

# **Investigation and Prosecution of Transnational Women Trafficking: The Case of Ethiopia**

Research Paper submitted in partial fulfilment of the requirements for the degree  
LLM in Transnational Criminal Justice and Crime Prevention - An International and  
African Perspective

Faculty of Law, University of Western Cape



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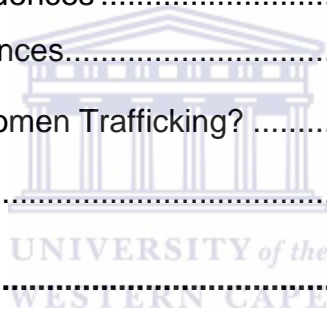
**Prepared under the Supervision of  
Professor Lovell Fernandez**

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## Table of Contents

<b>KEY WORDS</b> .....	<b>ii</b>
<b>DECLARATION</b> .....	<b>iii</b>
<b>DEDICATIONS</b> .....	<b>iv</b>
<b>ACKNOWLEDGMENTS</b> .....	<b>v</b>
<b>LIST OF ABBREVIATIONS AND ACRONYMS</b> .....	<b>vi</b>
<b>CHAPTER ONE</b> .....	<b>1</b>
<b>INTRODUCTION AND OVERVIEW OF THE STUDY</b> .....	<b>1</b>
1.1. Introduction .....	1
1.2. Aims of the research .....	2
1.3. Background to the Study.....	2
1.4. The research questions.....	3
1.5. Research Methodology .....	4
1.6. Scope of the research .....	4
1.7. Chapter Overview .....	5
<b>CHAPTER TWO</b> .....	<b>6</b>
<b>INTRODUCTION TO HUMAN TRAFFICKING</b> .....	<b>6</b>
2.1. Introduction .....	6
2.2. History of Human Trafficking.....	7
2.3. Definition of Human Trafficking .....	8
2.4. Elements of Human Trafficking.....	9
2.4.1. <i>Action</i> .....	9
2.4.2. <i>Means used</i> .....	9
2.4.3. <i>Purpose of Trafficking</i> .....	10

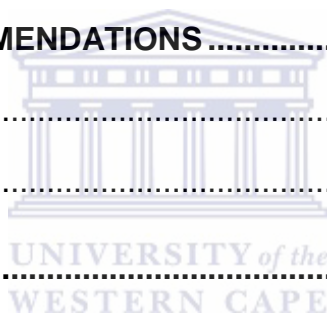
2.5. National Laws of Human Trafficking .....	10
2.6. Human Trafficking as against Human Smuggling .....	11
2.6.1 <i>Consent</i> .....	11
2.6.2 <i>Exploitation</i> .....	12
2.6.3 <i>Trans-nationality</i> .....	12
2.7. Types of Human Trafficking .....	12
2.8. Transnational Human Trafficking as Organised Crime .....	13
2.9. Trends of Human Trafficking .....	14
2.10. Causes of Human Trafficking .....	15
2.11. Consequences of Human Trafficking .....	17
2.11.1. Social Consequences .....	18
2.11.2. Economic Consequences .....	19
2.11.3. Political Consequences .....	19
2.12. Why Emphasize on Women Trafficking? .....	20
2.13. Summary .....	21
<b>CHAPTER THREE .....</b>	<b>22</b>
<b>THE INTERNATIONAL PRACTICE OF INVESTIGATION AND PROSECUTION OF TRANSNATIONAL WOMEN TRAFFICKING .....</b>	<b>22</b>
3.1. Introduction .....	22
3.2. International Legal Instruments Addressing Human Trafficking .....	22
3.3. Who is a Trafficker? .....	26
3.4. Consent of the Victim .....	27
3.5. The Question of Jurisdiction .....	28
3.6. Investigating and Prosecuting Organised Crime .....	28
3.7. Investigation and Prosecution of Transnational Human Trafficking Cases ....	31
2.8. Summary .....	36
<b>CHAPTER FOUR .....</b>	<b>37</b>



## INVESTIGATION AND PROSECUTION OF TRANSNATIONAL WOMEN

<b>TRAFFICKING IN ETHIOPIA .....</b>	<b>37</b>
4.1. Introduction .....	37
4.2. Women Trafficking from Ethiopia .....	38
4.3. Conditions in Destination Countries for Ethiopian Women Migrants .....	41
4.4. Organisations Working against Human Trafficking in Ethiopia.....	43
4.5. Ethiopian Laws Addressing Human Trafficking.....	44
4.6. The Definition of “Human Trafficking” and “Trafficker” under Ethiopian Laws	46
4.7. Consent of the Victim under Ethiopian Laws.....	47
4.8. Jurisdiction under Ethiopian Laws.....	48
4.9. Organised Crime under Ethiopian Law .....	49
4.10. Investigation and Prosecution of Transnational Women Trafficking in Ethiopia .....	49
4.11. Practical cases.....	54
4.12. The case of <i>Mr. Shu Gune v The Federal Public Prosecutor</i> .....	54
4.12.1. Investigation.....	55
4.12.2. Prosecution.....	56
4.12.3. Outcome of the case.....	56
4.13. The Case of <i>Mr. and Mrs. Demissie v The Federal Public Prosecutor</i> .....	56
4.13.1. Investigation.....	58
4.13.2. Prosecution.....	58
4.13.3. Outcome of the Case .....	58
4.14. The case of <i>Hussen Abdella Ture</i> .....	59
4.14.1. Investigation.....	59
4.14.2. Outcome of the Case .....	60
4.15. Analysis of the cases Vis-à-vis Human Trafficking laws.....	61
4.15.1. The General Overview of Human Trafficking in Ethiopia .....	61
4.15.2. The General Elements of the Crime of Human Trafficking.....	61
4.15.3. The Organised Nature of Human Trafficking in Ethiopia.....	61

