

The Assessment of the Ethiopian Anti-Human Trafficking and Smuggling Law
in Jimma Zone with Special Emphasis on Victims Protection, Rehabilitation
and Reparation

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DECLARATION

I, Kidist Tulu Negasa, declare that this work is original. It has never been presented to any other university or institute. When other people’s ideas have been used, proper references have been provided. All words of other persons are also quoted and acknowledged as complete references.

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Lists of Acronyms and Abbreviations

ACRWC - African Charter on the Rights and Welfare of the Child.

CRC - Convention on the Rights of the Child

CSOs - Civil Society Organizations

E.C- Ethiopian Calendar

FDRE- Federal Democratic Republic of Ethiopia

ICCPR- International Covenant on Civil and Political Rights

ILO - International Labour Organization

IOM - International Organization for Migration.

NGOs- Non Government Organizations

OHCHR - Office of the United Nations High Commissioner for Human Rights

UN - United Nation

UNHCR - United Nations High Commissioner for Refugees

UNICEF- United Nations Children's Fund

UNODC - United Nations Office on Drugs and Crime

ECtHR- European Court of Human Rights

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Abstract

The number of victims in Jimma Zone is 6389 by now and this is without including in-country trafficking victims. This paper was basically conducted to assess the legal and institutional frame work that governs human trafficking and smuggling in Ethiopia in particular the practice in Jimma Zone focusing on victim protection, rehabilitation and reparation. Accordingly, this study assessed issues related with victims protection notions, the contents of Proclamation No.909/2015, and institutional commitment towards counter trafficking and smuggling. Empirical method of legal research is a principal method employed in the furtherance of the paper. Thus, the major findings of this paper, depending on four Jimma Zone High Court decisions, eight interviewees from concerning government organs, three interviewees from victims, reports and other related materials analysis, revealed and echoed that victims protection is neglected by other aspects of trafficking so that victim oriented measures should be revisited and reconsidered. Along with this, the practice should follow the law.

Keywords

Trafficking in persons, Smuggling in persons, Victims protection, Rehabilitation, Reparation, Human rights based approach.

CHAPTER ONE

INTRODUCTION TO THE STUDY

1. Background

Today global migration in general and illegal migration in particular is one of the great by-products of globalization which results on the exploitation of movement of people by profit-seeking criminals.¹ This includes both smuggling² and trafficking in person³ because Illegal migration generally falls under human trafficking or human smuggling.⁴ What is common is both are threats to human rights of individuals, and state securities; and they are two of the fastest growing transnational criminal activities.⁵

Depending on the definitions of the two Protocols of UN, meaning anti-trafficking Protocol and anti-smuggling Protocol of UN,⁶ the differences between trafficking in person and smuggling in persons lies on the elements of: (1) consent, that is the presence of consensual agreement of smuggled in case of smuggling migrants and, fraudulent deceit or coercion in case of trafficking in person; (2) trans-nationality nature of smuggling but in which trans-nationality nature of the act is/not determinant for the crime of trafficking in person; (3) exploitation which is contractual in case of smuggling and supposed agreement in trafficking, and (4) The source of profit is one-time in smuggling or it ends when smuggled reaches its destination as opposed to trafficking in person in which there is continual profit for the trafficker.⁷ Generally smuggling is an illegal migration.⁸ But this is not always the case in

¹ UNODC, International Framework for Action to Implement the Smuggling of Migrants Protocol (2012).

² The Protocol against the Smuggling of Migrants by Land, Sea and Air, Supplementing the Palermo convention (2000), Art.3. This Protocol which is here after called 'anti-smuggling Protocol' defines Smuggling as: 'The procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of illegal entry of a person into a State Party of which the person is not a national or permanent resident'.

³ The Protocol to Prevent, Suppress and Punish Human Trafficking, Especially Women and Children supplementing the Palermo convention (2000), Art.3. This Protocol which is here after called 'anti-trafficking Protocol' defines trafficking in person as: '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 of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation'.

⁴ Louise Shelley, *Human Trafficking: A Global Perspective* (2010), p.8.

⁵ Louise Shelley, *Human Smuggling and Trafficking into Europe: A Comparative Perspectives* (2014), p. 2. See also Anna Triandafyllidou and Thanos Maroukis, *Migrant Smuggling: Irregular Migration from Asia and Africa to Europe*(2012), p.3.

⁶ Anti-trafficking Protocol, *supra* note 3; anti-smuggling Protocol, *supra* note 2.

⁷ Tom Obokata, 'Smuggling Of Human Beings from a Human Rights Perspective: Obligations of Non-State and State Actors under International Human Rights Law' 17 *International Journal of Refugee Law* (2005), p. 395.

⁸ *Ibid.*

trafficking in person and sometimes the trafficked may have a legal visa but this does not make a change on the status of trafficked person.⁹

Further the difference between the two also lies on treatments of victims. The protection provided for victims of trafficking in person is extensive than the one provided for victims of smuggled in persons. Indeed, the deleterious effect of human trafficking on the victim is severe and long-lasting.¹⁰ But this does not mean smuggled are not victims. Smuggled persons may have become victims of crime during or as a result of the smuggling process like exploitation and becoming victims of trafficking or even losing their lives.¹¹ Irrespective of this the act of smuggling by itself is a violation of immigration law by which states are in a position to prosecute people for violating national immigration laws and policies as per different international and regional instruments.¹²

However, even if the levels of protection for trafficked and smuggled vary, it is undeniable that the recent instruments address trafficking and smuggling in persons with increasing attention given to the human rights issue from the perspective of the protection of the victims.¹³ The primary documents are the two UN protocols on trafficking in person and smuggling migrants. Accordingly the two documents recognized the issue of victim's protection and other measures in their preamble as follows: Under trafficking protocol,

Declaring that effective action to prevent and combat trafficking in persons, especially women and children, requires a comprehensive international approach in the countries of origin, transit and destination that includes measures to prevent such trafficking, to

⁹ Ibid.

¹⁰ Mulgeta Berihun, 'The Ruthless Side of Human Trafficking in Ethiopia: Returnees Recounting Their Experience of Abuse and Exploitation in the Arab Countries' 21 *Journal of Culture, Society and Development*(2016), p.65.

¹¹ UNODC(2012),*supra* note 1.

¹² Anti-smuggling Protocol, Art.6(4); International Covenant on Civil and Political Rights 1966(ICCPR), Art.13; Protocol 7 of the European Convention on Human Rights 1950 (ECHR), Art.1; American Convention on Human Rights 1969 (ACHR), Art.22; African Charter of Human and Peoples' Rights 1981 (African Charter), Art.12.

¹³ Anti-trafficking Protocol, Art.6-9. It is all about assistance of victims in criminal investigations and proceedings, provision of accommodation, physical and psychological assistance, employment and educational opportunities, temporary or permanent residence permits, and protection from re-victimization; Smuggling Protocol, Art.5 & 16 is also about protection of smuggled that include the right to life, prohibition of torture, and the right not to be held liable for the fact being smuggled.

punish the traffickers and to protect the victims of such trafficking, including by protecting their internationally recognized human rights.¹⁴

Likewise the smuggling protocol gives emphasis to victims protection as follows: ‘Convinced of the need to provide migrants with humane treatment and full protection of their rights¹⁵; Also concerned that the smuggling of migrants can endanger the lives or security of the migrants involved’.¹⁶

So, even one purpose behind having those instruments is protection of victims. These instruments provide guidance to member states and, create some specific obligations for them regarding the rights of victims or certain groups of victims as well. Anti-trafficking Protocol¹⁷ calls for three interrelated pillars to combat human trafficking, namely prevention, protection, and prosecution. As far as protection of victims of trafficking is concerned, the protocol requires parties to establish comprehensive policies, programmes and other measures to protect victims of trafficking in persons, especially women and children from re-victimization.¹⁸ Additionally anti-smuggling protocol also requires member states, to the minimum, to protect their fundamental human rights.¹⁹

Since 2012, Ethiopia is a party to both anti-smuggling and trafficking protocol.²⁰ In addition Ethiopian government has also enacted anti trafficking and smuggling law.²¹ Article 26(1) of the proclamation reads as:

¹⁴ The Preamble of anti-trafficking Protocol, para 1.

¹⁵ The Preamble of anti-smuggling Protocol, para.3.

¹⁶ Ibid, para.6.

¹⁷ Anti-trafficking Protocol, *supra* note 3.

¹⁸ Ibid, Art.9 (1.b).

¹⁹ Anti-smuggling Protocol, Art.16.

²⁰ Ethiopia has acceded to both anti-smuggling Protocol and anti-trafficking Protocol of UN in 2012 see UNODC, ‘Status of Ratification of the UN Migrant Smuggling Protocol’ (2017) available at <https://treaties.un.org/doc/Publication/MTDSG/Volume%20II/Chapter%20XVIII/XVIII-12-b.en.pdf> visited 15 March 2017; See also Ethiopia’s date of accession to Trafficking protocol of UN available at: UNODC, ‘Status of Ratification of UN Trafficking in Person Protocol’ (2017) <https://treaties.un.org/doc/Publication/MTDSG/Volume%20II/Chapter%20XVIII/XVIII-12-a.en.pdf> visited 16 March 2017.

²¹ Prevention and Suppression of Trafficking in Persons and Smuggling of Migrants Proclamation 909 of 2015, here after called ‘anti-trafficking Proclamation’.

The Government shall put in place necessary working procedures to identify, rescue, repatriate and [sic] victims in partnership with other foreign diplomatic missions, concerned government and non-government organizations and other supportive mass organization, the details of which shall be specified by law.

This is the government obligation toward victims of trafficking in person and smuggling in persons.

Despite the legislative response to offense of trafficking in persons and smuggling, Ethiopia is still a source and, to a lesser extent, destination and transit country for men, women, and children subjected to forced labor and sex trafficking as reports are showing.²² Neighbouring African countries particularly Sudan and Djibouti as well as Middle East are common places where Ethiopians are exploited either for prostitution or domestic servitude.²³ Further girls from rural Ethiopia's are exploited in domestic servitude and prostitution, while boys are subjected to forced labor in traditional weaving, construction, agriculture, and street vending within the country.²⁴ Child sex tourism is also arising in major tourist hubs, including Addis Ababa, Bahir Dar, Hawassa, and Bishoftu.²⁵ Further as the national anti-trafficking task force's five year strategic plan shows, in Oromiya regional state, Jimma, Arsi, Ilubabor and Hararge zones are found the main sources of human trafficking.²⁶ As the study conducted on four woredas of Jimma Zone, namely ,Omo Nada, Kersa, Dedo and Manna shows, there is abundant practice trafficking and smuggling in person in the Zone ought to different factors like unemployment, and unaffordable costs of legal migration.²⁷ Accordingly there are a high number of victims in the identified woredas of Jimma Zone.²⁸ Women and poor individuals in general are identified by the research as the most vulnerable groups than others in the zone.²⁹

²² United States Department of State, 'Trafficking in Persons Report – Ethiopia' (2016) available at <https://www.state.gov/documents/organization/258876.pdf> visited 14 March 2017, p.167.

²³ Ibid.

²⁴ Ibid.

²⁵ Ibid.

²⁶ FDRE National Anti-trafficking Task Force, Five Year Strategic Plan (Nehase, 2007), p. 2.

²⁷ Tariku Ayele and Gudina Abashula, 'Exploring Human Trafficking in Four Selected Woredas of Jimma Zone, Ethiopia' 14 *Global Journal of Human-Social Science* (2014), p.49.

²⁸ Ibid.

²⁹ Ibid.

Hence, this study provides assessment of the new anti-trafficking and smuggling law of Ethiopia's responses and the practice to victims of trafficking and smuggling in persons in Jimma Zone, Ethiopia. This research measured how different law enforcement agencies are enforcing the law, and critically analysed the gaps and challenges encountering them. Accordingly, this study assessed whether victims of trafficking in person and smuggling in persons in Jimma Zone are protected, rehabilitated and repaired as per the new anti-trafficking and smuggling law.

2. Objectives of the Study

I. General Objective

The general objective of this study is to assess the law and practice on protection, rehabilitation and reparation of victims of trafficking and smuggling in persons in Jimma Zone, Ethiopia.

II. Specific Objectives

Accordingly, the specific objectives of the study include:

- To examine the existing normative, institutional and procedural framework on the protections, rehabilitations and compensation of victims' of human trafficking and smuggling;
- To assess implementation of protection, rehabilitation and compensation of victims of trafficking in person and smuggling in Jimma Zone; and
- To suggest the possible solution for the Stumbling blocks and other challenges in implementation.

3. Statement of the Problem

A Human Rights Based Approach recognizes that trafficking is a human rights issue as it is a gross violation of fundamental human rights and dignity of the victims.³⁰In crime of trafficking, victims are kept under horrendous conditions and control of their captors that they are unable to escape the conditions. The effects of human trafficking range from health risk to death of victims. Smuggling similarly causes exploitation, trafficking and loss of life of the victim during and after the process.³¹As a response to this, the Palermo Convention and its Protocols were adopted to prevent and combat transnational trafficking in persons and smuggling in persons. These universal instruments among other provide definitions of

³⁰ Bahar Jibriel, 'A Human Rights Based Approach to Counteract Trafficking in Women: The Case of Ethiopia' 3 *Oromiya Law Journal* (2014), p.223.

³¹ UNODC (2012), *supra* note 1.

trafficking in person and smuggling in persons, address all aspects of trafficking in person of which one is assisting victims, criminalization of participations and prosecution.

Ethiopia has ratified and acceded to the Palermo Convention and its Protocols. At national level, proclamation no 909/2015 was adopted with different purposes. One of the primary purposes is providing Victims with appropriate protection, rehabilitation and support.³²

Despite this trafficking in person and smuggling are still serious challenges in Ethiopia causing heinous human rights violations and exploitations on victim.³³ As the national anti-trafficking task force's five year plan shows, in Oromiya regional state, Jimma zone is one of the sources of human trafficking.³⁴ There is high number of victims in the zone ought to abundant practice of human trafficking and smuggling because of unemployment, and unaffordable costs of legal migration.³⁵ Beside this there is no legal research on the area and as such it needs a close scrutiny. Accordingly, this research assesses whether the protections given under the law are adequate and in line with standards of the two anti-trafficking and smuggling Protocols, and whether the protections given under the law are there in reality in Jimma Zone.

4. Research Questions

The study answers the following main questions:

- What are victims' protections, rehabilitations and reparation scheme under the UN Convention against Transnational Organized Crime and the two Protocols thereof?
- What measures of victims' protections, rehabilitations and reparation are there under anti-trafficking and smuggling law of Ethiopia?
- Are Ethiopian Anti-human trafficking and smuggling legal framework comprehensive enough to provide necessary protection scheme for victims of the crimes?
- Are victims provided with medical, psychological, legal services and adequate compensation in Jimma Zone?

³² The Preamble of anti-trafficking Proclamation, para.2.

³³ US Department of States Report (2016), *supra* note 22, p.167. see also National Anti-trafficking Task Force's Plan (2007), *supra* note 26.

³⁴ National Anti-trafficking Task Force's Plan (2007), *supra* note 26.

³⁵ Ayele and Abashula, *supra* note 27, p.49.

- What are the plausible practical or legal hurdles in realizing protection, rehabilitation, and reparation for the victims of human trafficking and smuggling in Ethiopia, in general and in Jimma Zone, in particular?

5. Methodology

I. Method

In order to attain the objectives listed and to address the research questions, the approach followed in this research is qualitative research method. Qualitative method involves data collections that attempt to discover the quality of something.³⁶ The research aims to assess whether or not the victims of trafficking and smuggling in persons are really protected, rehabilitated and compensated in Jimma Zone. Therefore it is a qualitative research design that best fit this study.

In qualitative, different data collection mechanisms would be used, like observations, textual or visual analysis (e.g., from books or videos) and interviews (individual or group).³⁷ Accordingly, the researcher will employ primarily analysis of laws and court decisions (in the relevant study area and interviews of appropriate stake holders, Study area selected for the assessment is Jimma Zone, found at South Western part of Ethiopia in Oromiya Regional State at the distance of 365km from Addis Ababa. The study area has been selected by considering previous researches³⁸ and plan³⁹ on combating human trafficking and smuggling and the Proclamation itself⁴⁰. Document analysis and interview have been used as instrument of data collection.

³⁶ Earl Babbie, *The Basics of Social Research*, 4th edn. (2008), pp.25-26.

³⁷ Paul Gill *et al*, 'Methods of data collection in qualitative research: Interviews and Focus groups' 204 *British Dental Journal* (2008), p.291.

³⁸ Ayele and Abashula, *supra* note 27, p. 49. By which the research identified that the practice of human trafficking and smuggling or what is commonly called illegal migration is abundant in Jimma zone.

³⁹ FDRE National Anti-trafficking Task Force, Five Year Strategic Plan (Nehase, 2007). One of the purpose of this plan is to promote researches on the area in order to contribute for the prevention of human trafficking.

⁴⁰ As per Art.24 (1) of anti-trafficking Proclamation, the power to entertain cases of human trafficking and smuggling which is subject to this proclamation is subject to the jurisdiction of Federal First instance courts. Accordingly regional high courts can exercise jurisdiction over crimes of this proclamation depending on Art. 80 (4) of FDRE Constitution's principle of delegation. As such, it is appropriate to choose Zonal structure for assessing the practice of the proclamation.

II. Sampling and Sample Size

Even if it were possible, it is not necessary to collect data from everyone in a community in order to have valid findings.⁴¹ So in qualitative research, only a sample (that is, a subset) of a population is selected for any given study.⁴² In order to achieve the objective of this study the information gathered from victims, Jimma Zone High Court, Justice Office, Human Rights Commission, Women and Children Affair, and the Office of Labor and Social Affair is ought to be considered.

Purposive sampling employed in order to gather detail information and to have respondents across relevant stake holders. Accordingly, two (2) persons from each and total of six (6) persons from Court, Justice Office, and Human Rights Commission of Jimma Zone Justice Office have been interviewed as they concerns directly interpretation of the law and implementation respectively. In addition, one person from Women and Children Affair, and one person from Labor and Social Affair have been interviewed since they are stakeholders again. Furthermore, three victims were interviewed. While selecting court cases, the author relied on all (four) cases decided up on the new anti-trafficking and smuggling law.

III. Sources of Data

In conducting this research, both primary and secondary sources were employed. Primary sources including laws, court decisions, reports (internal report, quarter report, and annual report), and other information's gathered through semi-structured interview were used. Semi-structured interview by which the interviewer still has a clear list of issues to be addressed and questions to be answered but without regard to the order of questions in order to have interviewee develop ideas and speak more widely on the issues to be raised by the researcher.⁴³ On the other hand, secondary sources like books, conference proceeding, journal articles, archive and minutes were utilized.

IV. Data analysis

Since it is a qualitative study, there is no strict rule to be followed for data analysis unlike quantitative method. However, this does not mean there is no rule of data analysis in qualitative data. For the purpose of this study, it is a 'Discourse analysis' and 'Thematic

⁴¹ Natasha Mack *et al*, *Qualitative Research Methods: a Data Collector's Field Guide* (2005), p.5.

