Following the deportation, 163,000 Ethiopians, including over 94,000 men working mostly in the construction sector and over 8,000 children working in cattle herding and domestic service; have

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<sup>185</sup> ILO, *Trafficking in Persons Overseas for Labour Purposes : The Case of Ethiopian Domestic Workers*, 2011 ed. Animaw Anteneh, ILO Country Office, Addis Ababa, p. viii, available at: <http://www.molsa.gov.et/English/EPro/Documents/ILO-Trafficking%20in%20Persons%20Overseas%20for%20Labour%20Purposes%20-%20The%20Case%20of%20Ethiopia.pdf> (accessed on June 20, 2014) (hereinafter: ILO Study).

<sup>186</sup> The Reporter, Gov’t bans overseas employment, 2013, available at: <http://www.thereporterethiopia.com/index.php/news-headlines/item/1165-govt-bans-overseas-employment> (accessed on February 20, 2014).

returned to Ethiopia.<sup>187</sup> Among the returnees, many include female domestic workers who have suffered from an appalling treatment of physical and psychological abuse. Some of those returnees who are still in debt bondage are feared of being re-trafficked.

Although the current trend of trafficking in Ethiopia is undertaken by private persons/entities through irregular routes with the consent of some victims, it does not relieve the Government from taking responsibilities to ensure that the problem is tackled from various aspects so that the safety of its citizens within and outside Ethiopia is guaranteed.

Examining whether Ethiopia can be held responsible under international law calls for a careful analysis of the rules on State responsibility. Accordingly, the first step would be looking at whether the acts of trafficking currently being conducted by private persons/entities could in any way be attributed to the State. In doing so, in the present case at hand it can be understood that the act of trafficking is not the direct actions (or the inaction) of courts, legislatures, executive bodies and public officials operating in their official capacity. Nevertheless, the absence of direct involvement does relieve a State from an obligation, as there are various responsibilities bestowed upon the States in relation to trafficking in for labour purposes, by the appropriate primary rules. Moreover, the rules on State responsibility echo this assertion in such a way that if the State has failed in its international obligation by its inaction or in sufficient response towards addressing the problem of trafficking, then taking into account the principle of due diligence it may be held responsible under international law.

As to the second element of finding a breach of an international obligation, it will be shown in the subsequent sections that Ethiopia has failed to prevent the harms associated with trafficking to its utmost capacity within and outside Ethiopia. Various international instruments including the Trafficking Protocol provide numerous obligations that a State must observe to tackle the issue and its root causes. Some of the obligations that are owed by migrant-sending countries to their citizens from within and outside the country during labour migration are: the obligation to

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<sup>187</sup> US Department of State, *Trafficking in Persons Report 2014* (Washington, D.C.: U.S. Department of State, June 2014), <http://www.state.gov/j/tip/rls/tiprpt/countries/2014/226721.htm> (accessed March 23, 2015) (hereinafter, US Department of State Report, 2014).

prevent trafficking, obligation to secure a bilateral agreement, obligation to secure safe repatriation of victims of trafficking.

### **5.1.1 Obligation to prevent trafficking**

Trafficking is a menace that feeds into a global market that seeks cheap, unregulated and exploitable labour and the services that such labour can generate.<sup>188</sup> It is also a threat to the peace, security and economic development of a community. The recruitment of domestic labour from developing countries is one of the examples of new forms of actual or potential exploitation made possible through trafficking.<sup>189</sup> Vulnerable Ethiopian migrant domestic workers, have constantly been taken advantage of by traffickers and employers who were interested in keeping them under their control to benefit from their work.

And as mentioned in Chapter three, Ethiopia has ratified some of the relevant UN and ILO conventions that are instrumental in dealing with trafficking and labour exploitation such as : the UN Convention for the Suppression of the traffic in persons and the Exploitation of the prostitution of others, The UN Convention Against Transnational Organized Crime, the Palermo Protocol, ICESCR, ICCPR CEDAW, CRC, C182, C105, C181, C111, and ILO C87.

It is paramount to note that from the literal reading of article 9(4) and 13(2) of the FDRE Constitution that ‘all international agreements ratified by Ethiopia are integral part of the law of the land’, and that ‘the fundamental rights and freedoms specified in the Constitution shall be interpreted in a manner conforming to the principles of the UDHR, ICCPR and International instruments adopted by Ethiopia’. Hence, it becomes imperative that the State confirms to obligations provided under international instruments that it has ratified in relation to trafficking women for labour purposes.

Article 11 of the Trafficking Protocol provides measures that a State should take ‘to prevent and detect trafficking at borders, prevent commercial carriers from being used to commit trafficking offences and impose the obligation of carriers to ascertain whether their passengers have the

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<sup>188</sup> UN OHCHR, *Recommended Principles and Guidelines on Human Rights and Trafficking Commentary*, 2010, United Nations Publication, p. 97.

<sup>189</sup> *Ibid.*

required travel documents.<sup>190</sup> Additionally, the Protocol calls for punishment with sanctions for an established offence of trafficking.<sup>191</sup> It further requires that State Parties shall ensure the security and control of documents, and the legitimacy and validity of documents.<sup>192</sup>

From the reading of the Protocol, it can be observed that it considers prevention measures from three perspectives such as: non-legal initiatives, measures dealing with commercial carriers (related to criminalization) and measures that must be taken to ensure the quality, integrity and security of travel and identity documents.<sup>193</sup> The ILO notes that ‘the exact nature of these measures is left to the specific State Party except for the requirement that carriers should check the travel documents of their passengers.’<sup>194</sup>

In relation to Ethiopia, an ILO field study report has confirmed that “Ethiopia does not have a comprehensive legal framework that defines human trafficking, provides adequate protection to victims, and enables to effectively combat and prevent trafficking in persons.”<sup>195</sup> However, the State addresses the issues of trafficking through the Constitution, the Revised Criminal Code and the Employment Exchange Proclamation No. 632/2009.