4.15.4. The Definition of Human Trafficking and its Application.....	62
4.15.5. The Effects of Organised Crime Law in Investigation and Prosecution .	62
4.15.6. Absence of Confiscation of Proceeds of Human Trafficking .....	63
4.15.7. Lack of Gender- Sensitive Investigations.....	63
4.15.8. Lack of the Exercise of Extra-territorial Jurisdiction .....	64
4.15.9. Lack of Interest by Law Enforcement in Trafficking Cases .....	64
4.15.10. Lack of Coordination among Ethiopian Authorities .....	64
4.15.11. Less Focus on the Victims .....	65
4.15.12. The Incapacity of the Human Trafficking Investigations Unit .....	65
4.15.13. Lenient Punishments .....	65
4.16. Summary.....	66
<b>CHAPTER FIVE.....</b>	<b>67</b>
<b>CONCLUSION AND RECOMMENDATIONS .....</b>	<b>67</b>
5.1. Conclusion .....	67
5.2. Recommendations .....	69
<b>List of References .....</b>	<b>73</b>



## KEY WORDS

Transnational human trafficking

Organised criminal groups

Human trafficking as organised crime

State of origin

Transit state

Destination state

Investigating and prosecuting human trafficking

Women Trafficking from Ethiopia

Investigating and prosecuting human trafficking in Ethiopia

Special investigative techniques



## DECLARATION

I, Selam Gebretsion Beyne, 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.

Student: Selam Gebretsion Beyene

Student Number: 3101479

Signature: .....

Date: .....



## DEDICATIONS

To my beloved mother

and

To victims of trafficking



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## ACKNOWLEDGMENTS

First and for most, I want to thank God for helping me to achieve my dreams. My special thanks go to my supervisor Prof. Fernandez and to all the lecturers who nourished my intellectual maturity. I would also like to extend my gratitude to the Germany Academic Exchange Services (DAAD) for offering me a chance to further my studies. Most importantly, I would also like thank my friends and family for their assistance, advice, support and patience. I would also like to acknowledge Bistrate and Getachew for their assistance and moral support, which made this research possible.



## LIST OF ABBREVIATIONS AND ACRONYMS

- CEDAW : Convention on the Elimination of All forms of Discrimination  
against Women
- GAATW : Global Alliance against Trafficking in Women
- GTZ : Deutsche Gesellschaft Fur Internationale Zusammenarbeit
- ILO : International Labour Organisation
- IOM : International Organisation for Migration
- OSCE : Organisation for Security and Co-operation in Europe
- RICO : The Racketeer Influenced and Corrupt Organisations Statute
- UNGIFT : United Nations Global Initiative to Fight Human Trafficking
- UNHR : United Nations Human Rights Office of the High Commission
- UNICEF : United Nations Children’s Fund
- UNIFEM : United Nations Entity for Gender Equality and the Empowerment  
of Women
- UNODC : United Nations Office on Drugs and Crime
- UNTOC : United Nations Convention against Transnational  
Organised Crime



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# CHAPTER ONE

## INTRODUCTION AND OVERVIEW OF THE STUDY

### 1.1. Introduction

Human trafficking is a widespread and growing crime in the world. Trafficking by its nature involves movement from one place to another and in most cases, it comprises crossing international borders. Although the estimation of victims of trafficking stretches to 2 450 000, the number of prosecutions is less than 5 000. This indicates the challenges faced by many countries in the investigation and prosecution of trafficking cases.

Transnational human trafficking is committed in different places, making investigation and prosecution very complex. This paper examines how investigation and prosecution can be carried out when the criminal acts are committed in different countries. It also examines how the issue of jurisdiction is entertained. Furthermore, it addresses who can be termed as “traffickers” in dealing with human trafficking issues.

Ethiopia is facing a big problem in fighting human trafficking. Like most countries, the issue of human trafficking is closely related to women. Ethiopia uses the criminal justice system as a tool to eradicate women trafficking. The investigation and prosecution of trafficking cases face many problems which have a direct impact on the country's efforts to overcome human trafficking. Thus, this research will contribute significantly by highlighting deficits in the criminal justice system as it deals with the investigation and prosecution of women trafficking issues and by making recommendations with regards to them.

## **1.2. Aims of the research**

This research aims to analyse how human trafficking cases are investigated and prosecuted in general, and specifically, in Ethiopia. It also intends to identify and recommend the shortcomings in the Ethiopian criminal justice system. On top of other things, it aims to influence Ethiopian policies and laws, to introduce special investigation and prosecution techniques regarding human trafficking.

## **1.3. Background to the Study**

Almost all literature dealing with human trafficking refers to “human trafficking” as a modern form of slavery,<sup>1</sup> as victims of human trafficking are held captive for exploitation as was the case in the era of slavery.<sup>2</sup> The victims of trafficking give their consent as a result of coercion or fraud or deception.<sup>3</sup> Human trafficking can take place within the territory of the state or outside of it.<sup>4</sup> This paper focuses on trafficking outside the state of origin.

Trafficking is not a concern only to developing countries, but a threat to the world. This can be inferred from the report of the United Nations Office on Drugs and Crime (UNODC) in which victims from 127 countries are listed.<sup>5</sup> Ethiopia is one of these countries, as significant numbers of women are trafficked to the Middle East, Europe, African and Asia Countries<sup>6</sup> for the purpose of labour and sexual exploitation.<sup>7</sup>

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<sup>1</sup> C. Miguel (2011:34).

<sup>2</sup> M. Roth (2010:17).

<sup>3</sup> J. Hart (2009:5-6).

<sup>4</sup> A. Aronowits (2009:117).

<sup>5</sup> UNODC Report (2010:39).

<sup>6</sup> GTZ (2003:17).

<sup>7</sup> USA Report (2010:144).