⁴² *Ibid*.

⁴³ Martyn Denscombe, *The Good Research Guide for small-scale social research projects*, 3rd edn.(2007), p.176.

analysis' that is used to analyse the data. As Lan Parker, in the book 'A Companion to Qualitative Research', pointed out, discourse analysts study the way texts are constructed, the functions they serve in different contexts and the contradictions that run through them. And the purpose of this study, as discussed under objective part, is to assess the laws, the practice, and the challenges. In thematic analysis, the researcher organizes and describes data set in detail. So the data collected, analysed through discourse and thematic analysis.

6. Literature Review

A number of studies have been conducted on human trafficking in Ethiopia, focusing primarily on factors causing human trafficking and its consequence.⁴⁴ That is the social, political and economic factors behind human trafficking,⁴⁵ and the extent and character of human trafficking in Ethiopia.⁴⁶ Poverty, unemployment, illiteracy, lack of awareness dishonest conduct of agents, and prevalence of traffickers are the root causes of human trafficking in Ethiopia as Gudetu Wakgari research shows.⁴⁷ In similar fashion, researches by Elias Ashene⁴⁸ and Gabriel Temesgen⁴⁹ assess the features and root causes of human trafficking in Ethiopia. Other researches like Bahar Jibriel's research raises lack of comprehensive legal framework dealing with the three Ps' (prevention, protection and prosecution) of human trafficking.⁵⁰ Khaled Ali Beydoun's work on the trafficking of Ethiopian domestic workers to Lebanon,⁵¹ critically examines the practical difficulties suffered by trafficked women. Accordingly, the study identified that even if Lebanon is a party to UN Protocol on human trafficking; it lacks political commitment to implement the

⁴⁴ See, for example, the research of: Gudetu Wakgari, 'Causes and Consequences of Human Trafficking in Ethiopia: The case of Women in the Middle East' 2 *International Journal of Gender and Women's Studies* (2014), pp. 238-241. Accordingly the study identified economic factors like poverty, unemployment, and lack of awareness, and pressures from family and friends as a factor for human trafficking, and social, economic and political consequences of human trafficking.

⁴⁵ Emebet Kebede, 'An Assessment of the International Labour Migration Situation: The Case of Female Labour Migrants' (2002), pp. 1-48.

⁴⁶ IOM, 'Assessment of trafficking in women and children in and from Ethiopia' (2010) available at http://www.africanchildinfo.net/index.php?option=com_sobi2&sobi2Task=sobi2Details&catid=6&sobi2Id=819&Itemid=73&lang=en visited 24 January 2017.

⁴⁷ Wakgari, *supra* note 44, pp. 238-240

⁴⁸ Elias Ashene, 'Trafficking of Ethiopian women and Girls to the Middle East' (2015) available at http://www.etd.ceu.hu/2013/ashene_elias.pdf visited 4 November 2016.

⁴⁹ Gabriel Temesgen, 'Root Causes and Solutions to human Trafficking in Ethiopia' (2015) available at <http://www.globalinitiative.net/download/human-trafficking/subsaharan-africa/root-causes-and-solutions-to-human-trafficking-in-Ethiopia.pdf> visited 24 January 2017.

⁵⁰ Jibriel, *supra* note 30, pp. 254-256.

⁵¹ Khaled Ali Beydoun, 'The Trafficking of Ethiopian Domestic Workers into Lebanon: Navigating through a Novel Passage' 24 *Berkeley Journal of International Law* (2006), para.2, p.18.

obligation under it Furthermore, there is no assistance provided to Ethiopian returnees from Lebanon.

Generally, most of these studies are conducted prior to the newly enacted Ethiopian anti-trafficking and smuggling law and as such these studies have not comprehensively assessed the new law.

Coming to the period after newly enacted Ethiopian proclamation on human trafficking and smuggling, there are few researches, of which their objectives are mainly limited to assessing either criminalization and prosecution of human trafficking under the Proclamation, or assessing all aspects of human trafficking law by which they assesses protection aspect in their way.⁵² Moreover, the issue of smuggling in persons is not addressed yet by all these researches.

Victims of trafficking need proper protection and support to recover from their treacherous experience of trafficking. As most victims of trafficking suffer from multiple violations and abuse of rights, the protection efforts must seek to respond to heal their wounds. Further, the proper protection services contribute to the prevention of trafficking by avoiding likelihood of re-trafficking.⁵³ Human rights based approaches requires understanding of human trafficking and smuggling as violation of human rights of victims.⁵⁴ Meaning, prosecution of perpetrators of the crime of trafficking in person and smuggling in person should not be the only response but also protection and assistance of victims too. So this has to be considered too.

The research of Tariku Ayele and Gudina Abashula⁵⁵ explored the abundant practice of human trafficking and smuggling or illegal migration, in general, in Jimma Zone the short coming of the research is that it is not legal research. Thus it fails to emphasise on the legal aspects of the problem.

⁵² Shiferaw,Z ‘Assessment of The Legal Framework Of Ethiopia On Human Trafficking In Light of International Standards’ (2016) LLM Thesis on file at the Loyola University Chicago School of Law.

⁵³ Jibriel, *supra* note 30, p. 238.

⁵⁴ *Ibid*, p. 224.

⁵⁵ Ayele and Abashula, *supra* note 27.

Finally, there is no research specifically dealt with protection of victims of human trafficking and smuggling in Ethiopia in general and in Jimma Zone⁵⁶ particularly. In response, this study assessed the law and practice in Jimma Zone.

7. Significance of the study

Trafficking and smuggling are increasing at an alarming rate globally. This means the number of victims of human trafficking and smuggling is increasing as well. Ethiopia is not an exception to this global phenomenon. In Ethiopia, Jimma zone is one of the fertile sources of trafficking and smuggling in persons. Therefore there is a need that, protection should be provided to these victims. One of which is a legal protection. Accordingly while conducting this study the researcher find out that this paper would have contribution to understand the concept of victims protection, rehabilitation, reparation, and the protections available for victims of trafficking and smuggling in persons under international law; and under the newly enacted Ethiopian human trafficking and smuggling Proclamation.

The study also assessed the practical application of the laws on protection of victims of human trafficking and smuggling in Jimma Zone, Ethiopia. Accordingly, the researcher believes that this will provide a broader understanding of the existing normative framework on the protection of victims of human trafficking and smuggling in Ethiopia, and shed light on the mechanisms that could strengthen the implementation of the law. The analysis of judicial practice in this field enables identification of the key challenges and obstacles in realization of victims rights and it may change implementation of the existing legislative. In this regards, the study will have paramount contribution to the meagre works in the area.

8. Chapter Outline

The paper is classified into four chapters. The first chapter provides background, statement of the problem, research questions, objective of the study, significance of the study, research methodology and limitation of the study. The second chapter explicates the conceptual and normative framework on protection of victims of trafficking in persons and smuggling of

⁵⁶ Not to mean the practical responses of all Woredas of Jimma Zone are going to be assessed rather it is an assessment of practices of court and justice office at zonal level because the power to entertain cases of trafficking in person and smuggling is given to federal first instance court which equals the power of regional high courts as per art. 24(1) of Ethiopian anti-trafficking and smuggling proclamation and 80(4) of FDRE Constitution. Simultaneously it is the power of justice office of the zone to bring perpetrators of such crime to justice.

migrants, at both international and national level. The third chapter is all about the legal and practical protection of the rights of victims of human trafficking and smuggling in Jimma Zone, Ethiopia. The fourth chapter concludes the study and put forward recommendations based on the findings.

9. Delimitation of the Study

Geographically, the study primarily aimed at analysing protection of victims of human trafficking and smuggling under the new Ethiopian human trafficking and smuggling law and the practice in Jimma Zone. So, geographically it concerned Jimma Zone's situation only. Jimma Zone is found in Oromiya region south west Ethiopia 365 km from the centre, Addis Ababa.

The consequence of human trafficking or trafficking in persons and smuggling is multidimensional and far reaching and accordingly, it may have impact on states, the society, family, and trafficked or smuggled persons. Article 2(11) of Ethiopian anti-trafficking Proclamation defines victims as: "a person against whom the offence stipulated under this Proclamation [including offence of human trafficking and smuggling of persons] has been committed or any person who has sustained harm, including mental and physical injury, emotional suffering, economic loss or substantial violation of basic human rights due to the commission of the crime."⁵⁷ According to the definition, both natural and artificial persons can be victims of human trafficking. Clearly, providing protection to entities is not the primary objective of the UN Trafficking Protocol and the Proclamation.⁵⁸ Other individuals can also be categorized as victims if they sustain, for example, economic loss as a result of the practice. Further from perspective of human rights, human trafficking and smuggling are both violations of human rights.⁵⁹ So as the direct impact rests on trafficked or smuggled persons, only trafficked or smuggled person have been considered as victim for the purpose of this study. In addition, the study considered victims of both internal and external trafficking cases and obviously smuggling is external one. Therefore, ideally the scope of the study was only with legal protection, rehabilitation and reparation of victims and its practice.

⁵⁷ Anti-trafficking Proclamation, *supra* note 21, Art.2 (11).

⁵⁸ See Art.2 (b) of the anti-trafficking Protocol and the preamble of the anti-trafficking Proclamation, para.2.

⁵⁹ Jibriel, *supra* note 30, p.224.

10. Limitation of the study

Crimes of trafficking in persons and smuggling of migrants are complex and organized forms of crimes by their nature and as such this could disable courts not to decide in time. Court case analysis was one of the means of data gathering for this study, accordingly the study was affected by prolonged decisions of courts as anti-trafficking and smuggling proclamation is recent and new and the number of cases used were few. To overcome this, the researcher used other means's and that is interview.

CHAPTER TWO

Legal Framework against Trafficking in Person and Smuggling Persons: Special Emphasis on Victims Protection, Rehabilitation and Reparation

Introduction

Human trafficking and smuggling persons are intertwined, yet distinct criminal activities that pose serious challenges to victims.⁶⁰ The two crimes overlap and many people may start their journey in one category and end it in another, even if the two Protocols⁶¹ are criticised for failure to recognise the operational link between smuggling and trafficking.⁶² Commonly, violations of human rights are taken as both a cause and a consequence of trafficking in persons.⁶³ This shows that trafficking in persons has been widely regarded as a human rights issue unlike smuggling persons in which a little attention has been paid to its human rights aspects mainly because it is characterised as facilitation of illegal migration.⁶⁴ However, the causes, processes and consequences of smuggling persons are in fact violations of human rights of victims.⁶⁵ Even if smuggling is a violation of state borders which is against state sovereignty, it is undeniable that smuggling is a violation of human rights of smuggled persons. Accordingly, refoulment and deportation, risk of abduction and trafficking, denial of asylum and violations to the right to life are some of the risks of smuggled persons encountered from eastern and horn of Africa including Ethiopia as identified by United Nations High Commissioner for Refugees (UNHCR) in 2015.⁶⁶ So the victims of both trafficking in person and smuggling of migrants deserves protection and assistance.

⁶⁰ 'Human Trafficking and Smuggling in the Horn of Africa: Patterns, Dynamics, and Criminal Networks' (2015) available at <http://life-peace.org/wp-content/uploads/2015/10/Human-Trafficking-and-Smuggling-in-the-Horn-of-Africa.pdf> visited 2 May 2017, p.1.

⁶¹ Anti-trafficking Protocol is adopted to criminalize, enable prosecution, and prevention of trafficking in person in particular Women and Children, and to protect victims. Anti-smuggling Protocol is again adopted to prevent and combat smuggling in person and protect victims of smuggling. Both Protocols fails to recognize the interconnection between smuggling and trafficking in person.

⁶² Benjamin S. Buckland, 'Human Trafficking & Smuggling: Crossover & Overlap', in Cornelius Friesendorf (ed.) *Strategies against Human Trafficking: The Role of the Security Sector* (2009), p.147.

⁶³ United Nations Human Rights Office of the High Commissioner, 'Human Rights and Trafficking', Fact Sheet No.36 (2014) available at http://www.ohchr.org/Documents/Publications/FS36_en.pdf visited 2 May 2017.

⁶⁴ Obokata, *supra note 7*, p. 394.

⁶⁵ *Ibid*, pp.399-401.

⁶⁶ M.L. McAuliffe and F. Laczko (eds.), *Migrant Smuggling Data and Research: A Global Review of the Emerging Evidence Base* (2016), pp.75-76.

1. The Legal Framework on Trafficking and Smuggling in Persons: Definition and Criminalization

The history of international law on criminalizing trafficking in person trace back to 1904 when the 'International Agreement for the Suppression of the White Slave Traffic'⁶⁷ was adopted.⁶⁸ Nevertheless, this instrument was limited to protect white slave only.⁶⁹ In 1921, the 'International Convention for the Suppression of the Traffic in Women and Children'⁷⁰ was adopted and it extended protections to children and women of every race unlike the first instrument.⁷¹ The International Convention for the Suppression of the Traffic in Women of All Ages criminalized the acts of procuring, enticing, or leading away of adult women for "immoral purposes" to a foreign country⁷² and the 1949 Convention replaced it.⁷³ The 1949 Convention was criticized for even not providing trafficking definition⁷⁴ and as such, it was ineffective in protecting victims.

The novelty of the issue of migrant smuggling under international law is the establishment of Convention on Transnational Organized crime and the smuggling Protocol.⁷⁵ But the issue is older under international law as it related generally to law of the sea, human rights law, and refugee law.⁷⁶ There are also other international human rights instruments and regional laws addressing the issue of trafficking in person and migrant smuggling such as Convention on the Elimination of all Forms of Discrimination against Women (CEDAW),⁷⁷ the Convention on the Rights of the Child (CRC)⁷⁸ and its second Optional Protocol on the Sale of Children,

⁶⁷ International Agreement for the Suppression of the "White Slave Traffic"(1904).

⁶⁸ Beydoun(2006), *supra* note 51, p. 1019.

⁶⁹ *Ibid.*

⁷⁰ *Ibid.*

⁷¹ *Ibid.*

⁷² International Convention for the Suppression of the Traffic in Women of Full Age (1933), Art.1.

⁷³ Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others (1949).

⁷⁴ Beydoun , *supra* note 51, p. 1020.

⁷⁵ United Nations Convention against Transnational Organized Crime (2000), Art.1. Its purpose is to prevent and to combat transnational organized crime including smuggling persons. See also The Protocol Against the Smuggling of Migrants by Land, Sea and Air, Supplementing the Palermo Convention (2000), Art.2. It states that the purpose of the Protocol is to prevent and combat the smuggling of migrants, as well as to promote cooperation among States Parties to that end while protecting the rights of smuggled persons.

⁷⁶ Anne T. Gallagher and AO Fiona David, *The International Law of Migrant Smuggling* (2014), p. 2.

⁷⁷ Convention on the Elimination of All Forms of Discrimination against Women (1979), Art.6 states that:*States Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women.*

⁷⁸ Convention on the Rights of the Child (1989), Art.35 addresses the issue of trafficking through prohibiting abduction, sale or trafficking of children for any purpose; see also art.32 of the Convention.

Child Prostitution and Child Pornography;⁷⁹ the Convention on the Protection of the Rights of all Migrant Workers and Members of Their Families;⁸⁰ and ILO Conventions⁸¹.

The Rome Statute,⁸² which established the International Criminal Court (ICC) to deal with the most serious crimes of concern to the international community, is also ought to be discussed. It declares that it is the duty of every state to exercise its criminal jurisdiction over those responsible for international crimes.⁸³ Further, Rome Statute identifies rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity as crimes against humanity when committed as part of a widespread or systematic attack directed against any civilian population.⁸⁴ It is a war crime if committed in time of armed conflict.⁸⁵ That means still trafficking in person forms international crime under the core crimes. However the jurisdiction of the ICC remains an obstacle because Ethiopia is not a State Party to Rome Statute. But, generally, all human right instruments point out that no one should be held in slavery or servitude.⁸⁶

Most importantly the Convention against Transnational Organized Crime⁸⁷ as well as its two additional Protocols⁸⁸ show the progress in terms of legal framework and manifestation of international community's response to combat trafficking in person and smuggling persons. Before such development, there were controversies as to the difference between trafficking

⁷⁹ Optional Protocol to the CRC on the Sale of Children, Child Prostitution and Child Pornography (2000), Art.3&4 requires States to criminalize and punish both transnational and domestic case of child prostitution and the sale of children for sexual exploitation, organ transfer or forced labour to protect children.

⁸⁰ Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990), Art.16 gives protection to migrant workers and members of their families particularly the right to security, access to social services and prohibition of undue deportation.

⁸¹ International Labour Organization Conventions: Forced Labour Convention No.29 (1930) and Abolition of Forced Labour Convention No.105 (1957), Arts.2(1) and 1 respectively defines Forced or Compulsory labour as all work or service which is exacted from a person under the threat of a penalty and for which the said person has not offered himself voluntarily. See also Art.7 of ILO Convention No.182 (1999) on Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour which require States to take measures to eliminate worst forms of child labour.

⁸² The Rome Statute of the International Criminal Court, (2002).

⁸³ The Preamble of Rome Statute.

⁸⁴ Ibid, Art. 7(g).

⁸⁵ Ibid, Art.8.

⁸⁶ Ryszard Piotrowicz, 'States' Obligations under Human Rights Law towards Victims of Trafficking in Human Beings: Positive Developments in Positive Obligations'24 *International Journal of Refugee Law*(2012), p.186.

⁸⁷ The United Nations Convention on Transnational Organized Crimes, (2000). It is adopted in Palermo, Italy and as such it is called 'Palermo Convention'.

⁸⁸ Trafficking Protocol, *supra* note 3; Smuggling Protocol, *supra* note 2.

and smuggling in persons due to the absence of comprehensive definitions on both concepts, and more so on the protection that victims of trafficking and smuggling deserves. The pattern of trafficking in person and smuggling persons evolves a form of transnational organized crime involving networked criminal syndicates.⁸⁹ Accordingly, they are subject to the Convention on Transnational Organized Crime⁹⁰ but the Convention is too general and as such, it is difficult to address those problems without supplementing it with the protocols. This is the motive behind the adoption of UN Trafficking Protocol and Smuggling Protocol.⁹¹

I. Definition and Elements of Trafficking and Smuggling in Persons

As tried to elaborate under background part of chapter one of this research, many features of human trafficking are similar to those of human smuggling.⁹² Trafficking in person and smuggling persons affects the livelihoods of people, endanger the social, economic and moral fabric of communities and undermine state security.⁹³ The impact of the two is transnational felt not only in source but also in transit and destination countries. Despite their similarities, they are treated distinct under international law as I discussed under the first section of Chapter One of this research. The common definition of trafficking is established by the UN Trafficking Protocol and it defines trafficking in person as:

the recruitment, transportation, transfer, harbouring or receipt of persons, by means of a threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual

⁸⁹ Human Trafficking and Smuggling in the Horn of Africa: Patterns, Dynamics, and Criminal Networks' (2015) available at <http://life-peace.org/wp-content/uploads/2015/10/Human-Trafficking-and-Smuggling-in-the-Horn-of-Africa.pdf> visited 2 May 2017, p.1.