Article 18 (2) of the FDRE Constitution provides that : “No one shall be held in slavery or servitude. Trafficking in human beings for whatever purpose is prohibited.” Moreover, articles 597-598 and 635 of the Revised Criminal Code deal with trafficking. Particularly article 597 of the Revised Criminal Code provides that:

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

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<sup>190</sup> Trafficking Protocol art 11 (1), 11(2), 11(3).

<sup>191</sup> Ibid. art 11.

<sup>192</sup> Ibid. art 12 and art 13.

<sup>193</sup> ILO, *Human Trafficking and Forced Labour Exploitation*, Guidelines for Legislation and Exploitation, 2005, Geneva p. 14.

<sup>194</sup> Ibid. p. 14.

<sup>195</sup> ILO Study, p. 58.

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

The ILO has noted that this article is ‘contrary to article 3 (c) of Palermo Protocol, as it requires the prosecutor to prove the use of one of the means such as deceit, force, coercion, abuse of vulnerability, or power, even when the victim is a child.’<sup>196</sup> Moreover, there is no a clear definition of human trafficking in Ethiopia and it is often confused with smuggling. The ILO has noted that such lack of a clear definition has extremely hindered the effective investigation and prosecution of human trafficking cases.<sup>197</sup>

It is important to note that the obligation to take preventive intervention also includes policy framework and improved migration administration and institutions. Developing a clear and coherent migration policy is critical to effectively combat trafficking in persons. Although the Ethiopian Government has stated that a new draft law is underway, the country does not yet have a migration policy that comprehensively addresses the issue of trafficking in persons for labour purpose.

Furthermore, Freedom of association and the right to bargain collectively are cornerstone ILO principles. These principles are particularly essential for migrant domestic workers in terms of getting their voices heard and ensure their rights to, collectively bargain their decent working conditions by setting their wage scales, working hours, training, health and safety, overtime and grievance mechanisms. However, the Ethiopian Employment Exchange Proclamation No.632/2009 fails to recognize the right to freedom of association and the right to bargain collectively of migrant workers.<sup>198</sup> Although there are a number of provisions in the Ethiopian

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<sup>196</sup> Look at article 3 (c) of the Trafficking Protocol which provides, “The 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 See also :ILO trafficking report, p. 59.

<sup>197</sup> ILO Study, p. 71.

<sup>198</sup> Human Rights Watch, *Rights on the line— Human Rights Watch work on abuses against migrants in 2010*, 2010, p. 32.

Revised Criminal Code, in practice investigation, prosecution and conviction rate of trafficking cases are low because these provisions are not adequate and comprehensive.

#### ***5.1.1.1 Addressing Vulnerability***

In terms of prevention, a migrant sending country also has one central responsibility under the rules for responsibility for trafficking related breaches of obligations that is addressing vulnerability as a root cause of trafficking.<sup>199</sup> The obligation to prevent trafficking through vulnerability in particular is asserted in various international instruments.

The issue of vulnerability to trafficking in Ethiopia, which is the second most populous country in Sub-Saharan Africa, can be addressed in many ways. Despite that fact that the country has abundant resources and potential for development, poverty is pandemic and often results in thousands of women migrating to escape by risking their lives at the hands of traffickers. The International Convention on Economic Social and Cultural rights (ICESCR) provides obligations on States for the fulfillment of certain rights under the convention, which are crucial in the fight against poverty. These are the obligation of States to fulfill: the right of everyone to an adequate standard of living (art. 11(1)), the right of everyone to be free from hunger (art. 11(2)), the right to the enjoyment of the highest attainable standard of physical and mental health (art 12) and the right of everyone to education (art 13).

With regards to the obligation on States for the rights enshrined under the Convention, Article 2 of the ICESCR provides that: “Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.” Nevertheless, General Comment 3 to the Convention under paragraph 9 clarifies that the term ‘progressive realization’ in the article should not be misunderstood in such a way that States would be relieved of any obligation. But on the contrary, the General Comment strictly stresses that ‘the phrase must be read in the light of the overall objective, indeed the *raison d’être*, of the Covenant which is to establish clear

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<sup>199</sup> Trafficking Protocol, art 9.

obligations for States parties in respect of the full realization of the rights in question.’<sup>200</sup> It therefore highlights that there is an obligation on a State ‘to move as expeditiously and effectively as possible towards that goal.’<sup>201</sup>

Despite the existing battling against poverty, there has been much development in Ethiopia in the past decade and the US Department of State Report has described the country as ‘one of the fastest-growing economies in the world.’<sup>202</sup> The Report indicates that the country has ‘registered impressive GDP growth for several years, ranging between 6% and 12%, depending on source data.’<sup>203</sup> And under this ICESCR, Ethiopia bears the obligation to take steps forward to tackle poverty and all its consequences such as poor health and nutrition and exposure to trafficking that result in the violation of human rights. In relation to trafficking, the necessary first steps can be legislative reforms, ensuring equality and non-discrimination against women in their right to education, economic participation and anti-trafficking awareness initiatives.

Article 9 (4) of the Trafficking Protocol also requires States parties to “take or strengthen measures ... to alleviate the factors that make persons, especially women and children, vulnerable to trafficking, such as poverty, underdevelopment and lack of equal opportunity.” Additionally, article 31 (7) of the Organized Crime Convention, also requires States to address the adverse social and economic conditions believed to contribute to the desire to migrate and hence, to the vulnerability of victims of trafficking. Both treaties highlight ‘the need for education and awareness-raising aimed at improving the public’s understanding of trafficking, mobilizing community support for action against trafficking, and providing advice and warning to specific groups and individuals that may be at high risk of victimization.’<sup>204</sup> As a part of prevention of trafficking, a State must also educate potential victims of trafficking as to the dangers of trafficking.

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<sup>200</sup> UN Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 3: The Nature of States Parties' Obligations* (Art. 2, Para. 1, of the Covenant).

<sup>201</sup> Ibid.

<sup>202</sup> US Department of State, *Diplomacy in Action, Executive Summary*, available at: <http://www.state.gov/documents/organization/228594.pdf> (accessed on May, 2015).

<sup>203</sup> Ibid.