In the fight against human trafficking, Ethiopia uses the criminal Justice system as a means to combat the problem.<sup>8</sup> However, the investigation and prosecution of trafficking cases is hamstrung by the nature of the crime, as it is transnational crime which also involves the commission of multiple crimes.<sup>9</sup> The challenge faced by the Ethiopian criminal justice system is also mentioned under the 2010 USA report on trafficking in persons. The report acknowledges Ethiopia's effort to investigate and prosecute trafficking cases. However, it highlights on the need to change the investigation and prosecution system, as it has numerous problems. Similar observations and comments can be inferred from the International Organisation for Migration (IOM) studies on female labour migrants and a study conducted on women and child trafficking in Ethiopia.

However, none of these documents discuss how the investigation and prosecution of trafficking cases are conducted in Ethiopia, nor do they point out the drawbacks. Moreover, the studies fail to give practical solutions on how to improve the criminal justice system response to trafficking cases. This research will therefore make a significant contribution to this area as it will point out the loopholes in the system and make recommendations.

#### **1.4. The research questions**

This paper mainly addresses the following questions

- What is human trafficking?
- Who is a trafficker?
- Why the need to emphasis on women trafficking?

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<sup>8</sup> A. Shiferaw (2009:2).

<sup>9</sup> ILO (2011:71-3).

- How to deal with the consent of trafficking victims in investigation and prosecution?
- What are the main problems in the investigation and prosecution of human trafficking cases? What are the solutions?
- How human trafficking cases are investigated and prosecuted in Ethiopia? Is the criminal justice system designed to address the issue of trafficking? If not what are the loopholes?

### **1.5. Research Methodology**

The study is based on desktop research relying mainly on primary and secondary sources. The primary sources are the international legal instruments, national laws, reports and national cases law. The researcher uses cases which have already been decided. The dockets, statements of witnesses, statements of victims and the accused, the charges by the public prosecutor and judgments on each case are the sources from which the writer shows how investigation and prosecution are carried out. The researcher used books, journals, reports and electronic sources as secondary sources.

### **1.6. Scope of the research**

This research discusses human trafficking in which the victims are women and the crime has been committed outside Ethiopia. Hence, it does not deal with men and children, nor does it deal with human trafficking within Ethiopia. Nevertheless, it focuses on how the Ethiopian criminal justice system deals with transnational women trafficking. The protection of the victims of trafficking is not the focus of this research. In the course of discussion more emphasis will be given human trafficking cases committed by organised criminal groups.



## 1.7. Chapter Overview

This paper has five chapters; the first chapter focuses on the introduction of the paper. Accordingly, the background to the study, methodology, objectives and scope of the research will be discussed.

Chapter Two discusses the history of human trafficking; the meaning of trafficking under international and national laws and looks how human trafficking can be considered as part of organised crime. The different types of trafficking, trends, causes, consequences and emphasis on women trafficking will also be described.

Chapter Three presents an analysis of the international legal frame work for human trafficking. It discusses how the legal instruments solve the various challenges in the investigation and prosecution of transnational human trafficking cases. The investigation and prosecution of organised crime in general and specifically human trafficking will be also analysed in detail.

Chapter Four examines how transnational women trafficking cases are investigated and prosecuted in Ethiopia based on laws and citing practical cases. It provides the general picture of women trafficking from Ethiopia and the conditions in the common destination countries. Organisations and laws that foster the combat of human trafficking from Ethiopia will also be discussed. The chapter points out the drawbacks under the Ethiopian criminal justice system.

Chapter Five concludes the study with a summary and a set of recommendations mainly following the discussion in chapter four.

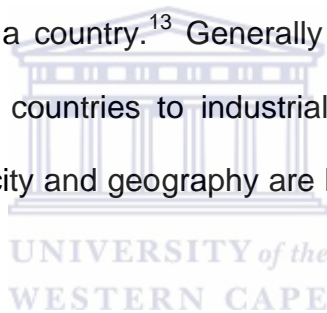
## CHAPTER TWO

### INTRODUCTION TO HUMAN TRAFFICKING

#### 2.1. Introduction

Normally “slavery” is considered as a horrible historical practice, which had been abolished many years ago.<sup>10</sup> Although every country in the world has outlawed slavery, it persists to present times.<sup>11</sup> Nowadays, human trafficking is regarded as “modern day slavery”, as it decreases the value of human beings to the level of commodities.<sup>12</sup>

Human trafficking involves transacting in human beings for the purpose of exploitation within and out of a country.<sup>13</sup> Generally speaking, the trend of human trafficking is from developing countries to industrialised countries, but individuals irrespective of age, sex, ethnicity and geography are being trafficked from every part of the world.<sup>14</sup>



Human trafficking is one of the fastest growing organised crimes. It is ranked as the third largest crime next to drug and armed trafficking,<sup>15</sup> with an estimated annual profit of US \$ 32 billion alone in 2005.<sup>16</sup> According to an International Labour Organisation (ILO) estimation, 2 450 000 individuals from all over the world are victims of trafficking.<sup>17</sup> Victims are mainly trafficked for the purpose of sex and economic exploitation. In both instances, women are the main victims, as 98 per cent of victims of sexual exploitation are women and girls, with only two per cent being

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<sup>10</sup> M. Roth (2010:17).

<sup>11</sup> K. Bales (2005:126).

<sup>12</sup> K. Cullen-DuPont (2009:7).

<sup>13</sup> L. Shalley (2010:87).

<sup>14</sup> L. Holmes (2010:1).

<sup>15</sup> F. Miko (2003:1).

<sup>16</sup> A Global Alliance against Forced Labour Report (2005:55).