⁹⁰ The Preamble of Palermo Convention, para 7.

⁹¹ See the preamble of the anti-trafficking Protocol, para.4 &5. It says that for the purpose of elaborating a comprehensive international Convention against Transnational Organized Crime and of discussing the elaboration of, inter alia, an international instrument addressing trafficking in women and children; and convinced that supplementing the United Nations Convention against Transnational Organized Crime with an international instrument for the prevention, suppression and punishment of trafficking in persons, especially women and children, will be useful in preventing and combating that crime.

⁹² Beyene, S'Investigation and Prosecution of Transnational Women Trafficking: The Case of Ethiopia' (2011) LLM Thesis on the file at the Faculty of Law, University of Western Cape, p.11.

⁹³ Ibid.

exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.⁹⁴

This definition consists of three basic elements determining trafficking in person and accordingly, the first element is *Action*: The recruitment, transportation, transfer, harbouring or reception of persons; The second is the *Means used*: The threat or use of force or various forms of non-violent coercion, such as fraud or deception; The third is *Purpose of Trafficking* which is exploitation, predominantly for forced labour. But in case the victim is a minor, the above requirements are not strict. In case of ‘child trafficking’ the “means” element is not required.⁹⁵ Only “action” such as recruitment, buying and selling for the specific purpose of exploitation is required.⁹⁶

These three elements, again, identifies trafficking in person from smuggling persons. Smuggling persons which is commonly called smuggling of migrants is defined under UN Smuggling Protocol as: ‘[t]he 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’.

Unlike trafficking victims, victims of smuggling consent to being smuggled. Victims of trafficking might have neither consented or their consent is irrelevant due to coercion, deception or abusive actions by traffickers.⁹⁷ So, *consent* is one element of smuggling. The other element of smuggling is *trans-nationality*. Smuggling of migrants is necessarily transnational, while trafficking in persons may be transnational or perpetrated within the borders of one state.⁹⁸ The third element for smuggling persons is *source of profit*. In smuggling of migrants cases, the profits are generated by the facilitation of the illegal entry or stay of a person into another country, while in trafficking in person’s cases, the profits derive from the exploitation of victims.⁹⁹ So the two are different and subject to two different protocols under international law.

⁹⁴ Anti-trafficking Protocol, Art.3(a) and (b).

⁹⁵ United Nations Human Rights Office of the High Commissioner, ‘Human Rights and Trafficking’, Fact Sheet No.36 (2014) available at http://www.ohchr.org/Documents/Publications/FS36_en.pdf visited 2 May 2017.

⁹⁶ Ibid.

⁹⁷ Beyene,S, *supra* note 92, p.93.

⁹⁸ UNODC Regional Office for West and Central Africa, Regional Strategy for Combating Trafficking in Persons and Smuggling of Migrants 2015-2020(2015), p.5.

⁹⁹ Ibid.

II. Protocol on Suppression of Trafficking and Smuggling in Persons: Purposes and Implications

This UN Protocol is among the Protocols supplementing the UN Convention against Transnational Organized Crime, and it is the first international treaty providing comprehensive definition and addressing the problem of human trafficking as discussed above. The application of the Protocol is limited to situations of international trafficking involving an organized criminal group¹⁰⁰ and its purpose is three fold: to prevent and combat trafficking in persons, paying particular attention to women and children; to protect and assist victims of trafficking; and to promote co-operation among State Parties in order to meet those objectives.¹⁰¹

To prevent and combat trafficking in persons, the Protocol calls on states parties to adopt measures to criminalise the offence, improve international co-operation in the governmental and non-governmental sectors, carry out research on trafficking, conduct awareness raising campaigns to discourage demand, exchange information, provide and strengthen training and reinforce controls over borders and travel documents.¹⁰² It also requires states parties to implement legislation which criminalises not only the direct offence of trafficking but also the acts of instigating, organising or directing trafficking, being an accomplice to a trafficker or attempting to commit a trafficking offence.¹⁰³

Part Two of the Protocol deals with protection and assistance of the trafficked person. Accordingly, in appropriate cases and to the extent possible under domestic law,¹⁰⁴ states parties are enjoined to protect the privacy of trafficking victims and ensure that they are given information on legal proceedings and facilities to present their views as well as concerns during criminal proceeding against offenders.¹⁰⁵ Besides, states parties are also enjoined to consider implementing a range of measures to provide for the physical and psychological recovery of victims of trafficking;¹⁰⁶ endeavour to provide for the physical safety of

¹⁰⁰ Anti-trafficking Protocol, *supra* note 3, Art.4.

¹⁰¹ *Ibid*, Arts.6-8.

¹⁰² *Ibid*, Arts.9-12.

¹⁰³ *Ibid*, Art.5.

¹⁰⁴ *Ibid*, Art.6(1).

¹⁰⁵ *Ibid*, Art.6(1) and 6(2).

¹⁰⁶ *Ibid*, Art.6(3).

trafficking victims within their territory;¹⁰⁷ and ensure that domestic law provides victims with the possibility of obtaining compensation.¹⁰⁸ Indeed it is criticised for containing a very little in the way of hard obligation.¹⁰⁹

Coming to the Smuggling Protocol, like that of trafficking Protocol gives a comprehensive definition of the term as it can be inferred from the above section. The purpose of the Protocol is to prevent and combat smuggling in person,¹¹⁰ to promote international cooperation,¹¹¹ and to protect the rights of smuggled persons.¹¹² The application of the Protocol is again limited to situations of international smuggling in persons involving an organized criminal group like the trafficking Protocol.¹¹³

The Protocol imposes several obligations on States Parties. These include criminalizing the smuggling of migrants and related offenses as well as the production, provision, and possession of fraudulent travel or identity documents.¹¹⁴ Further, the Protocol obliges states parties to take preventive measures to prevent smuggling of migrants by sea, air, and land. In doing so states parties are expected to consider or ensure the safety and humane treatment of the persons on board.¹¹⁵ States are also expected to give special trainings for the relevant stakeholders on preventing smuggling of migrants, and protection of victims' rights.¹¹⁶ Based on the Protocol victims are not liable to criminal prosecution for having consented to smuggling activities except for violation of national immigration laws.¹¹⁷ Furthermore, state of origin is obliged to facilitate the return of the victims without delay, since the receiving state is not duty bound under the Protocol to allow temporary or permanent stay unlike the

¹⁰⁷ Ibid, Art.6(5).

¹⁰⁸ Ibid, Art.6(6).

¹⁰⁹ Ad-Hoc Committee on the Elaboration of a Convention Against Transnational Organized Crime, Note by the United Nations High Commissioner for Human Rights, the United Nations Children's Fund, the United Nations High Commissioner for Refugees, and the International Organization for Migration on the draft protocols concerning migrant smuggling and trafficking in persons. The agency held that the discretionary nature of the protection provisions was unnecessarily restrictive and not in accordance with international human rights law which clearly provides that victims of human rights violations such as trafficking should be provided with access to adequate and appropriate remedies.

¹¹⁰ Preamble of anti-smuggling Protocol, para.1.

¹¹¹ Ibid.

¹¹² Ibid, para.3.

¹¹³ Ibid, Art.4.

¹¹⁴ Ibid, Art.6.

¹¹⁵ Ibid, Art.9(1(a)).

¹¹⁶ Ibid, Art.14(1) & 14(2).

¹¹⁷ Ibid, Art.5 and 6(4).

case of trafficking in person. Interestingly, the Protocol against smuggling contains a clause that states ‘nothing in the Protocol is to affect the rights, obligations, and responsibilities of states and individuals under international law, including international humanitarian law, human rights law, and refugee law’.¹¹⁸ So even if the safe guarding clause under the Protocol provides a minimum protection, which is the right to life and protection from inhumane treatment, still other international law branches including human rights law and refugee law are applicable.¹¹⁹

III. Regional Efforts in Combating Trafficking and Smuggling in Persons

There are also efforts to combat trafficking in person and smuggling in persons at regional level, meaning Africa. This include Ouagadougou Action Plan to Combat Trafficking in Human Beings, especially Women and Children,¹²⁰ and the Malabo Protocol¹²¹ which has criminalized the two crimes Under African regional legal framework.¹²² But Ethiopia is not party to the Malabo Protocol until now.

African and European Union member states adopted the Ouagadougou Action Plan in November 2006.¹²³ In January 2007, the African Union adopted the Executive Council Decision endorsing the Ouagadougou Action Plan to Combat Trafficking in Human Beings, especially Women and Children.¹²⁴ The action plan reaffirms international instruments and provides specific measures and recommendations to address trafficking in human beings in general, and women and children in particular.¹²⁵

¹¹⁸ Ibid, Art. 19 (1).

¹¹⁹ Ibid.

¹²⁰ African Union, ‘Ouagadougou Action Plan to Combat Trafficking in Human Beings, Especially Women and Children As adopted by the Ministerial Conference on Migration and Development’ (2006) available at https://ec.europa.eu/antitrafficking/sites/antitrafficking/files/ouagadougou_action_plan_to_combat_trafficking_en_1.pdf visited 16 June 2017.

¹²¹ Statute of the African Court of Justice and Human and Peoples Rights Annexed to Draft Protocol on Amendments to the Protocol on the Statute of the African Court of Justice and Human Rights, STC/Legal/Min/7(I) Rev. 1, annex (2014).

¹²² Ibid, Art.28(a) (1) (10).Accordingly, the court is empowered to entertain cases of ‘trafficking in persons’ under its International Criminal Law jurisdiction. This indicates that trafficking in persons is criminalized under African regional framework.

¹²³ Florence Shu-Acquaye , ‘Human Trafficking: Trends in Africa’ 16 *Gonzaga Journal of International Law* (2012), p.23.

¹²⁴ Ibid.

¹²⁵ Ouagadougou Action Plan, p.4. It provides as states, meaning, African states should sign or ratify international instruments. These include Palermo Convention, anti-trafficking protocol and other relevant instruments which possibly could include anti-smuggling protocol.

2. Ethiopia's Normative Framework against Trafficking and Smuggling in Persons

I. A Glimpse at the Ethiopian Anti-trafficking and smuggling Legal Regime

Ethiopia has ratified most of the key international treaties on human trafficking and smuggling. These include the UN Convention for the Suppression of the Traffic in Persons and the Exploitation of the Prostitution of Others (1949), the Abolition of Forced Labor Convention (No. 105, 1957) and Convention No. 182 on the Worst forms of Child Labor.¹²⁶ The detail of these instruments is already discussed under chapter two, under international Legal framework. Ethiopia also ratified UN Convention on Transnational Organized Crime as of 23 July 2007.¹²⁷ The Convention, above all, requires and promotes State Parties cooperation in order to prevent and combat transnational organised crime which includes both smuggling and trafficking in person.¹²⁸

In Ethiopia, the problem of human trafficking and smuggling is given constitutional recognition. The Constitution considers human trafficking as a form of inhuman treatment.¹²⁹ It provides that 'Trafficking in human beings for whatever purpose is prohibited'.¹³⁰ This provision was accompanied by the Criminal Code of Ethiopia adopted in 2004.¹³¹ Under Article 597, it is provided 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 labor, is punishable with rigorous imprisonment from five years to twenty years, and fine not exceeding fifty thousand Birr.
- (2) Whoever knowingly carries off, or transports, whether by land, by sea or by air, the victim mentioned in sub article (1), with the

¹²⁶ IOM, 'Assessment of trafficking in women and children in and from Ethiopia'(2010), pp.58 available at http://www.africanchildinfo.net/index.php?option=com_sobi2&sobi2Task=sobi2Details&catid=6&sobi2Id=819&Itemid=73&lang=en visited 10 July 2016.

¹²⁷ UNODC, 'Status of Ratification of Convention on Transnational Organized Crime' (2017) available at <https://treaties.un.org/doc/Publication/MTDSG/Volume%20II/Chapter%20XVIII/XVIII-12.en.pdf> visited 7 June 2017.

¹²⁸ Art.1 of the Convention on Transnational Crime.

¹²⁹ Art.18 of FDRE Constitution. It reads: 'Prohibition against Inhuman Treatment'.

¹³⁰ Ibid, para.2.

¹³¹ Criminal Code of FDRE Proclamation 414 of 2004.

purpose stated therein, or conducts, or aids such traffic, is liable to the penalty prescribed under sub-article (1) above.

However, both the Criminal Code and the FDRE Constitution lack provisions to adequately prevent and combat human trafficking. In particular, the criminalization of human trafficking is not accompanied by a comprehensive prevention strategy which helps to address the root causes of the problem. The term ‘human trafficking’ is not defined to include other forms of exploitations. It only covers labor exploitation¹³² and prostitution¹³³ under the Criminal Code. Consequently, a person is not liable under the above Article for using violence, threat or deceit and recruits, receives, hides, transports, exports or imports a woman or a minor for the purpose of ‘removal of organ’ or engaging them in to other forms of ‘sexual exploitations’. This means that the Criminal Code provides limited protection to women and children contrary to Ethiopia’s international obligation under UN Trafficking Protocol.

Consent and scope of protection are the other important notions not properly dealt with under the Criminal Code. It provides exclusive protection to women and children. Men are not offered protection under this law despite the absence of any reliable information indicating that they are not affected by the problem.¹³⁴ Even in defining the crime, the law deviates from the internationally accepted standard of consent that should be applicable in respect of children. In bringing court action concerning the trafficking of children, the public prosecutor is expected to prove the use of violence, threat, deceit, etc by the defendant. This is again a contrast to the UN Trafficking Protocol considered earlier as this instrument does not expect the public prosecutor to prove the use of violence, threat, deceit, etc, if the victims involved are children. In its current form, the law is not consistent with the FDRE Constitution which requires that in all actions concerning children, the best interests of the child shall be the primary consideration.¹³⁵

¹³² See Art.597 of FDRE Criminal Code.

¹³³ Ibid, Art.635.

¹³⁴ It is worthy to consider that Art.596 (1) of the Criminal Code criminalizes enslavement. This provision regards trafficking in human beings (including trafficking of children, men and women) as a form of enslavement. However, it does not clarify what trafficking in human beings is.

¹³⁵ Look at Art.36 of the FDRE Constitution. The CRC under Article 3 also requires that in all actions concerning children, the best interest of the child shall be a primary consideration.

Again, in light of harsh consequence that human trafficking has on victims, the penalty prescribed is inappropriate.¹³⁶ The gap between the minimum and maximum penalty to be imposed seems to be too broad.¹³⁷ This is; obviously, open for abuse and it will undermine the intended purpose of preventing and combating human trafficking. There is also no victims protection and assistance aspect.

Coming to the ‘Smuggling of persons’, the criminal code under Article 243(2) provides that:

Whoever, with the intention of obtaining, directly or indirectly, advantage procures illegal entry of a person, who is not either a national or a permanent resident of Ethiopia, into the territory of another State or produces, procures, provides or possesses a fraudulent travel document or identity card for enabling illegal entry into the Ethiopia territory of the person or performs an act that enables him to illegally remain in Ethiopia without complying with the necessary legal requirements, is punishable with rigorous imprisonment from five years to ten years.

Despite the existence of this provision under the Criminal Code, smuggling is increasing¹³⁸ and this shows inability of the country in discharging its international obligation which is provided under the Convention of Transnational Organized Crime and the Smuggling Protocol. As a result, harsh punishment is required to prevent Smuggling. The other problem in addressing smuggling under the Criminal Code is that, the interest of vulnerable groups in particular women, children and disabilities were not addressed.¹³⁹ Further, under the Criminal Code criminal liability is incurred with regard to victim only when the smuggling results in death or inhuman treatment of the victim.¹⁴⁰ This is not enough to prevent smuggling and to

¹³⁶ UNODC, Strengthening Criminal Justice Responses to Trafficking in Persons and Smuggling of Migrants in Ethiopia and Djibouti,(2016),<http://www.unodc.org/brussels/en/cjr-ethiopia.html> visited 27 July 2016.

¹³⁷ As can be observed from the above produced provision, the Criminal Code prescribes a minimum of 5 years and maximum of 20 years rigorous imprisonment in addition to fine.

¹³⁸ See the preamble of Trafficking Proclamation, para.1. it states that, it is necessary to prevent smuggling of migrants as it is becoming very serious crime from time to time and resulting in grave violation of human rights. Accordingly it provides 15-20 years rigorous imprisonment and 150,000-300,000 fines. See Art.5 (1) of the Proclamation. But under the Criminal Code, the punishment was 5-10 years (see Art.243(2) of the Code).

¹³⁹ See Art.5(2) of anti-trafficking Proclamation. In case the crime of Smuggling is committed against women, children, and disabilities the punishment is harsh in which the minimum imprisonment is 20 years and the minimum fine is 300,000 birr.

¹⁴⁰ FDRE Criminal Code, Art.243(3).

protect victims of smuggling persons. Therefore specific anti-trafficking and smuggling laws is required.

Indeed the promulgation of Employment Exchange Service Proclamation¹⁴¹ by Ethiopian government in 2009 is also undeniable measure in preventing smuggling and trafficking in person. It gives legal effect to the relationship between public, private employment agencies and workers. It also states the role of those agencies and workers right in employment exchange services.¹⁴² Accordingly, its purpose is to protect safety and dignity of workers or Ethiopian moving to abroad for work¹⁴³ so as to abolish exploitation. However, the Proclamation fails to recognize cooperation of Ethiopian government with other Countries as abolishment of transnational organized crime requires cooperation among states.¹⁴⁴ Ethiopian Labour Proclamation¹⁴⁵ which intends to govern the work contract between worker and employer is also another essential one in preventing exploitation. However it lets the party to agree¹⁴⁶ and what it provides as a protection for workers is a minimum protection¹⁴⁷. Hence, the other new law is required in response to these.

The year 2012 is a turning point in Ethiopia's effort to combat and prevent human trafficking and smuggling persons as the government acceded to the UN Trafficking Protocol¹⁴⁸ as well as UN Smuggling Protocol¹⁴⁹. The both protocols require the government of Ethiopia to give effect to standards entrenched in it through proper mechanisms. This can be drawn from Articles 5 and 6 of the Trafficking Protocol; and Article 6 and 16 of the Smuggling Protocol which enjoin States Parties to adopt legislative and other measures to criminalize human trafficking and Smuggling of persons and provide protection to victims.

¹⁴¹ Employment Exchange Service Proclamation 632 of 2009.

¹⁴² The Preamble of Employment Exchange Service Proclamation 632 of 2009, para 1 & 2.

¹⁴³ Ibid, para 2.

¹⁴⁴ Ibid, Art.1.

¹⁴⁵ Labour Proclamation 377 of 2003.

¹⁴⁶ Ibid, Art.3(1). It limits the scope of the proclamation to governing work contract existed between employer and employee.

¹⁴⁷ Ibid, Art.12. It states that 'An employer shall in addition to special stipulations in the contract of employment have the following obligations'.

¹⁴⁸ Ethiopia became a party to the anti-trafficking Protocol, *supra* note 20.

¹⁴⁹ Ethiopia ratified the smuggling Protocol. see Protocol Against the Smuggling of Migrants by Land, Sea and Air Ratification Proclamation 736 of 2012.