<sup>204</sup> Trafficking Protocol, art. 9 (2), Organized Crime Convention, art. 31 (5). See also *Legislative Guides to the Organized Crime Convention and its Protocols*, Part 2, para. 71.



While praising Ethiopia for taking steps to criminalize trafficking and prosecute the offences, the CEDAW Committee has rightly stated in a concluding observation that the Committee “is concerned about the lack of data and the low prosecution and conviction rates in relation to, in particular, internal trafficking in women and children for forced labour and sexual exploitation, the limited measures to address poverty as the root cause of trafficking, the lack of victim assistance and the lack of protection of refugee and internally displaced women and children vulnerable to becoming victims of trafficking.”<sup>205</sup> Ethiopian women are also vulnerable to discrimination in Ethiopia. And such discrimination against women can be a contributing factor to the trafficking in women and exploitation of migrant women workers. The Global Alliance Against Traffic in Women (GAATW) gives examples of such cases as: ‘women who do not share equal access to education or employment with men are at a greater risk of becoming trafficked or exploited in the work place, as they may be obliged to migrate for work; be less able to negotiate the conditions of their work; have less leverage to negotiate the conditions of their work; and have less knowledge of their rights.’<sup>206</sup> It is further paramount to safeguard that States are fulfilling their obligations under CEDAW and the relevant general recommendations for violence against women and migrant workers, as it is critical in the prevention and elimination of trafficking and labour exploitation.<sup>207</sup>

All of the above mentioned constitute rules necessary for preventive measures that a State is obligated to enact as a part of its international obligations. And any failure of the government, or its inaction, in preventing trafficking in persons constitutes a violation of its obligations under international law.

Consequently, from the readings of the Trafficking Protocol and the international instruments that Ethiopia has adopted combined with the national practice, it can be understood that Ethiopia has not yet fully taken up its obligations in terms of prevention with due diligence.

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<sup>205</sup> CEDAW, Concluding Observations of the Committee on the Elimination of Discrimination Against Women, UN, 2011, para 24. Available at [http://www.bayefsky.com/pdf/ethiopia\\_t4\\_cedaw\\_49.pdf](http://www.bayefsky.com/pdf/ethiopia_t4_cedaw_49.pdf) (accessed on April 5, 2015).

<sup>206</sup> GAATW, A Toolkit for Reporting to Cedaw on Trafficking in Women and Exploitation of Migrant Women Workers, 2011, p. 10, available at: [http://www.gaatw.org/publications/A\\_Toolkit\\_for\\_Reporting\\_to\\_CEDAW\\_GAATW2011.pdf](http://www.gaatw.org/publications/A_Toolkit_for_Reporting_to_CEDAW_GAATW2011.pdf) (accessed on April 5, 2015).

<sup>207</sup> CEDAW art 2, art 6, art 10, General Recommendation 12, General Recommendation 26.

### 5.1.2 Obligation to Prosecute

The obligation to prosecute traffickers is one of the most important responsibilities that falls upon a migrant sending country in order to tackle the problem of human trafficking by imposing a penalty on those who commit the offense and discourage other individuals from doing the same. States shall adopt appropriate legislative and other measures necessary to establish, as criminal offences, trafficking, its component acts and related conduct. Criminalizing trafficking at the domestic level is a mandatory obligation of all State parties to the Protocol. Article 34(2) of the Organized Crime Convention, requires ‘the offence of trafficking to be established in the domestic law of every State party independently of its transnational nature or the involvement of an organized criminal group.’<sup>208</sup> The Legislative Guide to the Trafficking Protocol (the legal instrument that sets out the internationally agreed definition) further notes that the definition was intended to contribute to a standardization of the concept which in turn would “form the basis of domestic criminal offences that would be similar enough to support efficient international cooperation in investigating and prosecuting cases”.<sup>209</sup>

In Ethiopia, the Federal High Court’s 11th Criminal Bench handles all cases of external trafficking, as well as internal trafficking cases reported and investigated in Addis Ababa.<sup>210</sup> In an ILO field study considering the magnitude of the problem of trafficking in Ethiopia, it was identified that the enforcement of the articles in the Criminal Code was very minimal and officials at different levels face a number of challenges. The first and foremost challenge is the fact that most officials do not clearly understand the definition of trafficking in persons. There is also no clear demarcation between trafficking in persons and smuggling of migrants and results confusion in prosecution or identification of the crime. Although this problem is also imbedded in the international law legal framework, Ethiopia as party to the Trafficking Protocol and should take its own initiatives to prosecute perpetrators by making sure that the national law provides clear definition of trafficking which is in harmony with international definitions and requirements. Likewise, the ILO has highlighted that:

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<sup>208</sup> Organized Crime Convention, art. 34 (2).

<sup>209</sup> Check Legislative Guide to the Protocol (para. 35). See also Gallagher, “Human rights and human trafficking: quagmire or firm ground?”, pp. 812-814.

<sup>210</sup> ILO Study, p. 71.

*“Officials, police or immigration officials, who arrest illegal travellers before they cross or while crossing the borders, commonly arrest the traffickers/smugglers and release the travellers. At times, and depending on the availability of resources, officials return the travellers to their place of origin or to Addis Ababa without screening as to whether they are victims of trafficking or persons using the services of smugglers. Another major challenge is that migration is encouraged as an alternative by the society at large. However, as the options for legal migration are considered to be very limited, irregular migration is tolerated, and even encouraged. Incidents of trafficking in persons for labour purpose are thus rarely reported and the community is not willing to testify and provide information to authorities.”<sup>211</sup>*

Generally, the lack of an independent comprehensive law regulating trafficking in persons in Ethiopia has had a significant impact on the lower numbers of cases handled by the Federal High Court. Consequently, Ethiopia’s failure to enact specific anti-trafficking legislation that provides for an appropriate sentence for trafficking, in accordance with the UN Protocol, constitutes a violation of the state’s international obligations.