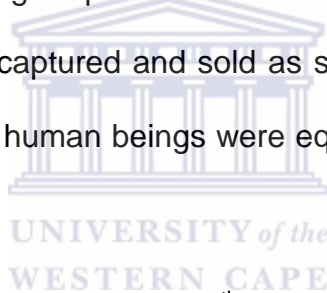
<sup>17</sup> A Global Alliance against Forced Labour Report (2005:14).

men and boys. Similarly, 56 per cent of forced labour exploitation is taken by women, leaving the 44 per cent for men and boys.<sup>18</sup> The high percentage of women victims is attributed to social, cultural and political factors, which deprive women from obtaining education, employment and taking advantage of other opportunities.<sup>19</sup>

This chapter discusses the historical development, meaning, causes, consequences and trends of human trafficking. It discusses human trafficking as organised crime and provides reasons for emphasis on women trafficking.

## **2.2. History of Human Trafficking**

Slavery is rooted in the history of human beings. It is found in the ancient civilisations of Egypt, Nubia and Greece, right up to the 19<sup>th</sup> Century, when people from Africa, Asia and Latin America were captured and sold as slaves in the United States and elsewhere. During this period, human beings were equated with property in terms of value.<sup>20</sup>



After the abolition of the slave trade in the 19<sup>th</sup> century, human trafficking flourished with almost similar features. Although individuals were not recognised as “slaves” under the laws of states, the treatment of individuals as chattels persists to this very day, given the high demand for exploitable human beings in the developed world as well as in the Middle East.<sup>21</sup>

As in the heyday of slavery, traffickers exert full control over the victims using various controlling mechanisms such as; threats, coercion, force or deception.<sup>22</sup>

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<sup>18</sup> A Global Alliance against Forced Labour Report (2005:15).

<sup>19</sup> O. Ebbe (2008:3).

<sup>20</sup> M. Roth (2010:16-7).

<sup>21</sup> M. Roth (2010:17).

<sup>22</sup> K. Cullen-DuPont (2009:7-8).

### 2.3. Definition of Human Trafficking

The term “trafficking” with regards to human beings was used for the first time under the 1904 International Agreement for the Suppression of the White Slave Traffic. This agreement was meant to eradicate the forcible or fraudulent recruitment of women and girls for the purpose of prostitution.<sup>23</sup>

Subsequently, other international instruments that deal with human trafficking were adopted. These were notably the following: The 1921 Agreement to Suppress Trafficking in Women and Children, the 1933 Agreement to Suppress Traffic in Women of Full Age and the 1949 Convention for the Suppression of Traffic in Person and the Exploitation of the Prostitution. However, none of these instruments define “trafficking”.<sup>24</sup>

In the second half of the 19<sup>th</sup> Century efforts were taken to define “trafficking”, mainly by organisations working in the area. The European Police Office defined “trafficking” from the perspective of forced sexual trade, while, Global Alliance against Trafficking in Women (GAATW) included forced labour, involuntary work and sexual exploitation. On the other hand, the IOM defined “trafficking” more broadly so as to include any form of forced labour. The definitions were controversial, as they tended to reflect the organisations’ experience in their fight against trafficking, thus failing to give a precise and comprehensive definition.<sup>25</sup>

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<sup>23</sup> C. Miguel (2011:37).

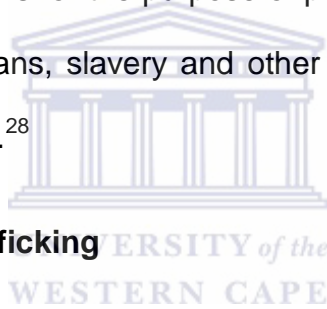
<sup>24</sup> A. Gallagher (2010:14).

<sup>25</sup> K. Cullen-DuPont (2009:8-9).

A generally acceptable definition of trafficking was introduced by the 2000 United Nation Protocol to Prevent, Suppress and Punish trafficking in Persons, Especially Women and Children.<sup>26</sup> This Protocol provides that

“trafficking in persons” shall mean 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 exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.<sup>27</sup>

The Trafficking in Persons Protocol, like the international instruments before it, focused on trafficking of persons for the purpose of prostitution, but it also embraces forced labour, removal of organs, slavery and other similar practices of slavery as occasions of human trafficking.<sup>28</sup>



## 2.4. Elements of Human Trafficking

Based on the Trafficking in Persons Protocol, three elements make up trafficking, namely action; means used; and the purpose of trafficking.<sup>29</sup> These are explained below in turn:

**2.4.1. Action:** designates the process of recruiting, transporting, transferring, harbouring or receipt of persons.<sup>30</sup>

**2.4.2. Means used:** represents the different mechanisms used to traffic individuals, which include the use of threat, force or other forms of coercion, fraud, deception,

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<sup>26</sup> A. Aronowits (2009:1).

<sup>27</sup> Article 3(a) of the Trafficking in Persons Protocol (2000).

<sup>28</sup> K. Cullen-DuPont (2009:9).

<sup>29</sup> UNHR (2010:34).

<sup>30</sup> UNODC Legislative Guides (2004:268).

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.<sup>31</sup>

**2.4.3. Purpose of Trafficking:** means the transferring of individuals for the purpose of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.<sup>32</sup>

## 2.5. National Laws of Human Trafficking

Apart from the international legal instruments, trafficking is also covered under the domestic laws of various jurisdictions. For example, the Criminal Code of Bahrain provides as follows:

“Every person who forces a male or a female to commit acts of immorality or prostitution by way of coercion, threat or deceit shall be liable...”<sup>33</sup>

Article 524 of the Lebanese Criminal Code similarly states,

“[a] person shall be sentenced to imprisonment for at least a year and fined for no less than two hundred pounds if he induces woman or a girl who has not reached the age of 21, even with her consent or a woman or a girl who is over the age of 21, using misrepresentation, violence, threats, or influence or other means of duress.”<sup>34</sup>

The Canadian Criminal Code on the other hand provides that

“[e]very person who recruits, transports, receives, holds, conceals or harbours a person or exercises control, direction or influence over the movement of a person, for the purpose of exposing them or facilitating their exploitation is guilty of an indictable offence and liable.”<sup>35</sup>

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<sup>31</sup> UNHR (2010:32).