Ethiopia Has Ratified The Convention On Transnational Organized Crime,¹⁵⁰ Trafficking Protocol,¹⁵¹ And Smuggling Protocol.¹⁵² Ethiopia Also Domesticated Inter-Governmental Authority On Development (IGAD) Convention On Mutual Legal Assistance In Criminal Matters.¹⁵³ That is cooperation to fight against transnational organized crimes in the region (IGAD region). In line with this, the FDRE constitution under Article 9 states that all International agreements ratified by Ethiopia are an integral part of the law of the land.¹⁵⁴ Accordingly, this convention is firmly corroborated by the Constitution.

Further, both protocols require legislative and other measures and Ethiopian government considered this obligation recently. Until August 2015, the government did not put into practice detailed laws to implement the two Protocols. In August 2015, the Trafficking and Smuggling Proclamation adopted¹⁵⁵ The proclamation adopted to rectify shortcomings in the existing laws and adequately implement the UN Trafficking Protocol.¹⁵⁶ It repealed laws, regulations, directives or practices with regard to trafficking in person and migrant smuggling.¹⁵⁷ Most importantly it repealed specific provisions of FDRE criminal code.¹⁵⁸ Moreover, Overseas Employment Exchange Proclamation is also enacted by Ethiopian government.¹⁵⁹

II. Ethiopian Anti-Human Trafficking and Smuggling Proclamation

Trafficking in persons and smuggling persons have an overwhelming effect on individual's human rights and state security. Thus, in order to combat, overcome or ameliorate the problems, Ethiopia took a legislative measure and enacted a separate law against trafficking

¹⁵⁰ UNODC, *supra* note 127.

¹⁵¹ UNODC, *supra* note 20.

¹⁵² *Ibid.* see also Protocol Against the Smuggling of Migrants by Land, Sea and Air Ratification Proclamation 736 of 2012. Under Art.2(2) of the Proclamation, Ethiopia reserved the jurisdiction of the arbitration and ICJ up on the request of one party.

¹⁵³ IGAD Convention on Mutual Legal Assistance in Criminal Matters Ratification Proclamation 732 of 2012.

¹⁵⁴ Of course this is debatable some says ratification is enough; while others argue as domestication is required in addition to ratification but the fact is there is no strict rule to be followed by states in domestication of international instruments.

¹⁵⁵ Anti-trafficking Proclamation, *supra* note 21.

¹⁵⁶ Look at Para 4 of the Preamble of the Proclamation.

¹⁵⁷ *Ibid.*, Art.48 (2).

¹⁵⁸ *Ibid.*, Art.48 (1).

¹⁵⁹ Ethiopia's Overseas Employment Proclamation 923 of 2016, here after called 'Overseas Employment Proclamation'.

and smuggling persons. This new Proclamation repeals Articles 243, 596, 597, 598, 599 and 635 of the Criminal Code of the Federal Democratic Republic of Ethiopia.¹⁶⁰

Accordingly, it is worthy to discuss the rationales that triggered abrogation of the existing laws and led to the enactment of the Proclamation. The rationales include: First, ‘to introduce a preventive strategy by designing the legal system as a viable alternative in addition to economic and social efforts undertaken to alleviate the problems related to human trafficking especially women and children’s trafficking...’¹⁶¹; Secondly, it became necessary to realize victims protection, rehabilitation and reparation in response to grave violations of victims human rights.¹⁶² In addition the indispensability to provide special protection to vulnerable groups of society due to their age, gender, and special needs also triggered the promulgation of the Trafficking Proclamation.¹⁶³; Thirdly, ‘to enact a detailed law since the Criminal Code and other laws are not adequately tuned with the depth of the problem and it is necessary to...[sic]pass proportional sentence against criminals’.¹⁶⁴ Finally, to promulgate a law consistent with international conventions and protocols to which Ethiopia is a party.¹⁶⁵

The UN Trafficking Protocol require states parties to adopt legislative or other appropriate measures to prevent, to the extent possible, means of transport operated by commercial carriers from being used in the commission of the offence of human trafficking.¹⁶⁶ States Parties are also enjoined to sanction non-compliance of such requirement.¹⁶⁷ Over and above this, the instrument outlines that states parties should consider taking measures that permit, in accordance with their domestic law, the denial of entry or revocation of visas of persons implicated in the commission of human trafficking and strengthening cooperation among border control agencies by, establishing and maintaining, *inter alia*, direct channels of communication.¹⁶⁸ These requirements are not properly dealt with in the legal frameworks of Ethiopia. The Proclamation merely sanctions intentional assistance and facilitation of trafficking in persons through the provision of transportation or facilitation of the

¹⁶⁰ Art.48 of anti-trafficking Proclamation.

¹⁶¹ Preamble of anti-trafficking Proclamation, para. 1.

¹⁶² Ibid, para.2.

¹⁶³ Ibid.

¹⁶⁴ Ibid, para. 3.

¹⁶⁵ Ibid, para. 4.

¹⁶⁶ Art.11(3) of anti-trafficking Protocol.

¹⁶⁷ Ibid, Art.11(4) .

¹⁶⁸ Ibid, Art.11(5) and (6).

transportation of victims of human trafficking.¹⁶⁹ It does not penalize commercial carriers, owners or operators of any means of transport who recklessly facilitate trafficking in persons through direct provision or facilitation of the transportation of victims of human trafficking. This lacuna is created as a result of the absence of any law which requires commercial carriers or the owners or operators of any means of transport to ascertain that all passengers are in possession of the travel documents required for entry into the receiving state.¹⁷⁰

a. Definition and Elements of Trafficking and Smuggling in Persons under the Proclamation

This Proclamation is an important step towards legislating comprehensive law that prohibits human trafficking and migrant smuggling. The Proclamation underlines human trafficking and smuggling as follows:

Article 3 (1) (a-c): Trafficking in Persons

Any person, for the purpose of exploitation, within the territory or outside of Ethiopia: at the pretext of domestic or overseas employment or sending to abroad for work or apprenticeship; by concluding adoption agreement or at the pretext of adoption or for any other purpose using threat or force or other means of coercion, abduction, fraud, deception, promise, abuse of power or by using vulnerability of a person or recruits, transports, transfer harbors or receives any person by giving or receiving of payments or benefits to achieve the consent of a person having control over another person shall be punishable with rigorous imprisonment from 15 years to 25 years and with fine from 150,000 to 300,000 birr.

The definition of trafficking under Ethiopian anti-trafficking Proclamation is more or less similar to the above definition. Exploitation is the determinant element of the crime of trafficking in person that in absence of exploitation there is no trafficking in person. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or practices similar to

¹⁶⁹ Art.4(4) of the Proclamation.

¹⁷⁰ UNODC, *TravauxPréparatoires* of the Negotiations for the Elaboration of the United Nations Convention against Transnational Organized Crime and the Protocols thereto,(2006), p.409 available at https://www.unodc.org/pdf/ctoccop_2006/04-60074_ebook-e.pdf It is elaborated in the *TravauxPréparatoires* of the UN Trafficking Protocol that such obligation to be placed on carriers should be limited to ascertaining basic possession of travel documents by passengers. As such, it should not go to the extent of imposing obligation on carriers to assess the validity or authenticity of travel documents possessed by passengers.

slavery, servitude or the removal of organs of victims prescribed under anti-trafficking Protocol.¹⁷¹ Under Ethiopian anti-trafficking Proclamation, exploitation includes benefiting from prostitution of others and other forms of sexual exploitation; servitude, labour exploitation or forced labor, slavery or practices similar to slavery; sexual servitude and enslavement; debt bondage; removal of organs; forcefully engaging for begging; and engaging children for military services.¹⁷² But the phrase: ‘Exploitation shall include, at a minimum...’—minimum threshold—found under the definitional provision of the Protocol (Article 3) has guided the legislator to look for other potential instances of exploitation.

The Proclamation introduced means of exploitation in a broad way and it widens the purpose of human trafficking from traditional method in which the purpose of trafficking in person perceived as forced labor into multiple forms of exploitation. For example: benefiting from the prostitution of others or other forms of sexual exploitation, slavery or practices similar to slavery, sexual servitude and enslavement, debt bondage or surrender as pledge for another, removal or taking of organs of the human body, forcefully engaging for begging and engaging children for military services. It even provides additional element than the Trafficking Protocol and this includes engaging for begging and engaging children for military services.

As we can understand from the preamble of the proclamation, it aimed also to provide a protection to victims of trafficking in person and smuggling of migrants.¹⁷³ Further, the prosecution or execution of sentence of a person who commits crimes stipulated under Articles 3 and 5 of the Proclamation, meaning trafficking in persons and smuggling persons, shall not be barred by statute of limitation.¹⁷⁴

Article 5(1): Crime of Smuggling Migrant

Any person, either directly or indirectly with the intention to procure financial or other material benefit, who causes migrants to cross border, attempts to cross or prepare to cross into or out from the territory of Ethiopia illegally shall be punishable with rigorous imprisonment of 15 years to 20 years and with fine from 150,000 to 300,000 Birr.

¹⁷¹ Art.3(a) of the anti-trafficking Protocol.

¹⁷² Art.2(4) of anti-trafficking Proclamation.

¹⁷³ Preamble of anti-trafficking Proclamation, para 2.

¹⁷⁴ Anti-trafficking Proclamation, Art.25.

Unlike the Criminal Code, the proclamation provides harsh punishment for the smuggling person. It aggravated the minimum imprisonment from five year to 15 years; and the maximum from 10 years to 20 years. In fact, this would discourage the potential criminals from committing smuggling persons. Moreover, it provides stringent punishment in a case the crime is committed on vulnerable and this would again contribute in protecting and assisting vulnerable persons as they are the most vulnerable group of society to such crimes.

b. The Institutional Framework

There is no centralized monitoring organ or state department dealing with and handling the case of trafficking in person and smuggling in persons in Ethiopia. However, Ethiopian Anti- trafficking Proclamation calls for stakeholder's cooperation.¹⁷⁵ Accordingly, it established National Committee for the purposes of better coordination of activities designed for victims' protection, assistance and rehabilitation, for advising in policy, plans and implementation framework to accommodate the interest of victims and for combating the crime of trafficking in person and smuggling in person.¹⁷⁶ The National Committee that will be led by the Deputy Prime Minister incorporates Minister of Justice, Minister of Foreign Affairs, Minister of Federal Affairs, Minister of Labor and Social Affairs, Minister of Women, Children and Youth Affairs, Minister of Education, Regional States, other governmental organizations, religious institutions, charities and societies, various structures and other respective organizations.¹⁷⁷ It is already established by now.¹⁷⁸

The Proclamation also established Ant-Human Trafficking and smuggling Taskforce which is accountable to the National Committee. This Taskforce is established to address trafficking and smuggling at national, regional, and Zonal levels and to coordinate prevention, prosecution, and protection measures.¹⁷⁹ Generally, the mandate of the Taskforce is to coordinate counter trafficking and irregular migration prevention activities all over the country. This Taskforce is operational since December 2007 E.C.¹⁸⁰ As stated in its 2015

¹⁷⁵ Ibid, Art.39(1).

¹⁷⁶ Ibid.

¹⁷⁷ Ibid, Art.39(2).

¹⁷⁸ IOM, *Human trafficking and smuggling of migrants in the context of mixed migration flows: State of play in the IGAD Region* (2015), p.31. see also FDRE Anti-Human Trafficking and Smuggling of Migrants National Council, 2008 Annual National Plan, (2007 E.C), p.4.

¹⁷⁹ Ibid.

¹⁸⁰ Ibid, p.2.

report, the Taskforce has been established from regional level to Kebele level.¹⁸¹ Likewise, the Taskforce is established in Jimma Zone.¹⁸² At the first level, the Committee is ad hoc not a permanent body serving the purpose of anti-trafficking Proclamation with all its resources including full time, the committee members are busy with their own office duty. The committee members are similar with the Taskforce members at federal level excluding Foreign Affairs and National Intelligence. Accordingly, it includes: Agriculture Office as chair person, Justice Office as secretary, Social Affair Office, Women and Child Affair Office, Youth and Sport Office, Education Office, Zone Security Office; Zone Police, Religious Leaders, Gada fathers, and other government offices are members.¹⁸³

c. Victim Oriented Measures

‘Victim’ means a person against whom the offence stipulated under this Proclamation has been committed or any person who has sustained harm, including mental and physical injury, emotional suffering, economic loss or substantial violation of basic human rights due to the commission of the crime’.¹⁸⁴ As discussed under chapter one while delimiting the scope of the study, this definition of victim is criticised for undermining the purpose of trafficking Protocol and Ethiopian trafficking Proclamation due to the fact that it includes other entities and persons as victim in contrary to the purpose of the proclamation.¹⁸⁵ Generally victim oriented measures are measures at best interest of victims of trafficking and smuggling.¹⁸⁶ These include from general human rights based approach to various rehabilitation measures.

Providing protection to victims is one of the purposes of the Proclamation.¹⁸⁷ Above all, victims’ assistance programs, rehabilitation measures, compensation and fund establishment are victims oriented measures. Generally, what makes the Proclamation unique is that the protection, assistance, rehabilitation and compensation or reparation are to be provided for

¹⁸¹ Ibid, p.33.

¹⁸² Jimma Zone Justice Office, *Report on Cases of Illegal Migrations of Hamle 2008 to Megabit 2009*, (2009), Section 7.1.6.4.

¹⁸³ Oromiya Regional State Administration, *Manual of the Committee on Anti-Trafficking and Smuggling* (2008 E.C), p.17.

¹⁸⁴ Art.2 (11) of the anti-trafficking Proclamation.

¹⁸⁵ Shiferraw, *supra* note 52, p.71. It is the grave violation of human rights of victims that necessitated trafficking Protocol and the Proclamation as provided under the preamble of both.

¹⁸⁶ Yohannes Eneyew Ayalew, ‘Victim Oriented Measures under Ethiopian Anti-Human trafficking Law’ (2016) available at <http://www.abysinnialaw.com/blog-posts/item/1713-victim-oriented-measures-under-ethiopian-anti-human-trafficking-law> visited 28 November 2016.

¹⁸⁷ The Preamble of anti-trafficking Proclamation, para. 2.

victims are available for both trafficking in person and smuggled persons because victim is either victim of trafficking in person or smuggling in person as stated above.¹⁸⁸

With regard to assisting victims, the Proclamation clearly stipulates the obligation of the government as follows under Article 26(1) as:

The Government shall put in place necessary working procedures to identify, rescue, repatriate and *[sic]* victims in partnership with other foreign diplomatic missions, concerned government and non-government organizations and other supportive mass organization, the details of which shall be specified by law.

As can be discerned from the above quote, the law conspicuously requires the government to set up the necessary infrastructure to trace, identify and help the victims even if it lacks provision establishing emergency centers, transit centers, short term and long term shelters after repatriation of victims is done. Furthermore, the Proclamation, taking into account the condition, orders referral of the victims to appropriate organizations and institutions for assistance and support.¹⁸⁹

d. Rehabilitation Measures

As Gallagher pointed out rehabilitation is;

a victim-centered concept that is a form of restitution insofar as it seeks to restore the situation that existed prior to the violation. Rehabilitation recognizes a need to ensure that the person who has suffered a violation of human rights has his or her status and position “restored” in the eyes of the law as well as of the wider community. Rehabilitation should include the provision of medical and psychological care as well as legal and social services. Victims of serious violations of human rights such as trafficking will inevitably require a range of support services. The rehabilitation element of reparation would operate to impose an obligation on the responsible state to provide such services.¹⁹⁰

¹⁸⁸ Anti-trafficking Proclamation, Art.2(11).

¹⁸⁹ Ibid, Art.26(3).

¹⁹⁰ Gallagher, T ‘The right to an effective remedy for victims of trafficking in persons: A Survey of International Law and Policy’ (2010), pp.11. available at WWW.ohchr.org >Issues >Trafficking visited 5 June 2017.

So, rehabilitation measures are victim assistance measures addressing the physical, psychological, behavioural, social, and economic traumas encountered by victims in order to enable them recover. This is also recognized under the trafficking Protocol.¹⁹¹ As such rehabilitation programs and strategies targeting individuals recovering from violence and exploitation resulted from trafficking as well as smuggling migrant require multifaceted approaches involving a variety of actors.¹⁹² It should address also the physical, psychological, behavioural, social, and economic issues encountered by these individuals.¹⁹³ Moreover, the recovery must include service coordination by governments, international organizations, NGOs, local agencies, surrounding communities, and families.¹⁹⁴

The critical point to be considered in rehabilitation, recovery, and reintegration include the individuals' age; physical and psychological health; background; family life; culture; duration of their exploitation; and their perceptions of the damage done to their person and their future as a result of having been trafficked, especially if they have been victims of commercial sexual exploitation.

Coming to Ethiopian anti-trafficking Proclamation, it provides that 'the Government shall put in place necessary working procedures to rescue and repatriate victims in partnership with other foreign diplomatic missions, concerned government and non-government organizations and other supportive mass organization, the details of which shall be specified by law.'¹⁹⁵ This shows that the right of victims to rehabilitation is recognised but its enforcement requires detail law or regulation which is not enacted yet up until this research conducted.

e. Compensation and Fund Establishment

The victims of trafficking and smuggling are entitled to compensation which enables them to be rehabilitated and recovered from such syndrome. Under the Ant-trafficking Protocol, state party is required to ensure that its domestic legal system contains measures that offer victims of trafficking in persons the possibility of obtaining compensation for damage suffered.¹⁹⁶

¹⁹¹ Trafficking Proclamation, Art.6(3). It states that 'Each state party shall consider implementing measures to provide for the physical, psychological and social recovery of victims of trafficking in persons, including, in appropriate cases, in cooperation with non-governmental organizations, other relevant organizations and other elements of civil society...?'

¹⁹² Ayalew (2016), *supra* note 186.

¹⁹³ Ibid.

¹⁹⁴ Ibid.

¹⁹⁵ Art.26(1) of anti-trafficking Proclamation.

¹⁹⁶ Anti-trafficking Protocol: Art.6(6).

Moreover, the Convention on Transnational Organized Crime provides this right of victims in stringent way.¹⁹⁷ Accordingly, it requires state party to accommodate the domestic legal system to enable victims to get compensation and to take ‘all appropriate procedure’ to implement the obligations under the convention.¹⁹⁸

Ethiopia, as a state party to the convention and Protocol against smuggling and trafficking in persons as discussed under and in response to the obligations imposed by the international instruments, has enacted a new law.¹⁹⁹ Before the adoption of this Proclamation, crime victims under Ethiopian legal system may apply for compensation by themselves as a joinder of action for the injury caused.²⁰⁰ The compensation is claimed from accused and there should be application to this effect.²⁰¹ Interestingly, the new Proclamation or Ethiopian anti-trafficking Proclamation recognised the right to compensation of victims in different way. The law provides that:

The court may decide against the convicted person, in addition to imprisonment and fine, to pay compensation for the victim or to persons or organization who incurred cost in the name of the victim.²⁰²

Accordingly, courts entertaining cases on trafficking at the same time may decide against the convicted person to pay compensation to the victim or to persons or organizations who incurred cost in the name of the victim. That means there is automatic right to compensation under Ethiopian anti-trafficking Proclamation.²⁰³ This provision also addresses calculating compensation for victims of trafficking and smuggling, requiring that victims receive compensation for the full value of their losses.²⁰⁴ Accordingly, the ‘full amount of the victim’s losses’ as provided under the Proclamation includes:

¹⁹⁷ Art.25(2) of the Convention on Transnational Organized Crime. It reiterates that, ‘Each State Party shall establish appropriate procedures to provide access to compensation and restitution for victims of offences covered by this Convention’.