### **5.1.3 Obligation to Secure a Bilateral Agreement**

Trafficking in persons for domestic work purposes is a transnational crime involving numerous countries. Therefore the need to establish regional and international cooperation framework addressing trafficking in persons and labour migration is of paramount importance. Various articles of the Trafficking Protocol set out specific obligations to cooperate with other States Parties with respect to the specific subject matter. In particular, article 9(5) provides that “State Parties shall adopt or strengthen legislature or other measures, such as educational, social or cultural measures, including through bilateral and multilateral cooperation, to discourage the demand that fosters all forms of exploitation of persons, especially women and children, that leads to trafficking.”

Although Saudi Arabia is one of the major destination countries, Ethiopia has not secured a bilateral agreement, hence the Government has not been in the position to negotiate that effective

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<sup>211</sup> Ibid. p. 71.

and adequate remedies are availed for Ethiopian migrant workers who are abused and exploited abroad. Such agreement would have played a vital role in tackling the exploitation and the lack of application and enforcement of international labour standards in Saudi Arabia. Ethiopia should negotiate with major destination countries to respect minimum working conditions and establish a monitoring system of worksite to ensure that migrant workers are not in situation of forced and exploitative working conditions. The ILO has also rightly noted that ‘the elaboration and conclusion of bilateral labour agreements to ensure regular migration channels for migrants and their recognition of diplomas constitutes another area of intervention to prevent trafficking in persons.’<sup>212</sup>

As mentioned earlier in the study, the Ethiopian Government has succeeded to sign a bilateral labour agreement with the Government of Kuwait and currently drafting an agreement with the UAE. But the issue with Saudi Arabia has not been pressed further since the provisional moratorium has been put to place, even if many continue to migrate through irregular routes. As noted in Chapter two, other migrant sending countries such as the Philippines and Indonesia have secured bilateral agreements with Saudi Arabia and have managed to a certain extent secure appropriate wages, resting period and other rights of the migrant domestic workers.

Therefore, Ethiopia should abide by the Trafficking Protocol and needs to push for a bilateral agreement while taking into consideration the suggestion of the ILO which stated “the general utilization of model employment contracts should be encouraged and the effective implementation should be coordinated with the authorities in destination countries through bilateral labour agreements and international consultation.”<sup>213</sup>

#### **5.1.4 Can Ethiopia be held responsible under the ASR?**

The Article for Responsibility of States has clearly provided that ‘Every internationally wrongful act of a State entails responsibility of that State’.<sup>214</sup> As done in the previous sections, analyzing Ethiopia’s acts or omissions towards protecting its nationals from trafficking for domestic

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<sup>212</sup> Ibid. p. 64.

<sup>213</sup> ILO Study, p. 77.

<sup>214</sup> ILC, Articles for State Responsibility, art 1.

purposes is crucial to understand whether the State can be held responsible under international law. It has been demonstrated that the act or omission in question is in many ways attributable to the Ethiopia. And in finding out whether there was a breach of an obligation that exists through treaty law, custom or other recognized source, all international conventions that Ethiopia has ratified in relation to trafficking and forced labour were taken into consideration. Accordingly, the writer hereof shares the opinion that Government of Ethiopia does not fully comply with the minimum standards for the elimination of trafficking,<sup>215</sup> and therefore should ensure that the national law is in line with international standards and it should provide a clear legal definition of trafficking in persons. In order to reach such conclusion, the standard of ‘due diligence’ for trafficking in particular has played a vital role in establishing whether Ethiopia could be held responsible for its failure to prevent, prosecute and secure a bilateral agreement for the commission of the act of trafficking on its nationals that are exploited severely in Saudi Arabia. Statistics and relevant data from the ILO and several NGO’s have confirmed that the number of people in distress is way up the ladder than the number of cases prosecuted within the country. Furthermore, taking into account its resources, the State must find must find other complementary mechanisms to prevent the violence against women that results from trafficking in women for domestic purposes.

## **5.2 Obligations of Saudi Arabia as a host country**

Saudi Arabia as a host country for migrant domestic workers bears a vast amount of responsibility when it comes to victims of trafficking within the country. It has acceded to four of the seven major United Nations conventions concerned with human rights, namely: the International Convention on the Elimination of All Forms of Racial Discrimination (CERD), Convention Against Torture (CAT) and Convention for the Rights of the Child (CRC). Saudi Arabia has also acceded to five of the eight International Labour Organization (ILO) conventions concerned with human rights, namely: Conventions (29) and (105) on Forced or Compulsory Labour (1978). The two Conventions (100 & 111) concerning the prevention of discrimination in respect of employment and occupation (1978). Convention (182) concerning the prevention of employing children and minors (2001). It has also ratified the Trafficking Protocol to Prevent,

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<sup>215</sup> This was also asserted by the US Department of State Report, 2014.

Suppress, and Punish Trafficking in Persons, Especially Women and Children. Accordingly, it is bound by these instruments to make sure that migrant domestic workers and victims of trafficking are protected and guaranteed their rights at all times.

Once the domestic workers arrive in Saudi Arabia, they often find themselves in conditions of work where their movement is restricted in such a way that they require an explicit permission from the employer for change of employment or to leave the country. As mentioned earlier in the research, Human Rights Watch documented numerous cases where workers were unable to escape from abusive conditions or even to return home upon completion of their contracts because their employer denied them permission to leave the country.<sup>216</sup>

The duties delineated in the international treaties obligate Saudi Arabia to ensure in its policies and prevent conditions leading to trafficking and protect domestic workers from discrimination and degrading treatment. With regards to the status of these international standards, Saudi Arabia officials have indicated that the treaties are automatically incorporated into domestic law and can therefore be invoked in domestic court proceedings.<sup>217</sup> However, Saudi Arabia has made reservations to some treaties such as CEDAW upon accession by stating ‘in case of contradiction between any term of the Convention and the norms of Islamic law, the Kingdom is not under obligation to observe the contradictory terms of the Convention.’<sup>218</sup> Likewise, Saudi Arabia has also made a general reservation the CERD, which states “The Government of Saudi Arabia declares that it will implement the provisions of the above Convention, providing these do not conflict with the precepts of the Islamic Shariah.”<sup>219</sup> Nevertheless, such general reservation that does not stipulate as to which article it implies to raises doubts as to the commitment of Saudi Arabia to the object and purpose of the Convention. And it is important to note that any reservation that is incompatible with the object and purpose of a treaty violates international law, as it will render a basic international obligation meaningless.<sup>220</sup> Therefore, Saudi Arabia must

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<sup>216</sup> Human Rights Watch, *As If I Am Not Human: Abuses against Asian Domestic Workers in Saudi Arabia* (2008), available at: <http://www.hrw.org/reports/2008/saudiarabia0708/saudiarabia0708webwcover.pdf> (accessed on December 20, 2014), p. 4.