<sup>32</sup> UNODC Legislative Guides (2004:268).

<sup>33</sup> Article 325 of the Criminal Code of Bahrain (1976).

<sup>34</sup> Article 524 of Lebanon Criminal Code (1943).

<sup>35</sup> Article 249.01 of the Criminal Code of Canada (1985).

The wording in the Canadian Criminal Code is broadly constructed to embrace different types of exploitation, whereas Bahraini and Lebanese codes limit trafficking only to instances of prostitution or sexual related exploitation.

## **2.6. Human Trafficking as against Human Smuggling**

Illegal migration generally falls under human trafficking or human smuggling.<sup>36</sup> Many features of human trafficking are similar to those of human smuggling; however, trafficking extends beyond procuring unlawful entry of a person to another state.<sup>37</sup>

Based on the 2000 Protocol against the Smuggling of Migrants by Land, Sea and Air, “smuggling of migrants” is defined as:

“the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a state party of which the person is not a national or a permanent resident,”<sup>38</sup>

Trafficking of human beings can be distinguished from human smuggling mainly on three elements.<sup>39</sup> These are outlined below:

**2.6.1 Consent:** Usually victims of smuggling consent to being smuggled, knowing the hazardous conditions they will face. Victims of trafficking on the other hand might have neither consented or their consent is meaningless due to coercion, deception or abusive actions by traffickers.<sup>40</sup>

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<sup>36</sup> L. Shalley (2010:8).

<sup>37</sup> UNODC Training Manual (2006:8-9).

<sup>38</sup> Article 3(a) of the Protocol against the Smuggling of Migrants by Land, Sea and Air (2000).

<sup>39</sup> UNODC Training Manual (2006:8-9).

<sup>40</sup> UNODC Handbook for Parliamentarians (2009:22).

**2.6.2 Exploitation:** Smuggling ends when the migrant reach their destination, whereas human trafficking is an on-going process in which traffickers will generate profit by exploiting the victims.<sup>41</sup>

**2.6.3 Trans-nationality:** Whereas smuggling always includes crossing of borders, human trafficking may be within as well as out of a country.<sup>42</sup>

Although human trafficking and smuggling are two different concepts, in reality they are intertwined. Most victims of smuggling are at high risk of exploitation, as most smugglers are also involved in human trafficking activities.<sup>43</sup>

## **2.7. Types of Human Trafficking**

Human trafficking takes many forms; it includes the widely known sexual trafficking as well as labour and organ trafficking.<sup>44</sup> In turn, trafficking for the purpose of sexual exploitation take different forms such as, prostitution of others, pornography, stripping, live-sex shows, mail-order brides, and sex tourism.<sup>45</sup> Although the severity of sexual exploitation might vary, generally it is severe everywhere. For instance, a study conducted on Nepalese girls trafficked to India, it is indicated that a brothel owner can take 90 to 95 per cent of the income, while the victims cannot even afford to buy food. Even worse, in average the girls were forced to have sex with 14 clients a day and in most cases the clients do not bother to use condom.<sup>46</sup>

Trafficking for labour exploitation is too broad. It can be for forced employment in apparently legitimate sectors like domestic servitude, factory, agricultural, mining,

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<sup>41</sup> C. Miguel (2011:43).

<sup>42</sup> UNODC Training Manual (2006:8-9).

<sup>43</sup> A. Aronowits (2009:6-8).

<sup>44</sup> OSCE (2010:9).

<sup>45</sup> UNODC *Handbook for Parliamentarians* (2009:12).

<sup>46</sup> P. Williams (2008:84).



fishing and construction, or victims can also be exploited to perform forced begging, participation in criminal activities like pickpocketing and selling of illegal goods.<sup>47</sup> Most of these illegitimate sectors are referred as '3-D' jobs, which stands for dirty, degrading, and dangerous jobs.<sup>48</sup>

Trafficking for organ is less known type of human trafficking, which is distinct from trafficking for the purpose of labour and sexual exploitation. Trafficking for organs, the main object of the crime is not the victim rather it involves the removal of organs, tissues or cells of the victim, for instance, kidneys.<sup>49</sup> In most instances the victims are deceived with money and told they can lead their normal life, however most of the victims will die or suffer from health problems.<sup>50</sup>

## **2.8. Transnational Human Trafficking as Organised Crime**

Human trafficking can be perceived as a human rights violation or as an indication of poverty or a result of a corrupt system or as part of organised crime. All these factors describe human trafficking from different angles.<sup>51</sup>

The concept organised crime is defined in various ways. Under UNTOC, it is defined as the commission of serious crimes, by organised criminal groups that comprise three or more persons, operating in concert for a period of time with the aim to obtain financial or material benefits.<sup>52</sup> Criminal organisations can be tightly or loosely structured groups.<sup>53</sup> The tightly structured criminal organisations such as; the Italian

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<sup>47</sup> OSCE (2010:9).

<sup>48</sup> ILO (2011:11).

<sup>49</sup> OSCE (2010:17).

<sup>50</sup> K. Bales (2005:150).

<sup>51</sup> K. Bales and R. Soodalter (2009:209).

<sup>52</sup> Article 2(a) of UNTOC (2001).

<sup>53</sup> F. Shanty and P. P. Mishra (2008:15).

Mafia and Japan Yakuza as well as loosely structured criminal groups take part in human trafficking.<sup>54</sup>

Transnational human trafficking by its nature necessitates the assistance of numerous individuals who operate in an organised manner. In most cases it involves (a) recruiters located at the state of origin, (b) individuals in transit state and (c) persons in states of destination.<sup>55</sup>

Recruiters are individuals who recruit victims at the community level. They are vital in trafficking, as they play the primary role by feeding false information regarding the opportunities abroad and the process of migration.<sup>56</sup> The second group consists of individuals who receive the victims from recruiters and transport, harbour or smuggle them to destination countries. In most cases, these groups bribe border guards and officials to transfer victims to destination.<sup>57</sup> The third category involves individuals who are at the destination, who guarantee the victims are well exploited and ensure the victims will not run away or report to police.<sup>58</sup>

## **2.9. Trends of Human Trafficking**

Although victims are trafficked from all over the world, large numbers of trafficked victims come from Southeast Asia, Latin America and Africa. The countries of destination, where there is a high demand for trafficked people, are the Middle East, Western Europe and North America.<sup>59</sup>

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<sup>54</sup> P. Williams (2008:136-37).