¹⁹⁸ Ibid.

¹⁹⁹ See *Infra*, Chapter two p.26.

²⁰⁰ Read Ethiopian Criminal Procedure Code 185 of 1961, Art.154(1) with Art.154(2) cumulatively.

²⁰¹ Ibid, Art.154(1) and 155.

²⁰² Art.31(1) of the anti-trafficking Proclamation.

²⁰³ Automatic right to compensation is a case by which the court directly orders compensation of victims following conviction.

²⁰⁴ Art.31(2) of anti-trafficking Proclamation.

The amount of compensation to be paid, shall enable to set off medical, transport, moral damage, any other costs or losses incurred as a direct result of the crime and other appropriate expenses; provided, however, in any case, the compensation shall not be less than the amount paid, or to be paid to the human trafficker or migrant smuggler, loss incurred by the victim because of the crime or the benefit obtained by the human trafficker or migrant smuggler.²⁰⁵

Based on this law the compensatory award is to be collected again primarily from the convicted person.²⁰⁶ Moreover, the compensation is to be collected from the government fund, if it is unsuccessful from the victim.²⁰⁷ In essence, the victim can claim to be paid the prescribed amount of compensation from the fund.²⁰⁸

III. Ethiopian Overseas Employment Proclamation

In February 2016, the government of Ethiopia made a decision to regulate overseas employment relations. Ethiopia's Overseas Employment Proclamation was adopted to protect the human rights violations of Ethiopians working abroad and discourage vulnerabilities to human trafficking.²⁰⁹ Before the adoption of this Proclamation, the Ethiopian Federal Ministry of Foreign Affairs and Ministry of Labor and Social Affairs with joint press conference prohibits sending workforce and employees either through agency or direct employment to countries in the middle east countries until such a time that comprehensive law be promulgated.²¹⁰ Accordingly, Ethiopian parliament recently passed a law dealing with Ethiopia's overseas employment.²¹¹ The Proclamation incorporates important safeguards for the protection of the rights of Ethiopian workers who seek to take up overseas employment.

²⁰⁵ Ibid, Art.31(2).

²⁰⁶ Ibid, Art.31(1).

²⁰⁷ Ibid, Art.31(3).

²⁰⁸ Ibid. The Proclamation under Part Five established fund. The sources of income of the fund are budget allocated by the government, proceeds of sale of properties confiscated or fine imposed as per the Proclamation, voluntary contribution from individuals, governmental organizations, the private sector, charities and societies, grants from different international organizations and donors and other financial sources approved by the Ministry of Finance and Economic Development. The fund is established for preventing and controlling human trafficking .It will also be used for rehabilitating victims (Art.32)..

²⁰⁹ The Preamble of Overseas Employment Proclamation, para 2.

²¹⁰ IOM (2015), *supra* note 179.

²¹¹ Overseas Employment Proclamation.

This Proclamation among other things aimed at bilateral agreements with receiving countries to strengthen lawful overseas employment and prevent human trafficking²¹² and smuggling.²¹³ The proclamation did not trace the term human trafficking and smuggling however it prohibits sending employees without license and its contravention will led to imposition of administrative measures.²¹⁴ It bans any direct recruitment and employment of Ethiopian workers in foreign states except in some limited circumstances.²¹⁵ Accordingly, employers in foreign states are allowed to recruit and employ Ethiopian workers only through the Ministry of Labour and Social Affairs or lawfully licensed Agencies.²¹⁶

The Ministry of Labor and Social Affairs is assigned in cooperation with concerned bodies to regulate the Ethiopian Overseas employment.²¹⁷ Accordingly, the Ministry is empowered to monitor the overall recruitment and employment process of workers. Employment contracts concluded between Ethiopian domestic workers and their employers will not have legal effect unless approved by the Ministry.²¹⁸ Moreover, the Ministry is empowered to prepare model employment contracts which contracting parties may use.²¹⁹ The contents of the model contract will be formulated taking in to account international labour standards.²²⁰ Contracting parties are also granted the freedom to draw their own terms of contract.²²¹ In such cases, however, the terms of the employment contracts are expected to be in harmony with public morals, laws and policies of Ethiopia.²²²

Therefore it is expected that the Overseas Employment Proclamation will reduce the number of illegal migrants crossing Arab and other foreign countries and help to prevent human trafficking. The strong supervision of employment contracts concluded by Ethiopian domestic workers and the resulting improved working condition may encourage others to follow lawful means of entering in to foreign countries. Moreover, application of the Overseas Employment Proclamation will enable workers who opt to work abroad to get

²¹² Ibid, para.II of its preamble.

²¹³ Ibid, para.I.

²¹⁴ Ibid, Art.47.

²¹⁵ Ibid, Art.6.

²¹⁶ Ibid.

²¹⁷ Ibid, Art.2(10).

²¹⁸ Ibid, Art.5

²¹⁹ Ibid, Art.17.The Model employment contract will deal with issues on regular working time, favorable wages for regular working hours, overtime pay, etc.

²²⁰ Ibid, Art.17(2).

²²¹ Ibid,Art.18.

²²² Ibid.

ample and accurate information about the working conditions and other related issues associated with their job. In return, this will reduce the potential abuse and misleading by traffickers and smugglers.

However, it is important that the Overseas Employment Proclamation will only have effect with respect to foreign states with which Ethiopia has bilateral agreement.²²³ Up until the writing of this research, the government has signed bilateral agreement with Saudi Arabia which is the major destination country²²⁴ for employment exchange.²²⁵ They, generally, have agreed to cooperate to enable Ethiopian workers to move to Saudi Arabia through legal way only under licensed company or recruiter; and to protect the right of both workers and employers.²²⁶ This would prevent smuggling as one of the reasons for illegal migration is the bureaucracy of legal migration.²²⁷ By the agreement, Ethiopian government undertakes to send only trained, healthy and workers with no criminal record. In addition, Ethiopia also agreed to send the workers after workers are given awareness on Saudi's culture and regulation.²²⁸ From the side of Saudi, they agreed to protect rights of workers in particular allowing them to have bank account so as to enable them transfer their monthly salaries to their respective country.²²⁹ Hopefully this would reduce labor exploitation which will finally contribute to prevention of trafficking in person. So, it is undeniable fact that the efforts are underway to regulate and improve the working conditions of overseas domestic workers through concluding bilateral agreement with foreign countries.

3. Conceptual Underpinning

A human rights-based approach is a conceptual framework for dealing with a phenomenon such as trafficking.²³⁰ According to United Nation Human Rights Office of High Commissioner (UNHROHC) fact sheet 36, the nexus between human trafficking and human rights is interdependent and it pointed out it as follows:

²²³ Ibid, Art.12

²²⁴ IOM (2015), *supra* note 179, p.31.

²²⁵ 'Kingdom signs pact to recruit maids from Ethiopia' Saudi Gazette, 27 May 2017, available at <http://saudigazette.com.sa/saudi-arabia/kingdom-signs-pact-recruit-maids-ethiopia/> visited 7 June 2017.

²²⁶ Ibid.

²²⁷ Ayele and Gudina , *supra* note 27, p.49.

²²⁸ Ibid.

²²⁹ Ibid.

²³⁰ Fact Sheet No.36 (2014), *supra* note 63, p.7.

[T]he links between human rights and the fight against trafficking are well established...[sic] Human rights law has prohibited discrimination on the basis of race and sex; it has demanded equal or at least certain key rights for non-citizens; it has decried and outlawed arbitrary detention, forced labor, debt bondage, forced marriage, and the sexual exploitation of children and women; and it has championed freedom of movement and the right to leave and return to one's own country.

Human rights are also central to the issue of migrant smuggling of persons because they impose important limitations on how States may respond to smuggling, and confer certain legal entitlements on all persons, including smuggled persons, that states and others are obliged to protect and respect.²³¹

Nevertheless, human right is not at the centre to give response to trafficking or smuggling of persons. The point is human right based approach analyse trafficking from two perspectives namely: trafficking as a violation of human rights and as state obligation under international human rights law.²³² Therefore, if human rights approach is at the centre of smuggling in persons of too, the same rule is applicable. This is to mean that, like trafficking in persons, smuggling of migrants is best analysed from human rights approach under two streams namely smuggling as a violation of human rights and as state obligation. Each strand will be discussed below one after the other.

I. Trafficking and Smuggling in Persons as a Violation of Human Rights

Normatively, human rights-based approach relies on international human rights standards, which are operationally directed to promoting and protecting human rights.²³³ Persons who have been or are being smuggled are vulnerable to ill-treatment, violence, exploitation, and life-threatening situations.²³⁴ Likewise, trafficked persons are also subject to different exploitations. Accordingly, when the concept is contextualised to trafficking in person and smuggling, the aim is to ensure that those acts are prohibited and the measures that are taken

²³¹ Anne T. Gallagher and AO Fiona David, *The International Law of Migrant Smuggling* (2014), p. 552.

²³² Fact Sheet No.36 (2014), *supra* note 63, p.7.

²³³ Ibid.

²³⁴ Gallagher and David (2014), *supra* note 231.

should not adversely affect human rights and dignity of victims. There is a consensus that anti-trafficking measures should not adversely affect the human rights and dignity of persons and, in particular, the rights of those who have been trafficked, migrants, internally displaced persons, refugees and asylum seekers.²³⁵

With the adoption of the Anti-trafficking Protocol,²³⁶ the international community regards trafficking in persons, particularly children and women, as human rights violations due to the fact that trafficking involves human being as commodity and for different forms of exploitations. Unlike the Protocol on anti-trafficking in persons, Protocol against smuggling of persons is lenient in recognizing smuggling as issue of human rights. However, it is undeniable that the Protocol recognised smuggling of migrants as a violation to certain fundamental human rights of victims.²³⁷

II. State Obligation towards Victims Protection, Rehabilitation and Reparation

The obligation of state under 2000 Trafficking Protocol is best illustrated by the “three Ps” namely prevention, protection, and prosecution.²³⁸ For the purpose of this study only one aspect is considered and it is protection aspect. Protection is a victim-centered measure resulted from recent instruments on trafficking in persons and smuggling persons.²³⁹ Further, unlike prevention and prosecution, protection involves immediate responses by the government or states to victims such as food, shelter, and other lifesaving assistances which the government ought to give priority. Having said this, there is no definition of ‘protection’

²³⁵ Fact Sheet No.36 (2014), *supra* note 64, p.7.

²³⁶ Anti-trafficking Protocol.

²³⁷ Anti-smuggling Protocol, Art.16.

²³⁸ By prevention, state parties are under duty to combat trafficking in person through different measures including legislation particularly labor law to protect workers from exploitation, and measures emphasizing on reducing vulnerabilities as trafficking in person affects vulnerable groups of the society particularly women and children; By prosecution, State Parties are under duty to prosecute perpetrators of trafficking in person so as to secure justice; and by protection, State Parties are under duty of giving protection to victims of trafficking in person.

²³⁹ For instance, up to the adoption of UN Trafficking Protocol, there was no victims protection aspect on instruments combating trafficking. This shows as protection is crucial aspect in combating trafficking in persons without which combating trafficking is impossible. After this understanding that international community recognized victims protection under UN Trafficking and Smuggling Protocol. See the Preamble of the UN Trafficking Protocol, para.2 & 3. It provides that: *first* despite the existence of a variety of international instruments containing rules and practical measures to combat the exploitation of persons, especially women and children, there is no universal instrument that addresses all aspects of trafficking in persons; *second* in the absence of such an instrument, persons who are vulnerable to trafficking will not be sufficiently protected.

under human rights instrument rather than advocating protection of human rights. But based on the International Organizations for Migration's definition, 'protection is aimed at all activities of obtaining respect for individual rights in accordance with the letter and spirit of the relevant bodies of law.'²⁴⁰ But this definition seems too broad and difficult to contextualize to trafficking or smuggling cases. This is because all aspects of trafficking protocol including prevention and protection are aimed to protect the human rights of victims. While prevention, the potential victims will be saved, and while prosecuting justice is served for victims. But the point is the term 'protection' under the trafficking protocol signifies the measure which is strictly directed to victims. Finally, in combating trafficking in person, effective victim protection efforts include the "3Rs" – rescue, rehabilitation, and reintegration.²⁴¹

It is obvious that persons who become subjects of human trafficking are in need of assistance and protection.²⁴² The same applies to victims of smuggling of migrants because there are points at which smuggling and trafficking overlap or at least the line that separates the two becomes blurry. In addition, smuggling of migrants is also a violation of human rights of victims. However, there seems to be uncertainty on the content of the protection.²⁴³ Human trafficking can occur at international or local levels. In inter-state trafficking in person, many victims of human trafficking do not have a legal migration status of receiving states.²⁴⁴ In this case, many victims of human trafficking fall within the category of "illegal" migrants²⁴⁵ like that of smuggled migrants. If this is so, they do not have a legal ground to remain in the receiving state so that they will either have to leave or will be forcefully deported.²⁴⁶ Upon deportation victims might encounter problems including re-victimization. One of the primary obligations of states under Palermo Protocol is protecting victims from re-victimization in

²⁴⁰ IOM, *International Migration Law: Glossary on Migration* (20004), p. 49.

²⁴¹ United States Department of States, 'The 3Ps: Prevention, Protection and Prosecution' (2011) available at http://cj.msu.edu/assets/Outreach-Humantrafficking-3Ps_Report.pdf visited 5 June 2017. See also Christal Morehouse, *Combating Human Trafficking: Policy Gaps and Hidden Political Agendas in the USA and Germany* (2009), pp.41-58.

²⁴² Vladislava Stoyanova, 'Complementary Protection for Victims of Human Trafficking under the European Convention on Human Rights' 3 *Goettingen Journal of International Law* (2011), p.778.

²⁴³ Ibid.

²⁴⁴ Ibid.

²⁴⁵ Ibid, p.779.

²⁴⁶ That means the relevant aliens' laws are applicable to them, by which states are in power of deciding the fate of illegal migrants found within their territory.

order to prevent trafficking in person.²⁴⁷ There is a well-developed jurisprudence of European Court of Human Rights on the issue of ‘[d]eportation’ of illegal migrants or aliens’ as commonly used by different literature. Accordingly, one of the land mark case of European Court of Human Rights reiterates that: ‘[A]s a matter of well-established international law, and subject to their treaty obligations, including those arising from the Convention,²⁴⁸ Contracting States have the right to control the entry, residence and removal of aliens.’²⁴⁹ But the Court has also observed that if a deported person faces a real risk of ill-treatment, there is an established state obligation not to deport the person under Article 3 of European Convention of Human rights.²⁵⁰

Since the development of the two UN Protocols supplementing Convention on Transnational Organised Crime there is a progress in clarifying the rights of victims of trafficking and smuggling to protection and support and the corresponding obligations of States. Accordingly, there is a general agreement around several core obligations, all based on a general duty to identify victims of trafficking in the first place.²⁵¹ These obligations are: providing immediate protection and support; legal assistance and temporary residency to the victims.²⁵² These measures are to assist victims in their physical, psychological and social recovery, taking account of the victim’s safety and protection needs.²⁵³ But the assistance must be provided on a consensual and informed basis, taking account of the special needs of persons in a vulnerable position particularly women as well as children, and it must not be made conditional on the victim’s willingness to act as a witness.²⁵⁴

In case of the crime of smuggling migrants even if states are in a position to hold the smuggled persons accountable for violating national immigration law, states are still under obligation to protect the safety and life of smuggled migrants.²⁵⁵ Particularly ill-treatments are absolutely prohibited and as such states are under obligation to protect every person including smuggled persons from ill-treatment or torture. That is why European Court of Human Rights

²⁴⁷ Anti-trafficking Protocol, Art.9 (1b).

²⁴⁸ European Convention on Human rights(1950), Art.3.

²⁴⁹ *Saadi v. Italy*, Judgement, ECtHR, Application No.37201/06, (2008), p.29.

²⁵⁰ *Soering v. the United Kingdom*, Judgment, ECtHR, Application No.14038/88, (7 July 1989), Series A, No. 161, p.6, para. 82.

²⁵¹ Anti-trafficking Protocol, Art.8 (2) & 8(3).

²⁵² *Ibid*, Arts.6,7 &8.

²⁵³ *Ibid*, Art.6(3).

²⁵⁴ *Ibid*, Art.6(4).

²⁵⁵ Anti-smuggling Protocol, Art.9(1a).

held that: ‘Since protection against the treatment prohibited by Article 3²⁵⁶ is absolute, that provision imposes an obligation...’²⁵⁷ Therefore it can be concluded that both smuggling and trafficking are violations of human rights so that state owes obligation to protect victims.

Chapter Summary

Even if the combat of trafficking and smuggling under international law traces back to the 20th century, the effortful international community’s response is the adoption of the Convention on Transnational Organized Crime, and it’s Protocols on smuggling and trafficking in person. This framework provides comprehensive definition of trafficking and smuggling in persons, criminalization and prosecution, prevention and finally extends protection to victims. The concept of victims protection aroused from this documents, in particular smuggling and trafficking protocol. This is due to the fact that only prevention and prosecution which were there under former legal framework became incapable of combating these crimes due to their nature which is transnational, and their superfluous impact on human rights of victims.

In combating trafficking in person, effective victim protection efforts include the “3Rs” – rescue, rehabilitation, and reintegration as discussed under preceding section of this chapter (under state obligation). Rescue is identification of victims and as such, identifying victims is a critical first step in ensuring victims can receive the support and resources they need.²⁵⁸ After identification, state parties should make the rights and needs of victims a priority to ensure that protection efforts restore a survivor’s dignity and provide an opportunity for a safe and productive life.

Ethiopia legal framework, FDRE Constitution, FDRE Criminal Code prohibit and criminalize trafficking and smuggling related crimes. But they are not adequate enough to prosecute and prevent crime of smuggling and trafficking in person; and finally to protect victims. Moreover, Ethiopia ratified the international legal framework discussed above. In response to all these, the new proclamation has been enacted. This proclamation contains a framework on

²⁵⁶ Article 3 of European Convention on Human Rights is all about Prohibition of torture.

²⁵⁷ *Saadi case* (2008), *supra* note 249, para.138, p.32.

²⁵⁸ ‘Draft Basic Principles on the Right to a Remedy for Victims of Trafficking’ available at www.ohchr.org/Issues/Trafficking visited 5 June 2017.

all aspects discussed including victims protection aspect. It provides protection, rehabilitation and reparation of victims in response to protection aspect even if it is not adequate.