<sup>217</sup> Ibid. p. 30, see also the text of the reservation at: [http://www.bayefsky.com/pdf/saudiarabia\\_t2\\_cedaw.pdf](http://www.bayefsky.com/pdf/saudiarabia_t2_cedaw.pdf)

<sup>218</sup> Ibid.

<sup>219</sup> Reservation to CERD, available at: [http://www.bayefsky.com/pdf/saudiarabia\\_t2\\_cerd.pdf](http://www.bayefsky.com/pdf/saudiarabia_t2_cerd.pdf) (accessed on May, 25, 2015).

<sup>220</sup> Vienna Convention on the Law of Treaties, May 23, 1969, entered into force on 27 January 1980, art. 19, United

fulfill its obligations owed to victims of trafficking that it is bestowed upon the State by the international treaties that it has adopted.

### **5.2.1 Obligation to protect and support**

While many victims of trafficking end up in situations of forced labour, not all victims of forced labour are trafficked. In other words, not every person who is exploited through forced labour has been trafficked. There are three aspects/components of human trafficking that are relevant to into consideration. First is the process of recruitment, transportation, transfer, harboring or receipt of a person. The second aspect involves undertaking the first step through means such as threat or use of force, coercion, abduction, fraud, deception, abuse of power or vulnerability, or the giving of payments or benefits to a person in control. For the purpose of exploitation and this Chapter, migrant workers exposure to forced labour will be up for consideration in the case of both Ethiopian domestic workers that have been trafficked and others who are simply subjected to forced labour in Saudi Arabia.

State obligations for host countries towards migrants or migrant domestic workers will commonly flow from the non-discrimination clauses found in the major human rights treaties and from international legal rules that prohibit differentiation in the treatment of nationals and non-citizens in the matter of fundamental human rights.

As previously noted, various international instruments such as the UDHR, ILO C29 and the trafficking protocol prohibit: slavery and trafficking for various exploitative purposes. Although Saudi Arabia is party to the ILO C29 and the Trafficking Protocol, the status of the migrant domestic workers in Saudi Arabia proves that the State has not fully complied with its responsibility to protect the workers from the harms resulting from the exaction of forced labour. The condition of forced labour often results from the employers' act of: confiscating passports, restricting movement, withholding or delay of payment and working under the threat of physical

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Nations, Treaty Series, vol. 1155, p. 331.

or psychological abuse. In relation to migrant domestic workers who were also trafficked in Saudi Arabia, it has been reported that many of them meet the definition of victims trafficking.<sup>221</sup>

The fact that domestic workers are not included in the national labour law exasperates their vulnerability to exploitation without any recognition from the law. The new domestic workers regulation Order No. 310 of Sept 2013 also fails to address the core issues that foment the vulnerability of the workers to situations of forced labour. The lack of penal sanction for the illegal exaction of forced labour is contrary to the rules established under ILO C29 article 25. This further foments the consequences of trafficking and the incessant victimization of the migrant domestic workers. There are some other conflict resolution mechanisms such as the Sharia court, which have also been said not to compensate for the exclusion of the women from the national labour law.<sup>222</sup>

When a Saudi Arabian employer abuses, exploits and mistreats a domestic worker, a worker is often reluctant to go to the authorities to report the situation in fear of further harm that may result either from the police or the system that usually treats them as ‘illegal’ migrants once they abscond from their employment. Moreover, Ethiopian domestic workers who report on an abusive employer often face counter charges at the police station for crimes of theft, mishandling children, and many more. And the lack of a bilateral agreement renders the women more vulnerable to exploitation and leaves them without any redress from their country of origin as well. Language barrier is also one of the major hurdles that the women have to face, hence they opt for friends or other connections to disappear into the black market.

There has in general been reluctance and slow development in the area of criminalizing forced labour for various reasons in Saudi Arabia. Vlieger rightly notes stating that “this assistance and protection does not take place, probably because there is too much money involved in the maid trade.”<sup>223</sup> He further points out that, given the fact that almost all domestic workers are women,

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<sup>221</sup> Vlieger, A.R, *Dissertation: Domestic workers in Saudi Arabia and the Emirates: a socio-legal study on conflicts*. 2011. Amsterdam: Amsterdam Law School Legal Studies Research Paper No. 2011-49 General Subserie Research Paper No. 2011-08, p. 275.

<sup>222</sup> Ibid. p. 277.

<sup>223</sup> Ibid.



their exclusion from the country's labour law seems equivalent to indirect discrimination.<sup>224</sup> And is this contrary to the UN CERD and in particular ILO Discrimination Convention (C111), which provides under its article 2:

*“Each Member for which this Convention is in force undertakes to declare and pursue a national policy designed to promote, by methods appropriate to national conditions and practice, equality of opportunity and treatment in respect of employment and occupation, with a view to eliminating any discrimination in respect thereof.”*

Saudi Arabia party to the above convention, has once many times been called out for its violation of the rights of migrant domestic workers and in particular victims of trafficking. The annual United States Trafficking in Persons report has repeatedly highlighted it its report that Saudi Arabia as one of the worst countries in the world regarding its response to human trafficking. The US State Department has noted that recruitment abuses, the *Kafala* system, and employers' treatment of migrant workers contribute to trafficking for forced labor. The 2008 report stated,

*“The Government of Saudi Arabia does not fully comply with the minimum standards for the elimination of trafficking and is not making significant efforts to do so. The government continues to lack adequate anti-trafficking laws, and, despite evidence of widespread trafficking abuses, did not report any criminal prosecutions, convictions, or prison sentences for trafficking crimes committed against foreign domestic workers.”*<sup>225</sup>

Since the workers' movement is restricted, they often lose hope in a prison like condition where the only ways out they see is to commit suicide. And an excruciating number of 54 percent of suicides in Saudi Arabia are committed by Ethiopian women alone.<sup>226</sup>

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<sup>224</sup> Ibid.