<sup>55</sup> OSCE (2010:24).

<sup>56</sup> K. Bales (2005:143).

<sup>57</sup> M. Roth (2010:19).

<sup>58</sup> M. Roth (2010:19).

<sup>59</sup> F. Miko (2003:3).

Trafficking patterns also vary. Usually, victims from Latin America and the Caribbean go to the United States, while victims from Africa are trafficked to Europe, Southern Africa and the Middle East. On the other hand, victims from Asia are usually found in the Middle East and Europe.<sup>60</sup>

The purpose of trafficking also varies from place to place. Trafficking in India and South America has been reported in connection with human organ trafficking.<sup>61</sup> In Africa and Asia it is mainly for the purpose of labour and sexual exploitation.<sup>62</sup>

Based on an ILO 2005 assessment, out of the 2 450 000 victims of trafficking, 1 360 000 victims originate from Asia and the Pacific, 270 000 from industrialised countries, 250 000 from Latin American and the Caribbean, 230 000 from the Middle East and North Africa, while 200 000 come from countries in transition, and 130 000 from sub-Saharan.<sup>63</sup>



## **2.10. Causes of Human Trafficking**

All criminal activities are not caused by poverty, although it is a factor to be taken into account in establishing the differences between the crimes committed and their prevalence in the world.<sup>64</sup> Indeed, the incidence of human trafficking is closely related to developmental issues, in which poverty is a major variable. It is small wonder that a significant number of victims of trafficking come from developing countries.<sup>65</sup>

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<sup>60</sup> UN GIFT (2008:7-8).

<sup>61</sup> M. Roth (2010:16).

<sup>62</sup> UN GIFT (2008:8).

<sup>63</sup> A Global Alliance against Forced Labour Report (2005:14).

<sup>64</sup> O. Ebbe (2008:34).

<sup>65</sup> A. Aronowits (2009:11).

Based on the UNODC report; Albania, Belarus, Bulgaria, China, Lithuania, Moldavia, Nigeria, Romania, Russia, Thailand and Ukraine are the leading countries from which many victims of trafficking originate.<sup>66</sup> While; Belgium, Germany, Greece, Israel, Italy, Japan, the Netherlands, Thailand, Turkey and the United States are listed as the top destination states.<sup>67</sup>

Victims of trafficking originate from different countries. However, they all share common features as regard the reason for their being trafficked. Most victims of trafficking originate from countries which have a high unemployment rate, poor living conditions, high illiteracy rates and poor health services. Civil war, environmental disasters, gender inequalities, divorce and corruption of authorities are additional facilitating factors.<sup>68</sup>

The causal factors need to be understood against the backdrop of the factors in the destination countries that could be called the “pulling” or attracting factors. The pull to the developed world has increased with the growth of globalisation, the increase in travel, and the concomitant relaxing of border restrictions in Europe. The high standard of living and salaries, high demand of migrant workers in destination countries are other factors which pull individuals from their countries.<sup>69</sup>

But, the above-listed factors do not translate into uniformity in the nature of trafficking. Rather, trafficking is described as a dynamic, flexible and opportunistic criminal activity which takes advantages of situations like conflicts, environmental disasters and economic recessions.<sup>70</sup>

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<sup>66</sup> UNODC Report (2010:44).

<sup>67</sup> UNODC Report (2010:44).

<sup>68</sup> A. Aronowits (2009:11).

<sup>69</sup> C. Miguel (2011:42).

<sup>70</sup> UN GIFT (2008:6).

## 2.11. Consequences of Human Trafficking

'It comes every time that I close my eyes... when I testified against my traffickers... and when I am at home... always in my dreams. I see myself still being taken to clients.'<sup>71</sup>

What is expressed above is not only the experience of a single victim, rather common trauma of trafficking victims. Starting from the state of origin up to the state of destination, victims face physical and sexual abuses. This lets them suffer from enduring psychological, physical and health problems.<sup>72</sup>

The effects of trafficking are severe. Studies conducted on the health effect of trafficking equate the trafficking with that of torture, as the victims have no control over themselves.<sup>73</sup> Trafficking victims have no or little access to health and medical facilities. They face disease and unwanted pregnancies. A recent study conducted on women and girls who were rescued from brothels in South Asian countries shows the prevalence of HIV among the victims of trafficking, as 22.9 per cent of the victims were tested positive.<sup>74</sup>

Apart from the health problem, most of the victims of trafficking suffer from psychological problems such as insecurity, fear of physical pain, depression, guilty feelings, sentiment of betrayal, helplessness, lack of trust and motive to live.<sup>75</sup> Significant numbers of victims also suffer from cognitive impairment and memory loss.<sup>76</sup>

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<sup>71</sup> C. Zimmerman M. Hossain *et al* (2006:21).

<sup>72</sup> UNODC Handbook for Parliamentarians (2009:41).

<sup>73</sup> OSCE (2010:22).

<sup>74</sup> UNODC Introduction to Human Trafficking (2008:83).

<sup>75</sup> UNODC Toolkit (2008:371).

<sup>76</sup> UNODC Introduction to Human Trafficking (2008:84).