CHAPTER THREE

The Implementation of Anti-Human Trafficking and Smuggling Law in Jimma Zone: Protection Rehabilitation and Reparation for Victims

Introduction

The general point of the preceding chapter shows that protection, rehabilitation and reparation of victims typically arises out of provisions of the 2000 Anti-Trafficking Protocol and Smuggling Protocol. The two Protocols impose on states parties to criminalize, prosecute and prevent trafficking in person and migrant smuggling; and protecting victims. Ethiopia as a party to both Protocols has to accommodate the provisional obligation of the protocol into its domestic anti-trafficking and smuggling laws. Accordingly, Ethiopian government enacted a comprehensive law recently which consisted of provisions criminalizing trafficking and smuggling in persons, prosecuting offenders, and protecting victims.²⁵⁹

The Anti-Trafficking and Smuggling Proclamation under Article 26 requires the government to put in place necessary working procedures to identify, rescue, repatriate and rehabilitate victims of human trafficking in cooperation with other foreign diplomatic missions, concerned government and non-governmental organizations and other supportive mass organizations. Further FDRE Constitution under Article 18 prohibits torture, slavery and servitude. Despite this the number of victims is increasing and as such the issue is needs to be addressed.²⁶⁰ Under this chapter the author makes analysis of the law, particularly the anti-trafficking Proclamation. In addition, in light of anti-trafficking Proclamation, in particular and international instruments, in general this chapter explicates the practice in Jimma Zone toward protection, rehabilitation and reparation of victims on the basis of interview results made with concerning organs of governments and victims in Jimma Zone, court cases, reports of different government organs and the concerning stakeholders in Jimma Zone.

²⁵⁹ *Supra* chapter two, pp.25-26. Accordingly, ensuring victims' protection, rehabilitation and compensation is recognized under the proclamation as one of the primary purpose.

²⁶⁰ Jimma Zone Justice Office, *Nine Month Work Report of the Committee on Prevention and Control of Trafficking in Person and Smuggling of Migrants*, (2009 E.C), p.2. The introduction part of the report states that illegal migration which includes both trafficking in person and smuggling of persons is high in Ethiopia, and Jimma Zone is among the top identified Zones in Ethiopia for sources of trafficking and smuggling in persons.

1. General Protection of Victims

Taking into consideration the horrific experiences of trafficking and smuggling, the suicidal tendencies and the post-traumatic stress disorder from which victims suffer, it has been discussed under chapter two of this report that victims deserve protection under both international and Ethiopian domestic legal framework.²⁶¹ The cumulative reading of all these provisions indicates that protection connotes a socio-economic and medical support or assistance (to be) given to victims. In general, it is all about identifying victims, creating job opportunities, availing to them educational as well as medical assistances including psychological assistance, and ensuring their right to access to justice.

With regard to identifying victims, as the report of Jimma Zone Social Affair shows 6,389 victims are already identified up to 26th May 2017.²⁶² But victims' identification does not involve identification of their personal suffering as experts from Social Affair said.²⁶³ As victims are many in number, the problem they have experienced from trafficking or smuggling differs. So, as far as it is not contrary to their privacy, their personal suffering from smuggling or trafficking should be known. If not, it incapacitates the processes of assisting victims particularly victims with medical problem or psychological disorder or victims in need of immediate rehabilitation measures which resulted from trafficking or smuggling in persons. This in return refutes the main purpose of identifying victims which is to guarantee them the protection particularly from re-victimization.²⁶⁴ Victims are entitled to get the available health and social services, medical care, counselling and psychological assistance with care, on a confidential basis and with full respect of privacy.²⁶⁵ Despite this there is no medical and psychological assistance provided to identified victims in Jimma Zone.²⁶⁶

²⁶¹ Art. 6-8 of the 2000 Anti-Trafficking Protocol and Articles 9(1) (a) and 16 of Anti-Smuggling of Persons Protocol of 2000 require states to consider measures to protect victims. Provisions of the Ethiopian anti-trafficking Proclamation, from Arts.26 -31 correspond to this international obligation.

²⁶² Jimma Zone Labor and Social affair, *Nine Month Report of 2009*, (2009).

²⁶³ Interview with Fikadu W/Giorgis, Delegate Coordinator, Jimma Zone Social Affair Office, 26 May 2017.

²⁶⁴ Anti-trafficking Protocol Art. 9(1.b).

²⁶⁵ Anti-trafficking Proclamation, Art.26(2)(b).

²⁶⁶ Interview with Muktar Sharafeddin, Public Prosecutor, Jimma Zone Justice Office, 22 March 2017.

With regard to job opportunities, from among the identified victims, only 1,949 number of victims from total of 6389 that got arrangement under 211 micro-enterprises in different activities including Agriculture and other businesses.²⁶⁷

Chart showing employed victims in different woredas' of Jimma Zone.

No.	Name of Woredas'	M(male)	F(female)	Total
1	Setemma	291	40	331
2	Sigmo	548	32	580
3	Dedo	179	13	192
4	Limmu Kossa	15	24	39
5	Manna	28	30	58
6	Gomma	98	52	150
7	Kersa	53	31	84
8	Tiro Afeta	2	5	7
9	Gumay	105	15	120
10	Gera	55	12	67
11	Sokorru	6	4	10
12	Limmu Seka	22	10	32
13	Aggaro	37	71	108
14	Omo Neda	71	9	80
15	Shabe Sombo	30	14	45
16	Seka Chokorsa	35	11	46
Total	-	1576	373	1949

Source, Jimma Zone Justice Office, *Nine Month Work Report of the Committee on Prevention and Control of Trafficking in Person and Smuggling of Migrants*,²⁶⁸ (2009 E.C).

From the above table, one can understand that still the number of victims provided with job opportunity is minimal compared to the total number of victims in the Zone. As the report²⁶⁹ further stated as direction, the job opportunity created by the Zone is inadequate so that it needs emphasis in the future.²⁷⁰ In essence, it is believed that the issue of job opportunity

²⁶⁷ Interview with Fikadu W/Giorgis, *supra* not 264.

²⁶⁸ This report is a work report of the committee or taskforce up to May 2017.

²⁶⁹ Report of the Committee, *supra* note 260.

²⁷⁰ *Ibid*, p.8

should be given attention. Therefore the job opportunity in the Zone for victims of trafficking in person and smuggling is less. Generally when looking at the practice, the protection of victims is not adequate due to the above and the following realities.

I. Lack of Sufficient Protection of Victims

As discussed above, the Ethiopian Government has adopted a range of positive legislative measures to prevent and punish trafficking of persons, migrant smuggling and ensure effective remedies to victims of trafficking and smuggling. Accordingly, slavery, sexual servitude and deceptive recruitment for sexual services, sale of a child, debt bondage and people trafficking and smuggling are proscribed and criminalized under the anti-trafficking Proclamation of 2015.

Generally, the counter-trafficking and smuggling measures under the Proclamation can be summarised into three strands: Criminalization and prosecution, prevention, and protection of victims of human trafficking and smuggling. As author pointed out in chapter two,²⁷¹ up to the adoption of UN trafficking Protocol, there was no victims' protection aspect on instruments combating trafficking related crimes and as such, those instruments were incapable of combating trafficking related-crimes and failed to extend protection to victims. After this understanding, the international community recognized victims' protection under UN Anti-Trafficking and Smuggling Protocol. This shows as protection is crucial aspect in combating trafficking in persons without which combating trafficking is difficult, if not impossible.²⁷² Moreover, as far as these problems are increasing, prevention should not be the only focus. The Government of Ethiopia is placing significant emphasis on the prevention facet of counter-trafficking.²⁷³ Direct assistance to internal or transnational victims of trafficking is often provided through civil society and international organizations.²⁷⁴

The data collected from Jimma Zone confirms this reality. In Jimma Zone, awareness creation programmes on the deleterious effects of smuggling are launched particularly by the

²⁷¹ *Supra* chapter two, pp.18-19.

²⁷² See the Preamble of the anti-trafficking Protocol, para.2 & 3. It provides that: *first* despite the existence of a variety of international instruments containing rules and practical measures to combat the exploitation of persons, especially women and children, there is no universal instrument that addresses all aspects of trafficking in persons; *second* in the absence of such an instrument, persons who are vulnerable to trafficking will not be sufficiently protected.

²⁷³ IOM (2015), *supra* note 178, p.29.

²⁷⁴ *Ibid.*

Ethiopian Human Rights Commission of Jimma Branch office²⁷⁵ and Justice Office²⁷⁶. This is because smuggling requires ‘consent of the smuggled’ as a definitional element unlike trafficking. As discussed in the preceding Chapter,²⁷⁷ trafficking is not based on the volition of the victim unlike smuggling so that awareness may contribute for prevention of smuggling. The awareness creation is given more for stakeholders and students at school.²⁷⁸ This is a prevention measure and there is no protection measure like assisting victims. In fact, there are complaints, from victims regarding the lack of enforcement of the legally recognized entitlements, to Human Rights Commission, as enforcing the law is their mandate too. However, the Commission’s power is making recommendation after investigation for the concerning organ, which it has done so.²⁷⁹ Furthermore, there is similar practice in the Justice office.²⁸⁰ So there is no assistance measure by the Commission as well as by Justice Office.

II. Poor Framing of Charge and Evidentiary Problem

In *Prosecutor v Muri A/Jihad* case, Jimma Zone High Court changed the case from ‘Trafficking in person’²⁸¹ to ‘Fraudulent misrepresentation’²⁸² ought to the failure of public prosecutor to prove ‘exploitation’ in the case.²⁸³ From the facts of the case, the first two elements for the commission of crime of trafficking in person are fulfilled under the case. That is the action by which the defendant after taking a money from victims, transferred victims to Sudan, and the means which is deceiving victims via false information.²⁸⁴ However, the third element of crime of trafficking, Purpose, which is exploitation, is unfulfilled. After long journey, the victims were caught and arrested by Sudan police at Ethio-Sudan border and then returned to Ethiopia. Exploitation shall include the

²⁷⁵ Interview with Endalkachew Asseffa , Women-Children Expert, Ethiopian Human Rights Commission Jimma Branch Office, 22 March 2017.

²⁷⁶ Report of the Committee, *supra* note 266, p.5. According to this report awareness rising activities were given for around 67 peoples in order to prevent trafficking and smuggling in persons including, leaders of religious institutions, women, and stakeholders.

²⁷⁷ *Supra* chapter two, p.17.

²⁷⁸ *Ibid*.

²⁷⁹ *Ibid*.

²⁸⁰ Interview with Muktar Sharafeddin, *supra* note 267. Accordingly, he said there are victims coming with different problem but we refer(not mandatory one) them to Social Affair Office to assist as we have no mandate plus budget. But the interview result the researcher made with Social Affair of the Zone, Fikadu W/Giyorgis, Delegate Cooperator, Jimma Zone Social Affair Office, 26 May 2017, shows as the assistance provided by their office is limited only to creating job opportunity and their report also shows similar thing.

²⁸¹ Art. 3 of anti-trafficking Proclamation.

²⁸² FDRE Criminal Code, Art.692 (1).

²⁸³ *Public prosecutor v Muri A/Jihad*, Jimma Zone High Court, *Judgment*, Criminal File No.36158, (2008E.C).

²⁸⁴ *Ibid*.

exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs as per anti-trafficking Proclamation.²⁸⁵ Up on this, there is no exploitation in the case at hand so that it would be better if charge was framed depending Article 4 of the proclamation than Article 3(1) (c) of the Proclamation. Under Article 4 a person is liable for the purpose of promoting trafficking, knowingly arrange transportation, transport or facilitate the transportation of victim by land, sea or air.²⁸⁶ The punishment is rigorous imprisonment from 15 years to 25 years and with fine from 150,000 to 300,000 Birr.²⁸⁷ That means the public prosecutor could have used promotion or facilitation of trafficking in person but declined to do so. Indeed, the Court could also order modification of charges so as to protect victims and ensure justice at large.

Secondly, the case could even be a smuggling of person. Of course sometimes the line between smuggling and trafficking become blurred and distinguishing the two becomes practically a daunting task. The IOM generalizes this challenge as follows:

In practice, it may be difficult to distinguish between trafficked and smuggled persons. Not all smuggled migrants become victims of trafficking or abuse. However, smuggled migrants are highly vulnerable to falling victim to trafficking or other forms of exploitation during their journey or once they arrive in the country of destination.²⁸⁸

What is lucid from the above quote is that there are many factors that make a person vulnerable to human trafficking, and one is being smuggled migrants.²⁸⁹ People may be exploited when they move across international borders or within their own countries.²⁹⁰ This shows the two crimes overlap and as such the eradication of the one is an input for the reduction of the other. Further, the general purpose of criminalizing both smuggling and trafficking in person under anti-trafficking and smuggling Protocol, and Ethiopian anti-trafficking Proclamation, is in order to prevent the crime, punish perpetrators, and to protect and assist victims. So in case the two crimes overlap, their overlapping should not be a

²⁸⁵ Article 2(4) of anti-trafficking Proclamation.

²⁸⁶ Ibid, Art.4.

²⁸⁷ Ibid.

²⁸⁸ IOM (2015), *supra note* 178, pp. 4 - 5.

²⁸⁹ Ibid, p.3.

²⁹⁰ Ibid, p.3.

challenge to the achievement of those purposes. But in the case at hand, it is challenging. Hence, it is proved that the defendant took money from victims in return to transfer them to other state or country.²⁹¹ The elements for the crime of smuggling persons are fulfilled and thus the person should have been charged with smuggling, at least alternatively.

In similar way on the other case,²⁹² the court also changed the case from trafficking in persons to ‘abduction of another’²⁹³ But had the prosecutor proves the elements of trafficking in persons through evidences, the case is trafficking not abduction. Therefore; poor framing of charges and evidentiary problem is challenging victim’s protection and the implementation of the Proclamation.

III. Outreach Problem Regarding Crimes and the Entitlements of Victims

As discussed previously,²⁹⁴ it is shown that the right to information is recognised as one means of protection and assistance to victims of trafficking. This in particular includes information on relevant court and administrative proceedings.²⁹⁵ Accordingly, states parties are under duty providing information to victims.²⁹⁶ This seems to enable victims aware of their rights and role in their protection, compensation and rehabilitation. That is the general principles and recommendations in human rights and human trafficking stated as a state should ensure that ‘migrants and potential migrants are warned about possible dangers and consequences of trafficking and receive information that enables them to seek assistance if required’.²⁹⁷

As long as victims are not informed of their rights, the violation to their rights continues and finally it disables their access to remedies which is a response to the violation. That is why

²⁹¹ *Muri case, supra* note 284. That means there is intention of illegal migration in reward to money from victim.

²⁹² *Public prosecutor v Yesuf A/Balcha*, Jimma Zone High Court, *Judgment*, Criminal File No.36637, (2008E.C). The story of the case is begins with the point, the criminal told the victim as she should have to move with him from Omo Nedda, Jimma Zone promising her to join she with her sister. Then without her confirmation, he forced her to enter to a car and moved to Addis Ababa where he transferred her to other person. The case also shows as she suffered body injury due to the crime. After that, she returned to Jimma through the help of others.

²⁹³ See FDRE Criminal Code, Art.586. It reiterates ‘Abduction of another’. Accordingly, ‘Whoever abducts another by violence, or commits such an act after having obtained his consent by intimidation or violence, trickery or deceit, is punishable with rigorous imprisonment not exceeding seven years’.

²⁹⁴ *Supra* Chapter two, pp.47-48.

²⁹⁵ See Art.6 (2.a) of the Protocol.

²⁹⁶ *Ibid*.

²⁹⁷ OHCHR, Recommended Principles and Guidelines on Human Rights and Human Trafficking, (2001), p.4.

Galgher said, ‘often victims of trafficking will be denied their rights in this area²⁹⁸ simply because they lack information on the possibilities and processes for accessing remedies’.²⁹⁹ In response to this, Article 26(2.a) of anti-trafficking Proclamation recognised victims’ rights to information on nature of protection, assistance, support and legal proceedings.³⁰⁰

Awareness raising activities are ways information exchanges. As the 2008(E.C) national report on illegal migration shows, awareness raising activities are there in Oromiya region which includes Jimma Zone. But the report does not indicate that the awareness was given to victims of trafficking and smuggling.³⁰¹ Further, the data collected in Jimma Zone from Justice Office³⁰² and Human Rights Commission shows that, the awareness is given in particular to the stake holders and to potential victims which are students at school on the dark side of illegal migration.³⁰³ But the awareness creation should not be only focused on the dark side of illegal migration and also on remedial aspects for victims as it is one means of addressing the issue of illegal migration and as it is the right of victims too.

IV. Low Involvement of Civil Societies

The role of civil societies in realizing victim’s protection and overall process of preventing human trafficking and smuggling should not be undermined. The UNODC has pointed that civil societies can make tremendous contribution in preventing human trafficking by conducting intensive awareness-raising against trafficking at the local and national levels, collecting data and conducting research to inform policies and programmes and launching income-generating programmes in trafficking-prone areas.³⁰⁴ In light of this, the UN trafficking Protocol obliges states parties to create conducive environment for civil societies that enable them to play their role in the prevention of human trafficking. Policies, programs and other measures established by states, to this end, are expected to include cooperation with

²⁹⁸ Anne T. Gallagher, *The International Law of Human Trafficking*, Cambriegde University Press, New York (2010), 358.

²⁹⁹ Means, the right to remedy. See Ibid, p.368.

³⁰⁰ Anti-trafficking Proclamation, Art.26(2.a).

³⁰¹ Anti-Human Trafficking and Smuggling of Migrants Task Force, *Annual National Report of 2008*, (2008E.C), p.33.

³⁰² Report of the Committee, *supra* note 260, p.5.

³⁰³ Interview with Endalkachew Asseffa, *supra* note 275.

³⁰⁴ UNODC, *Toolkit to Combat Trafficking in Persons*, (2008), p.15 available at https://www.unodc.org/documents/human-trafficking/HT_Toolkit08_English.pdf visited 8 August 2016.

civil societies.³⁰⁵ The Proclamation acknowledges the role of civil society in the prevention process via including them as members of the National Committee.³⁰⁶

As the Government is emphasising more on the prevention aspect, rightly so, and as the anti-trafficking Proclamation by itself requires involvement of civil societies,³⁰⁷ there is no or very little protection measure is taken by the government particularly in assisting victims. In Jimma Zone, there is no civil society's participation in assisting victims; and the only assistance is from international organizations in particular IOM, UNICEF, ILO and Catholic Church.³⁰⁸ Bonga Catholic Church assisted victims.³⁰⁹ Accordingly, the church gave each victim around 5,000 birr as initial capital for business and those victims are engaging in local businesses particularly making and selling coffee and tea, which is commonly called '*shay buna*' in Ethiopia, mostly on the road sides.³¹⁰ But all IOM, ILO, UNICEF, and Catholic Church are not civil societies.³¹¹

Above all, protection is a human right issue and requires finance and foreign NGOs are prohibited by the law not to engage in human rights issues in Ethiopia by Proclamation No.621/2009.³¹² Accordingly, the Proclamation prevents civil society organizations, earning more than 10 percent of their budget from foreign sources, from operating on human and democratic rights.³¹³ Indeed, the prohibition has its own purpose but as assisting victims is requiring more money, involvement of different organizations is mandatory. So the author concludes that this Proclamation inhibits foreign NGOs from actively engaging in human rights areas including.