<sup>225</sup> US Department of State, Trafficking in Persons Report 2007 (Washington, D.C.: U.S. Department of State, June 2008), <http://www.state.gov/g/tip/rls/tiprpt/2008/105389.htm> (accessed March 25, 2015).

<sup>226</sup> Humanitarian Organization for Ethiopians in Need, Speech by Mona Kareem, Executive Director Africa Division of Human Rights Watch, available at: <http://www.hofenny.org/#!newsletter-/cpm2> (accessed on May 5, 2015).

### 5.2.2 Can Saudi Arabia be held responsible under the ASR?

The assessment of Saudi Arabia's response to the case of trafficking for forced labour abuse of migrant domestic workers within the country has unfolded various aspects in which the State is in violation of international law. And article 2 of the ASR has strictly provided that 'Every internationally wrongful act of a State entails responsibility of that State.'<sup>227</sup> Saudi Arabia by insisting to keep or refuse to reform the *Kafala* sponsorship system which gives immense power to the employer, is violating its international obligation towards tackling trafficking in women for labour purposes. It is also crucial to note that freedom of movement is a core human right, protected by major international and regional human rights treaties such as the UDHR, and Saudi Arabia would be breaching these obligation if it fails to secure that the acts of private persons who undertake trafficking or abuse trafficking victims are left unpunished. Additionally, the lack of penal sanctions for employers who exploit migrant domestic workers who are excluded from the national labour law is evidence that the State is still continuing to violate relevant international laws that it has pledged to abide by such as: the Trafficking Protocol and ILO Convention 29 of Forced Labour. Additionally, the examination of: statistics, relevant data and laws have confirmed the gravity of the violation within the Kingdom of Saudi Arabia , calling for an urgent action for the State to take responsibility for the wrongs that are attributable to it. And the information collected demonstrate instances where Saudi Arabia will and can be held responsible under international for the acts or wrongs committed by private persons/entities. Hence, the State should take considerable legislative reforms so that the national legislation is in conformity with international obligations. These reforms may also include adopting the core international instruments such as: CEDAW, ILO C143 and C97, Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (Migrant Workers Convention) and the domestic workers convention. The State in general also has an obligation to meticulously prosecute employers and employment agents whose treatment of domestic workers violates existing national and adopted international laws. It should also investigate, prosecute and penalize offenders of physical and sexual violence against migrant domestic workers. Furthermore, the issue of child victims of trafficking should be given extra care in accordance with the obligations provided under the Trafficking Protocol and other relevant instruments.

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<sup>227</sup> ILC, ASR art 1.

### 5.3 Obligations of Saudi Arabia and Ethiopia regarding repatriation

As a principle of well-established international law, States are entitled to regulate movement across their borders and regulate the action of those who reside within the territory. While doing so, a State should exercise this authority with a human rights principle applicable to every individual. Hence, both Saudi Arabia and Ethiopia share an obligation in ensuring the safe and possibly voluntary return of victims of trafficking.<sup>228</sup> The Trafficking Protocol provides obligations in this respect that should be considered by both sending and host countries. Article 9(1)(b) provides an obligation on all States parties “to protect victims of trafficking ... especially women and children, from re-victimization” Article 8(2) provides for the obligation of the country of destination to conduct return with due regard for safety of the person and for the status of any related legal proceedings.<sup>229</sup> The Protocol further adds that countries of origin specifically have an obligation to accept the return of a trafficked national or resident without undue delay and with due regard for their safety.<sup>230</sup> Likewise, migrant sending countries also have the obligation to cooperate in the return of a victim, including through verification of that person’s nationality or residence,<sup>231</sup> and issuing of necessary travel documents.<sup>232</sup>

Following the decision of the Government of Saudi Arabia to deport ‘illegal’ foreign workers, more than 100,000 men, women and children have arrived in Ethiopia. Some returned voluntarily while others had to be forcibly deported. Many of the deported women were trafficked for domestic work purposes and had to face secondary victimization at the detention centers for not having the proper documents to stay within the country. The profile of the returnees included from children born in Saudi Arabia to Ethiopians women who have left at a very young age to work as a domestic worker.<sup>233</sup> From among these women, a large number get

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<sup>228</sup> Trafficking Protocol art 8(2).

<sup>229</sup> Ibid.

<sup>230</sup> Ibid. 8 (1).

<sup>231</sup> Ibid. 8 (3).

<sup>232</sup> Ibid. 8(4).

<sup>233</sup> MSF, Ethiopia: *Traumatized Workers Expelled From Saudi Arabia* - “I was imprisoned, beaten up and then deported”, 2014, available at <http://www.msf.org.uk/article/ethiopia-traumatised-workers-expelled-saudi-arabia-i-was-imprisoned-beaten-and-then-deported> (accessed on March 10, 2015).

<sup>233</sup> Ibid.

arrested and detained and consequently deported without any redress and in even in a worse condition from the time they flee their home country. The condition of most of the returnees and how both States (Ethiopia and Saudi Arabia) handled the situation was criticized. The immediate response of Ethiopia was to impose a temporary ban on the travel to Saudi Arabia, while it should have focused on rehabilitation of the victims and a long-term plan that would also be helpful in tackling irregular migration and exposure to trafficking which is currently an ongoing trend in the country.