Families and the community might be aware of the suffering of victims. Despite this fact, the families of the victims might still be looking for the promised wealth. For this reason, although victims might return to their home, they often will be disheartened by the responses of families and community.<sup>77</sup> Moreover, most cultures fail to recognise individuals who have worked as prostitutes or who are addicts of drugs and alcohol. Consequently, most victims of sexual exploitation are treated like criminals and experience severe stigmatisation from their families and community.<sup>78</sup>

The effect of trafficking is not limited to individual victims, but also impacts the social, economic and politics of states.<sup>79</sup> This will be the focus of the next discussion.

### **2.11.1. Social Consequences**

The social effect of human trafficking is not a one-time phenomenon, but leaves vast and enduring consequences. Although individual victims suffer mainly for health and psychological problems, the problem also extends to families and the community.<sup>80</sup>

For example, in Asia, families and communities are found suffering from addictive behaviour which was introduced by trafficking victims.<sup>81</sup> Trafficking is also identified as affecting the next generation. The trafficking of parents leaves children with nobody to look after them, which also affects the children's right to gain access to education and health facilities.<sup>82</sup>

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<sup>77</sup> UNODC Introduction to Human Trafficking (2008:86).

<sup>78</sup> OSCE (2010:15).

<sup>79</sup> C. Morehouse (2009:18).

<sup>80</sup> UN GIFT (2008:20).

<sup>81</sup> L. Shalley (2010:62).

<sup>82</sup> UNODC Introduction to Human Trafficking (2008:86).

Significant numbers of victims die prematurely; which let families and community suffer from guilt and despair for failing to protect them.<sup>83</sup> These consequences of trafficking are identified to cause family breakdowns and divorces.<sup>84</sup>

### **2.11.2. Economic Consequences**

In most developing countries, trafficking sustains the day to day life of the victims' families, while it supports the economy through remittances.<sup>85</sup> However, this contribution is insignificant in comparison to the loss. Countries that are highly affected by human trafficking suffer from human trafficking as it snatches away a significant portion of their human resources.<sup>86</sup> The problem gets worse as most of victims are youths,<sup>87</sup> who can contribute significantly to economic development by taking part in the labour market.<sup>88</sup>

Labour trafficking in particular affects the economy as some employers benefit more from exploitation. This disturbs the normal market competition.<sup>89</sup> Moreover, similar to other organised crimes, human trafficking also brings unequal distribution of wealth within the public.<sup>90</sup>

### **2.11.3. Political Consequences**

Human trafficking is facilitated by corrupt public officials and border guards who allow trafficking in return for bribes.<sup>91</sup> This creates suspicion on the trustworthiness of

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<sup>83</sup> UNODC Introduction to Human Trafficking (2008:86).

<sup>84</sup> L. Shalley (2010:61).

<sup>85</sup> ILO (2011:7-8).

<sup>86</sup> UNODC Introduction to Human Trafficking (2008:86).

<sup>87</sup> A Global Alliance against Forced Labour Report (2005:15).

<sup>88</sup> L. Shalley (2010:60-2).

<sup>89</sup> OSCE (2010:27).

<sup>90</sup> UNODC Introduction to Human Trafficking (2008:86).

<sup>91</sup> E. Pearson (2000:38).

the government officials, the politics and rule of law.<sup>92</sup> Outside the states of origin, trafficking also threatens the social, economic and political spheres of transit and destination countries. For instance, in the European Union, human trafficking is one of the five security threats of the region and in the United States trafficking is associated with terrorist financing.<sup>93</sup>

## 2.12. Why Emphasize on Women Trafficking?

'I am waiting to give birth to my baby. I hope it is not a girl. She must not suffer like me'<sup>94</sup>

The quote is taken from a 28-year-old victim of trafficking. The statement is the view of a single woman, but it also represents the opinion of many of them. Unfortunately, most of our socio-cultural values discriminate against women. As over and against men, women suffer comparative disadvantages in gaining access to education, employment, and other opportunities. Although women have limited opportunities, society expects much from them. Usually, women are expected to care for their family and raise children. Their responsibility will be more burdensome, particularly in developing countries as significant numbers of women are single parents due to deaths during internal conflicts.<sup>95</sup>

To fulfil their responsibility and family expectations, women migrate to foreign countries searching for a better salary to finance their families.<sup>96</sup> The majority of the women are employed in unskilled and less protected occupations such as domestic workers or 'entertainers' or in manufacturing and agriculture.<sup>97</sup> The insecure

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<sup>92</sup> L. Shalley (2010:66).

<sup>93</sup> UNODC Introduction to Human Trafficking (2008:99).

<sup>94</sup> UNIFEM (2005:2).

<sup>95</sup> GAATW (2010:10-12).

<sup>96</sup> GAATW (2010:13).

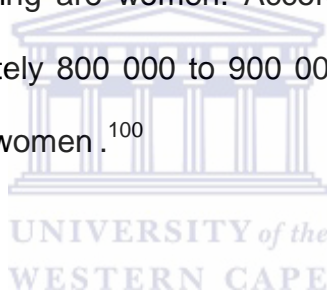
<sup>97</sup> S. Jolly and H. Reeves (2005:16).



occupations, coupled with the socio-economic deprivations, make women more vulnerable to traffickers, as the traffickers prefer victims with a low level of awareness, to minimise the risk.<sup>98</sup>

The leading organised criminal groups involved in trafficking women are the Russian, Chinese and Japanese criminal groups. Ordinarily, criminal groups compete with each other in their operations however; when it comes to women trafficking, criminal groups tend to complement each other, since all the groups can re-sell the trafficked women several times to different brothel owners.<sup>99</sup>

Given the vulnerability of women and the high profits yielded by exploiting them, most of the victims of trafficking are women. According to the USA Trafficking in Persons Report of approximately 800 000 to 900 000 trafficking victims who cross the border, of 80 per cent are women.<sup>100</sup>



### **2.13. Summary**

Human trafficking is the modern form of slavery. Victims mostly originate from developing countries and are recruited through coercion or deception for the purpose exploitation. Most cases of trafficking are the result of the work of organised criminal groups in the state of origin, state of transit, and state of destination. Trafficking mainly affects individual victims, but it also hampers the social, economic and political system of countries. The main causes of trafficking are economic, social or political problems that pull victims from their country, along with the attractive economic opportunities in developed countries. As the problems are more prevalent amongst women, human trafficking has become gender-sensitive

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<sup>98</sup> GAATW (2010:8).