V. Minimal Protection of Child Victims

The best interests principle enshrined under the CRC requires that the laws adopted by states parties should promote the interests of the children.³¹⁴ Ethiopian anti-trafficking Proclamation

³⁰⁵ Anti-trafficking Protocol, Art.9 (3).

³⁰⁶ Ibid, Art. 39(2).

³⁰⁷ Ibid, Art. 26(1).

³⁰⁸ Interview with Fikadu W/Giorgis, *supra* note 263.

³⁰⁹ Interview with Jimmawork.

³¹⁰ Ibid.

³¹¹ See Art.3(2.a) of Civil Societies Proclamation. Religious organization are excluded from civil societies and charities.

³¹² Proclamation to Provide for the Registration and Regulation of Charities and Societies Proclamation 621 of 2009.

³¹³ Ibid, Art.2(2) in conjunction with Art.14(5).

³¹⁴ CRC, Art.3.

however left to consider this important aspects that help to protect the rights of children. There is nothing mentioned in the Proclamation which requires Courts or other responsible organs to apply the best interests principle in their actions. There is no organ of government that is authorized to appoint guardians to accompany the child in the due course of proceedings. The importance of respecting the views of children is also not emphasized in the Proclamation. However, the UN trafficking Protocol requires consideration of age and sex as well as their special needs while taking measures of protection of victims.³¹⁵ Indeed, this is recognised under FDRE Constitution and as such it would not be a big deal as every law is subordinate to the constitution.³¹⁶ The Constitution provide that, best interests of the child shall be given primary consideration in all actions concerning children and still this applicable to child victims.³¹⁷

The point is, there are children from the Zone who have become victims and repeatedly returned by UNICEF from Djibouti and other countries to Jimma Zone, Ethiopia.³¹⁸ They are around 76 children by this year or as of 2009 E.C.³¹⁹ But with regard to protecting these victims, the only thing done by the Zone is returning the children to their families.³²⁰ But the government obligation under Anti-Trafficking Protocol toward protecting and assisting child victims is not only limited to reunification of the victims with their families.³²¹ Instead, it includes educational, caring and housing measures.³²² Reunifying the children with their families might solve the problem of housing and caring to some extent if their families are self-reliant. But this could not be a guarantee for their education.

In Jimma Zone there is no step forward movement on the education of those child victims by the concerning government organ which is provided as one of the primary interest of child victims to be protected under Trafficking Protocol.³²³ Indeed there is no organ expressly empowered to do so by Ant-Trafficking Proclamation. Nevertheless, the purpose of establishment of Women and Children Affair under the Executive Branch from ministerial

³¹⁵ Anti-trafficking Proclamation, Art.6(4).

³¹⁶ FDRE Constitution, Art.9(1).

³¹⁷ Ibid, Art.36 (2).

³¹⁸ Interview with Kedidja A/Mecha, Child Affair Coordinator, Jimma Zone Women and Child Affair, 26 May 2017.

³¹⁹ Ibid.

³²⁰ Ibid.

³²¹ Anti-trafficking Protocol, Art.6.

³²² Ibid.

³²³ Ibid, Art.6(4).

level to Woreda level is to promote and protect the interest of women and children all over the country. But the office responded as there is no assistance given to child victims by the office other than reunifying them with their families.³²⁴ As such the office ought to undertake protecting child victims but failed to do so. Therefore child victims protection is minimal in the Zone.

VI. No Identification of Victims of Internal Trafficking

Trafficking in person, unlike smuggling of persons, is either internal or external (transnational) by its nature. The Trafficking Protocol is applicable to transnational trafficking cases.³²⁵ However, states obligations under international law including human rights obligation remain constant.³²⁶ If this is the case, it is state's obligation to respect, protect and fulfil human rights of individuals within their jurisdiction.³²⁷ So it is state's human rights obligation to protect victims of internal trafficking cases as trafficking is a violation of human rights of victims. In response to this, Ethiopian anti-trafficking Proclamation provides protection of both internal and external cases and the phrase "...within the territory or outside Ethiopia..." under Article 3(1) is the expression of this. Hence, there is no legal deficiency, nor differentiation, in terms of protection based on the nature of trafficking.

In Jimma Zone as the report of Jimma Zone Social Affair shows the total number of victims of illegal migration is around 6,389.³²⁸ These identified victims are all returned victims from abroad.³²⁹ Furthermore, the child victims repatriated by the UNICEF are from abroad and even at the time of report of victims of internal cases to Women and Children Affair, the Office simply returns the victims to their families.³³⁰ But activity should have been communicated to the concerned stake holder or the criminal justice system and ensure victims' rights to access to justice and assistance. The cumulative reading of the two is the

³²⁴ Interview with Kedidja A/Mecha, *supra* note 318.

³²⁵ Anti-trafficking Proclamation, Art. 4.

³²⁶ *Ibid*, Art.14.

³²⁷ ICCPR, Art.2.

³²⁸ Jimma Zone Labor and Social affair, *Nine Month Report of 2009*, (2009).

³²⁹ Interview with Fikadu W/Giorgis, *supra* note 263.

³³⁰ Interview with Kedidja A/Mecha, *supra* note 318.

failure of concerning government organs to identify victims of in-country trafficking. As Draft Basic Principles on the Right to a Remedy for Victims of Trafficking,³³¹ pointed out,

Victim identification is an essential pre-requisite for the realization of the right to a remedy. States are under an international legal obligation to identify victims of trafficking and of related exploitation as quickly and accurately as possible.³³²

Victim's identification is also provided as the initial stage in victim's protection under both Anti-Trafficking Proclamation³³³ and anti-trafficking Protocol³³⁴ Hence; anti-trafficking Protocol is applicable to external trafficking cases only.³³⁵ Nevertheless, victim's identification for both internal and external cases is the duty of the government as under Anti-Trafficking Proclamation. So, if there are no identified victims of internal cases and data are unavailable, not much to say about their protections. That is why it said that failure to identify victim's amounts to denial of their protection.³³⁶

VII. No Palpable Protection of Victim as a Witness

Interestingly the law also provides immunity to victims of trafficking and smuggling from criminal prosecution.³³⁷ This is a human rights-based approach to victim protection and assistance which highlights that victims should, irrespective of their cooperation with law enforcement, be afforded immunity from criminal liability for their involvement in unlawful activities as a result for being trafficked or smuggled.³³⁸ Accordingly, they shall not be liable for being a victim of smuggling and trafficking under Ethiopian Legal system.³³⁹ Indeed, in Jimma Zone, there is no trafficking or smuggling victim who have been prosecuted for engaging in the activity.

³³¹ 'Draft Basic Principles on the Right to a Remedy for Victims of Trafficking' available at www.ohchr.org >Issues >Trafficking visited 5 June 2017.

³³² Ibid.

³³³ Anti-trafficking Proclamation, Art. 26(1).

³³⁴ Anti-trafficking Protocol, Art. 6(1).

³³⁵ Ibid, Art.4.

³³⁶ OHCHR, Recommended Principles and Guidelines on Human Rights and Human Trafficking, (2001), p.4. It pointed out that, 'failure to identify a trafficking person correctly is likely to result in a further denial of that person's right'.

³³⁷ Anti-trafficking Protocol, Art.30.

³³⁸ UNODC, International Framework for Action to Implement the Trafficking in Persons Protocol,(2009),p. 11.

³³⁹ Ibid.

Protection is one of the means of prevention particularly in countering re-trafficking³⁴⁰ and smuggling.³⁴¹ Upon return to their place of origin, victims should be assisted socially and medically, if not, they will encounter re-trafficking, retaliation and rejection by others including family members.³⁴² So in order to overcome the post victimization problem, victims shall be provided with necessary protection. Further, victims are sources of evidences necessary to secure convictions of traffickers or smugglers for what they inflicted upon their victims.³⁴³ Due to this victims deserve protection as a witness.³⁴⁴

The Convention on Transnational Organized Crime provides a mandatory obligation on states to take “appropriate measures within its means to effectively protect witness, their relatives and other persons close to them from retaliation or intimidation by offenders in criminal proceeding, without prejudicing the right of the defendant including the right to due process”.³⁴⁵ Providing effective protection for witness within the states resource may include “establishing procedures for the physical protection, relocating them, in appropriate cases permitting non-disclosure or limitation on the disclosure of information concerning the identity and address and providing evidentiary rules to permit witness to give testimony in a manner that ensure safety such as the use of video links and adequate means”³⁴⁶.

Under Ethiopian Anti-Trafficking Proclamation, victims are entitled to witness protection provisions.³⁴⁷ That means the Proclamation permits victims to make statements in criminal case. Ethiopian Witness and Whistle Blowers Protection Proclamation contains a provision ensuring that trafficked and smuggled persons and their family members are protected from intimidation, harm, and threats of harm through different means such as keeping their personal details anonymous (not disclosing their names and identifying information to the

³⁴⁰ Anti-trafficking Protocol, Art.9(1.b).

³⁴¹ Anti-smuggling Protocol, Art.2.

³⁴² Vladislava Stoyanova, ‘Complementary Protection for Victims of Human Trafficking under the European Convention on Human Rights’, 3 *Goettingen Journal of International Law* (2011), p.778.

³⁴³ Gallagher, *supra* note 298, p.317.

³⁴⁴ *Ibid*, p.317.

³⁴⁵ Convention on Transnational Organized Crime, para 1 & 2, Art 24.

³⁴⁶ *Ibid*, Art 24 para. 2 (a) & (b).

³⁴⁷ Anti-trafficking Proclamation, Art.29. stated that, ‘Without prejudice to different rights stipulated in other laws with respect to victims, any witness, who is a victim of crime of trafficking in persons and smuggling of migrants, shall be entitled with the protections stipulated under Witness and Whistleblowers Protection Proclamation no. 699/2010’.

public), relocating them and other witness protection programs.³⁴⁸ But in practice, it is only when they encountered a problem and report this to the office that they are given witness protection.³⁴⁹ Indeed, the protection of victim as a witness is not victims protection rather means of combating the crime.³⁵⁰ But it is treated as victim's protection in different legal systems particularly in United States of America following the adoption of Victims Protections Act of 2000.³⁵¹ Finally, the purpose of witness protection is due to the character of criminals.³⁵² Traffickers and smugglers are indeed dangerous because the nature of trafficking and smuggling activities are complex, passing through different process; organized, involving different traffickers and smugglers; and transnational, except the case of in-country trafficking. So, as witness, victims need protection.

2. Rehabilitation of Victims

Rehabilitation measures shall be put in practice in order to address the physical, psychological, behavioural, social, and economic traumas encountered by victims. Article 17(1) (c) of Ethiopian anti-trafficking Proclamation provides that order be made against any governmental and non-governmental medical facility so as to avail proper medical treatment to victims who suffer serious injury. This is provided as immediate rehabilitation measure. Rehabilitation could be immediate or aftercare by which the victim could follow outside rehabilitation centre, if any. Accordingly, victims must be offered the following rehabilitation, support and aftercare options including food, shelter, medical and psychological care, financial assistance, legal aid, skill development training and education. The victim can choose to access all or any of these services, in consultation with the concerning with the government organ. Awareness rising for the victims is one of the means for rehabilitation as it contributes for victim's recovery. However, there is no awareness rising activity in Jimma Zone for victims. One of the duties of Ethiopian Human Rights

³⁴⁸ Protection of Witnesses and Whistleblowers of Criminal Offences Proclamation 699 of 2010, Art.3. See its preamble, which provides that the purpose of the proclamation is not only protecting evidences but also the safety and rights of individuals.

³⁴⁹ Interview with Yohannis Name, Public Prosecutor, Jimma Zone Justice Office. 10 May 2017.

³⁵⁰ Ibid.

³⁵¹ United States Victims of Trafficking and Violence Protection Act Of 2000, Section 107, provides that victims of severe forms of trafficking be provided protection if a victim's safety is at risk or if there is danger of additional harm by recapture of the victim by a trafficker, including: taking measures to protect trafficked persons and their family members from intimidation and threats of reprisals and reprisals from traffickers and their associates; ensuring that the names and identifying; and information of trafficked persons and their family members are not disclosed to the public.

³⁵² The Preamble of Protection of Witnesses and Whistleblowers of Criminal Offences Proclamation 699 of 2010, para.3.

Commission is to promote human rights.³⁵³ But there is no such activity by the Commission except for the potential victims.³⁵⁴ The same is true under in Justice Office.³⁵⁵ The analysis of the law and the practice on rehabilitation of victims gives the following result.

I. Absence of Permanent Organ and Ineffectiveness of the Ad hoc Committee

In order to give them proper assistance and support, victims may be referred to appropriate organizations and institutions. There is no organ empowered to implement the central tenet of the Proclamation. The only thing done is establishing ad hoc committee. However, this is creating a gap. As the practice in the Zone shows, there is no government organ with mandate of taking certain victim oriented measures like rehabilitation of victims, the author this study, collected data from concerning justice organs namely, Ethiopian Human Rights Commission Jimma Branch, Jimma Zone High Court, Woreda Courts, Jimma Zone Justice Office, Jimma Zone Social Affair and Women and Children Affair that are working towards ensuring protection of victims of crime.

The original power of Human Right Commission is indeed to check human right violations, translating human right instruments to local language and awareness creations are the major ones.³⁵⁶ Justice office is primarily concerned with prosecution and awareness creation. Court as a judiciary organ entertains cases and no organ is empowered to do so. Victims of the offences under the Proclamation may be able to receive support as per the law. But, it is not clear that under which program and Government Office the support is given under the Proclamation. Due to this, it has been challenging in practice. As an interview made with public prosecutor of Jimma Zone shows, there are victims with various forms of damage including physical and economic damage.³⁵⁷ But ought to lack of budget and mandate, there is no support given by Justice Office to victims of human trafficking and migrant smuggling.³⁵⁸ The only thing done is prosecution as it is the mandate of Justice Office.³⁵⁹ So

³⁵³ Ethiopian Human Rights Commission Establishment Proclamation 210 of 2000, Art.5. Accordingly it is provided as: The objective of the Commission shall be to educate the public be aware of human rights see to it that human rights are protected, respected and fully enforced as well as to have the necessary measure taken where they are found to have been violated.

³⁵⁴ Interview with Shimelis Merera, Awareness Rising Expert, Ethiopian Human Rights Commission Jimma Branch Office, 28 March 2017.

³⁵⁵ Interview with Muktar Sharafeddin, *supra* note 266.

³⁵⁶ The Preamble of Ethiopian Human Rights Commission Establishment Proclamation 210 of 2000.

³⁵⁷ Interview with Muktar Sharafeddin, *supra* note 266.

³⁵⁸ *Ibid.*

³⁵⁹ Art.47 of anti-trafficking Proclamation.

there should be separate body both at the federal and state governmental levels dealing with human trafficking and smuggling in order to solve the problem at grassroots.

Moreover, even if the taskforce is established at Zone level as stated under chapter two on institutional framework,³⁶⁰ practically there is no indication that it is really protecting and rehabilitating victims. The only thing that the Committee has done is training victims that are working in microenterprises.³⁶¹ Indeed, training is one means of rehabilitation however the number of victims working under micro-enterprises is few compared to the total number of victims. Thus it is difficult to conclude that the measure is adequate. Moreover, as discussed in the first part of this chapter,³⁶² there is no education service and follow up for child victims. In addition the report of the Committee shows that the magnitude of illegal migration is high in the Jimma Zone.³⁶³ In spite of this the rehabilitation measures that have been taken by the Committee is hardly addressing the problem.

II. Lack of Regulation on Rehabilitation

Article 26(1) of the Proclamation imposes the government to take necessary steps in order to overcome the problem of victim's protection. One of which is the duty to take necessary measure for rehabilitation of victims. But the detail of which is to be decided by the regulation to be enacted by the Council of Ministers.³⁶⁴ At the time of writing this research, the Council of Ministers has not enacted the necessary regulation. In a contrary meaning, there is no detail on the rehabilitation measures so that it is difficult to properly enforce this right.

3. Reparation for Victims

Trafficking and smuggling are forms of transnational organized crimes that violate human rights of victims that are recognised under international, regional treaties and customary international law. Human rights law is a source of international obligation for human rights violations. One of these obligations is state's duty to provide *substantive* right to remedy for

³⁶⁰ See *infra*, chapter two p.29.

³⁶¹ *Ibid*.

³⁶² See *infra*, chapter two pp.51-52.

³⁶³ Interview with Muktar Sharafeddin, *supra* note 266.

³⁶⁴ Art.26(1) of the anti-trafficking Protocol.

violations as well as a *procedural* right of access to remedies.³⁶⁵ Article 25 of the Convention on Transnational Organized Crime provides that states shall establish appropriate procedures to provide access to compensation and restitution for victims of offences covered by the Convention. This shows that remedies are critical aspects of the international legal response to trafficking, particularly in confirming the status of trafficked persons as victims of crime and victims of human rights abuse.³⁶⁶ Accordingly, the reparation of victims of trafficking in person and smuggling of persons primarily emanates from this obligation.

Even if it is not defined under the human rights instruments, reparation is ‘the act of making amends for a wrong; or compensation for an injury or wrong, especially for breach of international obligation’.³⁶⁷ That is either from the state or the convict. So, reparations are linked to responsibility.³⁶⁸ As discussed earlier,³⁶⁹ compensation is a form of reparation provided under Ethiopian anti-trafficking Proclamation.³⁷⁰ The analysis of the law and the data collected from Jimma Zone gives the following findings.

I. Absence of Compensation

The right to seek just and adequate reparation or satisfaction for any damage suffered as a result of violations of rights are not necessarily secured solely by the punishment of the

³⁶⁵ The ICCPR, Art.3(a). It requires states parties to ensure “that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy.” Similar provisions are found in the European Convention on Human Rights (Article 13); and the American Convention on Human Rights (Article 25). The African Charter provides every individual with “the right to appeal to competent national organs against acts violating his fundamental rights.” (Article7). The Convention on the Elimination of All Forms of Racial Discrimination requires States to provide effective remedies and upholds the right of all persons to seek from national tribunals “just and adequate reparation or satisfaction for any damage suffered as a result of ... discrimination.” (Article6). The Convention against Torture is also explicit in providing victims with an “enforceable right to fair and adequate compensation including the means for as full rehabilitation as possible.” (Article 14). The Convention on the Rights of the Child includes a similar provision (Article 39). The Migrant Workers Convention’s provision on remedies, (Article 83), is identical to that of the ICCPR. The Rome Statute of the International Criminal Court grants the Court broad powers to order convicted persons to make symbolic or financial reparations to victims (Article 75).

³⁶⁶ Gallagher (2010), *supra* note 298, pp.2-9.

³⁶⁷ Bryan A. Garner, *Black’s Law Dictionary*, 9th edn.(2009), p.1413.

³⁶⁸ Gallagher(2010), *supra* note 298, p.359.

³⁶⁹ See *infra*, chapter two p.33.