Médecins Sans Frontières(MSF) had extended its help to some of the returnees and documented the conditions of some of the victims. The case of Yelem was one example of a girl who was undergoing individual counseling sessions offered by MSF. The MSF reported that “on arrival, Yelem was totally confused, aggressive, disoriented, talking to herself and smiling occasionally but then after a minute crying bitterly. She mentioned how she had worked in different households without pay and how her employers had physically abused her.”<sup>234</sup>She went to Saudi Arabia when she was only 10 years old. Now at age 15, she is lost and confused, MSF psychologists referred her to the Emanuel Hospital to obtain specialized medical and psychological treatment.<sup>235</sup> The reality is that this is the story of one girl, from among the thousands who undergo through this horrific exposure to trafficking and its aftermath. The US State Department Report highlighted that during the deportation of Ethiopians from Saudi Arabia that the ‘government relied on NGOs to provide direct assistance to both internal and transnational trafficking victims and did not provide financial or in-kind support to such organizations.’<sup>236</sup> The report further notes that ‘the government did not deploy labor attachés or improve the availability of protective services offered by its overseas diplomatic missions.’<sup>237</sup>

The case of child victims of trafficking is also one that needs to be distinguished, as it needs extra care and deep analysis. As noted earlier, from among the Ethiopia women who migrate for domestic work, there are many young children from the age of 13-17 who falsify their age to be

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<sup>234</sup> Ibid.

<sup>235</sup> Ibid.

<sup>236</sup> US Department of State, 2014.

<sup>237</sup> Ibid.

able to work abroad.<sup>238</sup> And many of the girls have to undergo through the deceitful promises of local brokers or abuse from their employers in Saudi Arabia, making them child victims of trafficking. Therefore, Ethiopia has an obligation to pay due regard child victims of trafficking and make sure that their cases are distinguished so that all the rights provided under: the Trafficking Protocol, CRC and its Optional Protocol. General Comment No. 6 of the Committee on the Rights of the Child stresses that repatriation should not occur where there is a “reasonable risk” that the return would result in the violation of fundamental human rights of the child.<sup>239</sup> The Committee further recommended that the decision to return should take into account the “safety, security and other conditions, including socio-economic conditions, awaiting the child upon return”.<sup>240</sup>

All in all, from the obligations derived from the respective international human rights instruments adopted by Ethiopia and Saudi Arabia, analyzed with their actions or omissions thereof, both States have the responsibility of protecting, respecting and fulfilling the rights of migrant domestic workers who undergo the horrific trauma resulting from trafficking in Saudi Arabia. And the legally established responsibilities of each country serve as a bridge towards creating awareness of the obligations owed to victims of trafficking, families and the community at large by holding States accountable for every wrong done in violation of international law.

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<sup>238</sup> AGRINET, *Assessment of the magnitude of women and children trafficked within and outside of Ethiopia*. 2004, pp.8 and 12 (IOM, Addis Ababa).

<sup>239</sup> General comment 6 of the Committee on the Rights of the Child (para. 84).

<sup>240</sup> Ibid.

## Conclusion

The plight of Ethiopian migrant domestic workers in Saudi Arabia remains dire and is of urgent concern. As migration and trafficking are interlinked, traffickers often exploit the processes by which individuals migrate. Various push and pull factors have been identified in relation to Ethiopian women's labour migration to Saudi Arabia. Poverty, failure in educational endeavors, gender stereotypes, conflict and unemployment are among the many factors that drive Ethiopians to migrate to Saudi Arabia. On the other side, the growing demands for cheap labor in destination countries like Saudi Arabia foment the exposure to trafficking and exploitation. Thousands of women and young girls become victims of various forms of abuse, starting from deception during recruitment. Enticed for the promises of good wages, many go into debt being faced with fraudulent job recruiters only to find wages so low that it will take them decades to break even.

Saudi Arabia similar to other Gulf countries uses the *Kafala* immigration or sponsorship system, which has been criticized for giving an immense power to the employer over the worker. Moreover the Country's labour law excludes domestic workers thereby making them vulnerable to abuse and exploitation. The domestic workers not just endure physical abuse, but dismal work conditions that have driven many to the verge of depression and even suicide. In addition, most employers confiscate the workers' passport putting a restriction on their freedom of movement. This amounts to modern day slavery.

While the ILO, the UN and NGOs make commendable efforts in combating trafficking of women for domestic purposes, it is the States involved that have the ultimate power to directly engage and tackle the issue from the grassroots. In establishing responsibility, the ILC Articles on State Responsibility play an important role in identifying: whether the act/omission of trafficking can be attributed to a state, and whether there is breach of an internationally established law (primary rule) that a State has pledged to respect. Based on this rules there are instances where the acts of a private person/entity can be attributed to a State. Public international law mandates States to exercise due diligence to promote, protect and fulfill human rights. This principle is commonly referred to as the "due diligence" principle. Based on this

principle, the obligation extends to not only prevent human rights abuses by the State and its agents, but also those by non-state actors in the so-called “private harm.”

Accordingly, in the analysis of the case of trafficking in Ethiopian girls and women to Saudi Arabia, the two States involved bear certain obligations under international law. The research has accordingly identified the obligations of Ethiopia as a labour sending and Saudi Arabia as a destination country in order to clearly understand the respective responsibilities owed to the victims in particular and the society at large.

The Trafficking Protocol that is adopted by both Ethiopia and Saudi Arabia and other relevant ILO treaties such as the ILO C29 against Forced Labour, impose certain obligations that the Governments must adhere to in dealing with the crime of trafficking and the victims thereof. Labour sending countries like Ethiopia have important obligations such as: the obligation to prevent trafficking, to prosecute the crime, to secure a bilateral agreement with Saudi Arabia and to guarantee safe repatriation for victims and returnees. On the other side, Saudi Arabia as a major destination country bears the responsibility of: protection and assistance of victims and to secure a safe and probably voluntary repatriation of migrant workers and victims.

Chapter five of the research has analyzed the obligations of the States and whether they have lived up to their international responsibilities. Although it is one of the requirements of the Trafficking Protocol to have a sufficient legislative protection, Ethiopia lacks a comprehensive legislation solely for tackling human trafficking. Rather the Country applies the Constitution, the Criminal Code and the Employment Exchange Proclamation. Although there are some laudable articles within the aforementioned documents, none provide for a clear definition of the concept of ‘trafficking human beings’. And it is paramount to note that in Ethiopia in particular, one of the issues contributing to large migrations is the lack of monitoring of illegal operations of traffickers which is due to insufficient knowledge by law enforcement officials of the term “trafficking” under existing national law which is often confused with ‘smuggling’. This has greatly impeded the number of trafficking cases prosecuted within the country. Moreover, Ethiopia has not made an effort to its fullest capacity to prepare financially and supply adequate manpower to assist and protect deported victims of trafficking from secondary victimization.