³⁷⁰ As Gallagher pointed out, reparation aimed at: (i) restitution, in which measures are taken to restore the victims prior situation before crime ; (ii) compensation, payable to victims for physical and psychological harm, lost opportunities, loss of earnings, and medical, legal, or other costs incurred as a result of the violation and (iii) satisfaction and guarantees of non-repetition, a measure aimed at cessation of violation, and it include acknowledgment of violation of victims rights like prosecution. See Gallagher(2010), *supra* note 299, pp.364-367.

perpetrator but also the courts and other competent authorities should consider awarding financial compensation for damage, material and moral, suffered by a victim, whenever appropriate.³⁷¹ Under anti-trafficking Protocol and the Convention on Transnational Organized Crime,³⁷² it is provided as the duty of state to ensure victims' rights of access to compensation.³⁷³ As discussed under chapter two,³⁷⁴ trafficking and smuggling victims in Ethiopia may obtain financial damages through compensation ordered by the court from the convict.³⁷⁵ This compensation is without making additional application to the court.³⁷⁶

However, there is no decision to this effect in Jimma Zone High Court as the court decisions used for this study shows.³⁷⁷ From among these cases, the court decided two of them depending on anti-trafficking Proclamation,³⁷⁸ the rest two cases were decide depending on FDRE Criminal Code³⁷⁹. Indeed all the cases were filed up on anti-trafficking Proclamation as they were committed after the promulgation of this Proclamation.³⁸⁰ But the reason is what is stated under section 1(II) of this chapter.³⁸¹ *A/Biyya case* is a smuggling case³⁸² by which

³⁷¹ As cited under foot note no.150 of Obokata, General Recommendation No. 26 (Art. 6 of the Convention) (2000), Compilation of General Comments, n. 21 above. It should be noted, however, that the ambit of Art. 6 of the CERD (provision of effective remedy) is wider than the similar provisions in other key human rights instruments such as ICCPR (Art. 2) and ECHR (Art. 13) in terms of remedies and responses (e.g. specific references made to just reparation and satisfaction and to the role of judicial and other State organs in providing them). General Comment No. 15 (The Position of Aliens under the Covenant) (1986), para. 9. See also General Comment No. 27 (Freedom of Movement) (1999), in which the Human Rights Committee stated that 'the question whether an alien is "lawfully" within the territory of a state is a matter governed by domestic law, which may subject the entry of an alien to the territory of a State to restrictions', para. 4. Compilation of General Comments and General Recommendations adopted by the Human Rights Treaty Bodies, HRI/GEN/1/Rev.5 (2002).

³⁷² For more discussion on this see *Infra*, Chapter two p.33.

³⁷³ Anti-trafficking Proclamation, Art.6(6).

³⁷⁴ *Supra* Chapter two, pp.33-34.

³⁷⁵ Anti-trafficking Proclamation, Art.31(1).

³⁷⁶ See *Infra*, Chapter two p.34.

³⁷⁷ *Public prosecutor v A/Biyya A/Dura*, Jimma Zone High Court, *Judgment*, Criminal File No.37035, (2008E.C); *Public prosecutor v Fatuma Mohammed*, Jimma Zone High Court, *Judgment*, Criminal File No.37161, (2009E.C); *Public prosecutor v Muri A/Jihad*, Jimma Zone High Court, *Judgment*, Criminal File No.36158, (2008E.C); and *Public prosecutor v Yesuf A/Balcha*, Jimma Zone High Court, *Judgment*, Criminal File No.36637, (2008E.C).

³⁷⁸ *A/Biya case* and *Fatuma case*.

³⁷⁹ *Muri case* and *Yesuf case*.

³⁸⁰ See all cases, *supra* note 377.

³⁸¹ See *infra*, chapter three, pp.47-48. The court shifted the case from trafficking to 'Abduction of another' and 'Fraudulent misrepresentation' because of poor framing of charges and evidentiary problem which is failure to show 'exploitation'.

the perpetrator was charged, *one* for caused death of one of the victim Mohammedawwel Hamid because of the harsh condition of smuggling process taken from Jimma Zone to Yemen through Dire-Dawa,³⁸³ and *second* for causing the rest victims, Abdulbasit Hamid and Mohammedwaiz Hamid who are the first victims brothers, economic and physical harm at Yemen.³⁸⁴ In this case, the court found the perpetrator convict and sentenced him with 20 year rigorous imprisonment and 450,000 birr.³⁸⁵ But there is no compensation decided for either of the victims. On the other case,³⁸⁶ again the court found the perpetrator convict and similarly no compensation decision. This means, irrespective of recognition of automatic compensation order to victims under anti-trafficking Proclamation, there is no practice approving this.

II. Lack of Fund for Reimbursement Payment

Anti-trafficking Proclamation as discussed under chapter two,³⁸⁷ has established a compensation to be claimed from the convicted person. The Proclamation has also established a fund for reparating victims as a last resort.³⁸⁸ It says, ‘A fund to prevent, control and rehabilitate victims of crime of trafficking in human and smuggling of migrants (hereinafter called the “Fund”) is hereby established by this Proclamation’.³⁸⁹ That means, the fund is already established since the date the proclamation proclaimed in Negarit Gazzette.³⁹⁰ The sources of the fund are:

[b]udget allocated by Government, proceeds of sale of properties confiscated or fines imposed as per this Proclamation, voluntary contribution from individuals,

³⁸² The charge was filed due to the violation of Art.5(1), 5(2)(b) of anti-trafficking Proclamation. That means it is not only illegal border crossing but also resulted on suffering of victims so that the punishment is harsher as per art.(5(2) of the Proclamation.

³⁸³ *A/Biyya case* (2008 E.C).

³⁸⁴ *Ibid.*

³⁸⁵ *Ibid.*

³⁸⁶ *Public prosecutor v Fatuma Mohammed*, Jimma Zone High Court, *Judgment*, Criminal File No.37161, (2009E.C).

³⁸⁷ See *Infra*, Chapter two, pp.25-34.

³⁸⁸ See Art.31(3) of the Proclamation. Under Part Five it established fund. The sources of income of the fund are budget allocated by the government, proceeds of sale of properties confiscated or fine imposed as per the Proclamation, voluntary contribution from individuals, governmental organizations, the private sector, charities and societies, grants from different international organizations and donors and other financial sources approved by the Ministry of Finance and Economic Development. The fund is established for preventing and controlling human trafficking .It will also be used for rehabilitating victims (Art.32).

³⁸⁹ Anti-trafficking Proclamation, Art.32.

³⁹⁰ See Art.50 of ant-trafficking Proclamation and accordingly, it is 17th August 2015.

governmental organisations, the private sector and charities and societies, grants from different international organization and donors and other financial sources approved by Ministry of Finance and Economy Development.³⁹¹

But the enforcement is not yet begun.³⁹² In practice, courts are indeed imposing fines in addition to imprisonment.³⁹³ However, this fine is not forming a part of the fund as enjoined by the law.³⁹⁴ This is because of the fact that, ‘the management and procedure of the fund and the accountability of the organ which administers it shall be determined by Council of Ministers regulation’.³⁹⁵ As discussed previously, there is no regulation of Council of Minister to this effect. So, the enabling regulation should come first.

Chapter Summary

As discussed in the main part of this chapter, the focus of many of the measures taken in Jimma Zone is on preventing trafficking and smuggling as well as in prosecuting trafficking-related crimes. Consequently, protection measures that are prescribed by the law are neglected. The role of civil societies is highly expected in realizing protection of victims. But it is not as such in assisting victims due to different discouraging factors, the primary factor being the new civil society proclamation. Again, ought to lack of mandated organ, ineffectiveness of the ad hoc committee and absence of enforcement laws that are expected to be enacted, the rehabilitation of victims in Jimma Zone is low. With regard to reparation, victim’s right to statutory compensation (compensation from the state) needs to be recognised under the Proclamation as victims are not accessing compensation in practice and as it is a state obligation to provide a system that offer victims the access to compensation from convict and/or fund under the trafficking Proclamation.

³⁹¹ Art.33 of anti-trafficking Proclamation.

³⁹² Interview with Mesfin Birhanu, Criminal Bench, Court Officer, Jimma Zone High Court, 20 March 2017.

³⁹³ See *A/Dura* case (2009 E.C), *supra* note 286.

³⁹⁴ Interview with Mesfin Birhanu, *supra* note 392.

³⁹⁵ Art.35 of the Proclamation.

CHAPTER FOUR

CONCLUSION AND RECOMMENDATION

1. Concluding Remarks

Due to globalization,³⁹⁶ illegal migration has been increasing to which Ethiopia is not an exception. These in particular include smuggling and trafficking in persons especially women and children. Human trafficking is the trade of humans for the purpose of sexual slavery, forced labour or commercial exploitation by the trafficker or others; it affects all regions and most countries of the world either as place of origin, transit or destination, or even all. In similar fashion, smuggling of persons is '[t]he 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',³⁹⁷

There is a thin line between migrant smuggling and trafficking in persons. The profiles of trafficked and smuggled persons, the routes they take, the operation of smuggling and trafficking networks and the level of dependence of the smuggled or trafficked migrant on their smugglers or traffickers is quite similar.³⁹⁸ And as literature identified, there are three points at which the act of smuggling may be developed to trafficking: One is the case where the operation of smuggling networks does not end after the successful border crossing.³⁹⁹ In this circumstance, the smuggler exploits the migrant using the money owed to them as a suitable justification. Second, smuggling turns into trafficking when the migrants are still in route to their destination. Mostly, this is the case of women migrants who are subjected to sexual exploitation including rape.⁴⁰⁰ The third is enslavement at an intermediate stop through the offer of an employment opportunity into some sort of criminal activity. The migrants find themselves trapped in what started as an employment relationship but has

³⁹⁶ Alhaji Ahmadu Ibrahim, 'The Impact of Globalization on Africa' 3 *International Journal of Humanities and Social Science* (2013), p.85. He defined 'Globalization' as 'the process of intensification of economic, political, social and cultural relations across international boundaries aimed at the transcendental homogenization of political and socio-economic theory across the globe, impacts significantly on African states through systematic restructuring of interactive phases among its nations, by breaking down barriers in the areas of culture, commerce, communication and several other fields of endeavor.' Further, he identified smuggling and trafficking in person as the dark side of globalization.(see para 7, p.88). That means globalization is one factor promoting illegal migration.

³⁹⁷ Art.3(a) of anti-smuggling Protocol.

³⁹⁸ Anna Triandafyllidou and Thanos Maroukis, *Migrant Smuggling: Irregular Migration from Asia and Africa to Europe* (2012), pp.204 &205.

³⁹⁹ Ibid.

⁴⁰⁰ Ibid.

quickly turned into slavery.⁴⁰¹ So, conducting study on migrant smuggling in conjunction with trafficking in person is methodologically better approach.

International community since 20th century have been making efforts and responding to trafficking in persons and smuggling in person's problem. The adoption of the Convention on the Transnational Organized Crime; and its two Protocols, which close to two decades, on combating trafficking in person and smuggling of migrants shows the concern of international community toward the two organized crimes. Generally, the Convention and the Protocols imposed state parties to cooperate, to criminalize, to prosecute, to protect victims and to prevent those crimes. Ethiopia has ratified and accepted the obligations under the Convention and the two Protocols. Protection, prevention, and prosecution and criminalization or the so called '3Ps' are the central tenets of the trafficking Protocol so as to combat trafficking in person. Above all, unlike the former instruments, it consisted of victim's protection provision. Smuggling in persons Protocol, on the other hand, enjoin state parties to criminalize and prosecute, to prevent and to protect victims, in particular, from ill-treatment and their right to life.⁴⁰²

To this end, both Protocols include the duty to 'afford appropriate assistance to traffic and smuggled persons whose lives or safety are endangered by reason of being smuggled. Ethiopia ratified and acceded to the Convention as well as the two Protocols. In response to above discussed international obligation, and to tackle the problem and to give effect to the international obligations, Ethiopia enacted Anti-human trafficking Proclamation No 909/2015 and also the Overseas Employment Proclamation No.923/2016. The Overseas Employment Proclamation is adopted to prohibit illegal means of overseas recruitment which in return prevent the crime trafficking in person and smuggling in person and grave violations of rights of victims. The practice of trafficking and smuggling in persons is common in Ethiopia.⁴⁰³ Jimma Zone is among the top rated sources of trafficking and smuggling zones in Ethiopia.⁴⁰⁴ Accordingly, the government is under duty to ensure that trafficking and smuggling victims are protected. Above all, the trafficking proclamation introduced identification and rescue of victims in order to make them eligible for assistance programs;

⁴⁰¹ Ibid.

⁴⁰² See Art.16 of the anti-smuggling Protocol.

⁴⁰³ See Anti-Human Trafficking and Smuggling of Migrants Task Force, National Report, (2008 E.C), pp.2.

⁴⁰⁴ Ibid. See also Jimma Zone Justice Office, *Nine Month Work Report of the Committee on Prevention and Control of Trafficking in Person and Smuggling of Migrants*, (2009 E.C), pp.2 & 7.

victims rehabilitation to enable victims recover from their suffering and compensation to retribute them. Looking into the practice, victims of in-country trafficking remains unidentified in Jimma Zone; as to rehabilitation or in assisting victims recovery, there is no medical as well as psychological assistance for victims of smuggling and trafficking in the Zone. The only thing that is being done for the victims in Jimma Zone is training victims who are working under microenterprises, and not for all victims identified. There is no case on compensation for victims either from perpetrator or government due to absence of statutory restitution, and lack of fund. Therefore, it is difficult to conclude that victims are adequately and sufficiently protected, rehabilitated and repaired in Jimma Zone.

From the above legal and practical analysis, the author generally underscored that the human trafficking and smuggling persons trend in Ethiopia is ongoing unabated irrespective of the promulgation of a relatively progressive normative framework. Admittedly, there is a progress toward measures since the promulgation of the trafficking Proclamation. Trafficking and smuggling persons is clearly identified by the government as a problem through the instrumentality of enacting a separate and comprehensive legislative measure. However, the Proclamation is not yet supplemented by the necessary enabling legislation that needs to specify rehabilitative measures as well as separate governmental body dealing with the issue. The practice is also lenient one in Jimma Zone in the realization of those measures including protection, rehabilitation and reparation. Protection, rehabilitation and reparation are interdependent and the non-fulfilment of the one is a cause for the non-fulfilment of the other. Further the focuses of many of the measures taken are on preventing trafficking and smuggling and prosecuting trafficking-related crimes. But attention is also needed on addressing the human rights violations suffered by victims of trafficking by providing access to effective remedies as required under Ethiopia's international human rights obligations. Even if the there is in-country trafficking from woreda to woreda in Jimma Zone⁴⁰⁵, there is no comprehensive data⁴⁰⁶ as they are not yet identified unlike external trafficking cases.

To conclude, the protection and assistance provisions under the smuggling in persons Protocol reflect the lowest common denominator rather than the best available tools to protect

⁴⁰⁵ Interview with Kedidja A/Mecha, *supra* note 318.

⁴⁰⁶ *Ibid.*

and safeguard the rights, integrity and interests of smuggled migrants.⁴⁰⁷ In general, the smuggling of Migrants Protocol establishes a relatively low threshold for the assistance and protection that states parties must provide to smuggled migrants. Nevertheless, Ethiopian Anti-Trafficking Proclamation provides equal protection to victims of trafficking and smuggling unlike UN Trafficking and Smuggling Protocols because the definition under the Proclamation includes victims of trafficking and smuggling in person. Furthermore, part four of the proclamation which is about protection, rehabilitation and reparation is provided for both smuggled and trafficked. But certain legal deficiency is still undeniable under the proclamation, particularly in reparation. Even if the smuggling protocol provides a minimum threshold for victims' protection, it also recognised application of international human rights law and refugee law still for better protection of victims of smuggling.⁴⁰⁸ International human rights impose states the duty to provide remedies including reparation for violations of human rights.⁴⁰⁹ The proclamation fails to recognise compensation from state. What is recognised is compensation from convict which is not in practice yet ought to lack of awareness and other. So both the law and the practice are contributing factors for inadequate protection, rehabilitation and reparation of victims.

2. Recommendations

Based on the findings of the study, the author suggests the following recommendations as a way forward and lessons for Ethiopia: First, as to rehabilitative measures, there should be detailed and enabling law governing the manner and extent of rehabilitative measures to be provided for victims in order to realize victim's rehabilitation. In addition, the would be law should come up with guidelines which help to determine the nature and amount of reimbursement payment for the victims. Secondly, instead of ad hoc committee there should be separate Federal and state governmental body or agency dealing with human trafficking and smuggling in persons in order to solve the problem at grassroots level. Third, the author recommends that practitioners, in particular Women and Children Affair office, and Labour and Social Affair to look at and implement the Proclamation through identifying victims including victims of in-country trafficking cases so as to enable them to be assisted and

⁴⁰⁷ Andreas Schloenhardt and Kate L. Stacey, 'Assistance and Protection of Smuggled Migrants: International Law and Australian Practice', 35 *Sydney Law Review* (2013), pp, 83.

⁴⁰⁸ See Art.19 (1) of anti-smuggling Protocol.

⁴⁰⁹ Universal Declaration of Human Rights (UDHR) (1948), Art.8. It recognised as 'Everyone has the right to an effective remedy by the competent national tribunal for acts violating the fundamental rights granted under the constitution or other law'.

protected as per the law. In addition courts should order compensation from convict as per the law. Fourth, the government fund for the reimbursement payment should be established as required by the law; and fifth, trainings and outreach activities that are geared towards awareness creation on the prevention aspects, crimes and their deleterious effects as well as the protections should be conducted by the stakeholders.

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5. Interview with Hawa Shifa, Victim, 22 March 2017.
6. Interview with Zahra Abdo, Victim, 22 March 2017.
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Appendix

Appendix 1: Background of Research interviewees (Victims and concerning government organs)

No.	Name of Respondents	Sex	Their Status	Organ	Remarks
1	Muktar Sharafeddin	M	Public Prosecutor	Justice Office	
2	Yohannis Name	M	Public Prosecutor	Justice Office	
3	Ashenafi Workineh	M	Judge	Jimma Zone High Court	
4	Mesfin Birhanu	M	Court Officer	Jimma Zone High Court	
5	Fikadu W/Giorgis	M	Delegate Coordinator	Jimma Zone Labor and Social Affair	
6	Kedidja A/Mecha	F	Child Affair Coordinator	Women and Children Affair	
7	Endalkachew Asseffa	M	Women-Children Expert	Ethiopian Human Rights Commission Jimma Branch Office	
8	ShimelisMerera	M	Awareness Rising Expert	Ethiopian Human Rights Commission Jimma Branch	

				Office	
9	Hawa Shifa	F	Smuggling Victim	-	Returned from Saudi Arabia by Ethiopian government
10	Jimma work	F	Smuggling Victim	-	Returned from Riyad
11	Zahra Abdo	F	Trafficking Victim	-	She went to Sudan, then to Saudi Arabia through illegal migration. She was exploited for labor at Saudi Arabia without wage and she was serving her employer plus the mother of her employer