This has been particularly the case when hundreds of thousands of migrant domestic workers who were also victims of trafficking were repatriated in 2013. Ethiopia also has an obligation to negotiate a bilateral agreement similar to the ones pursued by Philippines and Indonesia, who managed to secure certain safeguards for their nationals working in the domestic household in Saudi Arabia. Consequently, due to such lack of agreement Saudi Arabia has turned to Ethiopians where thousands live under the poverty line. Most Saudi Arabian employers and recruitment agencies often consider Ethiopian domestic workers as ‘cheap and disposable’.

Therefore, it is without a doubt that trafficking in for the exaction of forced labour is a crime strictly prohibited under: international law, human rights treaties and international labour rights and standards. In ensuring preventive, protective and judicial guarantees for trafficking victims, migrant sending and destination countries have obligations bestowed upon them in the various legal instruments that each State has adopted such as: the UDHR, ICCPR, ICESCR, CEDAW, Organized Crime Convention, Trafficking Protocol, ILO C29 etc. And any violation of such rights would amount to breach of an internationally established legal obligation resulting in the international responsibility of that State as per article 1 of the ILC ASR.

In conclusion, with little being done to improve the condition of Ethiopian migrant domestic workers in Saudi Arabia, things are not expected to change any time soon. If Ethiopia and Saudi Arabia do not take responsibility so that the problem is adequately addressed, and protection is available to potential and actual victims, the fate of a myriad of children and women who are victims of trafficking in Saudi Arabia will be left suppressed.



## **Recommendations**

The research has identified certain obligations that Ethiopia and Saudi Arabia owe to victims of trafficking to tackle the problem from the grassroots. Below are few general recommendations as to how the States can undertake the identified obligations accordingly as per the rules of international law and labour requirements.

### **Ethiopia:**

- In relation to vulnerability, Ethiopia needs to have short and long-term measures to address socio-economic push factors that drive women into the hands of deceitful traffickers. Such measures may include legislative reforms or ant-trafficking awareness trainings for: migrants, police, judges, prosecutors, diplomats posted abroad, as well as labor officials who validate employment contracts or regulate employment agencies.
- The Government should also provide a clear legal definition of trafficking in persons in accordance with the Trafficking Protocol and harmonize the national law with international standards. Such clarification should also focus on emphasizing on the distinction between trafficking and smuggling, which are often confused within the criminal justice system.
- Strengthen the Criminal Code and Employment Exchange Proclamation penalties in prosecuting trafficking cases so that they are proportionate with other rigorous crimes.
- Identify and provide special care for child victims of trafficking by prosecuting perpetrators in accordance with international requirements.
- The Government of Ethiopia should negotiate a bilateral agreement with Saudi Arabia, which is crucial for securing the application and enforcement of labour standards to protect migrant domestic workers from trafficking for labour purposes. Such mutual agreement is vital in creating awareness among employers, diplomats, the police force and all interested parties, that migrant domestic workers are entitled to crucial labour and

human rights that is extended among other workers, and most of all protection from exploitation by the exaction of forced labour.

5. Provide efforts towards coordinating stronger protection services for victims of trafficking in Ethiopia and Saudi Arabia. These may include: temporary accommodation, psychosocial and legal counseling, vocational skills training, micro-credit schemes, and medical care. Moreover, Ethiopia should take lessons from the labour ‘crackdown’ in 2013, where substantial number of undocumented migrant workers were deported from Saudi Arabia, by safeguarding adequate financial and human resources for protection services to meet the needs and demands of victims of trafficking and exploited migrant workers.

### **Saudi Arabia**

- Saudi Arabia needs to have legislative reforms to ensure and guarantee the inclusion of domestic workers in the national labour law.
- The newly approved regulation Order No. 310 on domestic workers needs to be amended in accordance with ILO C29 and recommendations of the ILO CEACR to include: the possibility of changing employers or leaving the country without the written consent of the employer, in discouraging the issue of the retention of passports and the inclusion of penal sanctions for *illegal exaction of forced or compulsory labour*.
- Ensure that the rights and protections provided under Order No. 310 are enforceable in safeguarding: set hours of work, payment of wages, overtime, a weekly rest day and paid holidays. Saudi Arabia can create awareness on such issues by providing orientation for both employers and employees on their respective rights.
- Amend or abolish the *Kafala* sponsorship system by creating and enforcing a system in which the workers’ choices in seeking an alternative employment are not dependent upon the employer. In doing so, the Government should also eliminate the requirement for migrant domestic workers to secure the consent of their sponsors for “exit visas” to leave

the country.

- Guarantee domestic workers' access to labor and other courts to resolve : wage disputes, reports of physical abuse and other complaints. In doing so, Saudi Arabia needs to thoroughly investigate, prosecute, and rigorously punish perpetrators of physical and sexual violence against domestic workers.
- Despite the current lack of a bilateral agreement, Saudi Arabia should cooperate with Ethiopia in the identification and protection of victims of trafficking so that they are not exposed to secondary victimization by authorities or agencies.
- Provide training for police to identify and investigate abuse against domestic workers and protocols on how to respond to such situations, and offer appropriate referrals. Educate police and immigration authorities about the importance of not returning domestic workers to abusive employers against workers' wishes, and make sure they are familiar with procedures for filing complaints against employers and labor agents.
- Reform criminal justice laws, including evidence laws that make it difficult to prove rape, criminal punishment for adult consensual sexual behavior, and arbitrary punishments for supposed witchcraft or "black magic."
- Remove sweeping reservations to the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of the Child. Should first and foremost ratify the relevant international Conventions, such as the ones on migrant workers (ILO Convention C143 on Migrant Workers of 1975 and the UN Convention on the Protection on the Rights of All Migrant Workers and Members of Their Families).

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