<sup>99</sup> O. Ebbe (2008:18).

<sup>100</sup> CRS Report (2004:1).

# CHAPTER THREE

## THE INTERNATIONAL PRACTICE OF INVESTIGATION AND PROSECUTION OF TRANSNATIONAL WOMEN TRAFFICKING

### 3.1. Introduction

Human trafficking is a broad notion. Among others, it encompasses economic, social, political, and legal matters. Accordingly, although it is not their main focus, most international instruments have touched the on issue in one way or another. Nevertheless, there are a limited number of international instruments that are entirely devoted to human trafficking.<sup>101</sup>

The international instruments are crucial in the fight against human trafficking. Beyond defining the concept of trafficking, the instruments also regulate and solve the various questions such as who a trafficker is, how to handle the consent of the victim; and jurisdiction in transnational trafficking issues.

This chapter will discuss the international legal instruments that address human trafficking and how the instruments try to come up with solutions for the various issues raised in trafficking. It also looks at how organised crime is investigated and prosecuted in general and specifically the investigation of transnational human trafficking cases as part of organised crime.

### 3.2. International Legal Instruments Addressing Human Trafficking

The 1926 Slavery Convention and the 1955 supplementary Convention on the Abolition of Slavery have played a crucial role in eliminating the acceptable practice of slavery from the world, besides their contribution in developing the concept of

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<sup>101</sup> UNHR (2010:17).

human trafficking.<sup>102</sup> However, these conventions, neither deal with debt bondage nor sexual and labour exploitation.<sup>103</sup>

There are at present, various international as well as regional instruments regarding human trafficking. These include the 1966 International Covenant on Civil and Political Rights (ICCPR), the 1979 Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the 2000 United Nations Convention against Transnational Organised Crime (UNTOC), the 2000 Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organised Crime.<sup>104</sup>

One of the fundamental documents regarding women's right, (CEDAW), prohibits women trafficking and calls for states parties to take legislative and other necessary measures to suppress all forms of trafficking in women.<sup>105</sup> Furthermore, regional instruments such as the 2003 Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa; the 2005 Council of Europe Convention on Action against Trafficking in Human beings; the South Asian Association for Regional Cooperation Convention on Preventing and Combating Trafficking in Women and Children for Prostitution, the Economic Community of West African States' Declaration on the Fight against Trafficking in Persons are few regional instruments that deal with human trafficking.<sup>106</sup>

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<sup>102</sup> K. Bales (2005:47-8).

<sup>103</sup> UNHR (2010:20).

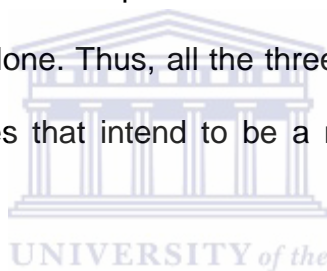
<sup>104</sup> UNHR (2010:19).

<sup>105</sup> Article 6 of CEDAW (1997).

<sup>106</sup> UNHR (2010:22).

All the international and regional instruments mentioned above are equal in terms of their relevance and contribution; however the UNTOC is taken as a milestone. It has introduced more acceptable and comprehensive provisions pertaining to human trafficking and shifted the traditional perception of trafficking from one that only perceives trafficking as a human right violation to a new perception of trafficking, as a transnational organised crime.<sup>107</sup>

UNTOC aims to deny safe havens for organised criminals, including those who took part in human trafficking. UNTOC is supplemented by three additional protocols that deal with the smuggling of migrants, the Trafficking in Persons Protocol and trafficking in firearms.<sup>108</sup> The three protocols are designed to supplement the convention and not to stand alone. Thus, all the three protocols must be interpreted with the convention and states that intend to be a member to the protocols must ratify the convention.<sup>109</sup>



The Trafficking in Persons Protocol entered into force on 25 December 2003. It aims to prevent and combat human trafficking, placing special emphasis on women and children.<sup>110</sup> The Protocol obliges states parties to criminalise the acts of trafficking, as provided under the Protocol.<sup>111</sup> States are required to criminalise both national as well as transnational human trafficking. Countries are also obliged to criminalise trafficking whether it is committed by a single individual or by organised criminal

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<sup>107</sup> A. Gallagher (2010:68).

<sup>108</sup> The Preamble of UNTOC (2001).

<sup>109</sup> The Preamble of UNTOC (2001).

<sup>110</sup> Article 2 of the Trafficking in Persons Protocol (2000).

<sup>111</sup> Article 5 of the Trafficking in Persons Protocol (2000).

groups.<sup>112</sup> States are also required to criminalise not only the act of trafficking but also the laundering of the proceeds of human trafficking.<sup>113</sup>

In addition to the Trafficking in Persons Protocol, UNTOC requires states parties to enact laws that criminalise participation in organised criminal groups.<sup>114</sup> As most organised crime cases are trans-boundary by their nature, it encourages states to use international cooperation, such as<sup>115</sup> mutual legal assistance, extradition, transfer of sentenced persons and joint investigations.<sup>116</sup>

The investigation and prosecution of transnational organised crime is time-consuming.<sup>117</sup> To solve this problem UNTOC requires states to provide for long statutes of limitation,<sup>118</sup> special investigation techniques such as electronic surveillance and undercover agents.<sup>119</sup>

In prosecuting organised crimes, UNTOC requires states to stipulate punishments, taking the severity of the crime into account. States are also required to ensure that any discretionary legal power related to prosecution is exercised to maximise the effectiveness of law enforcement measures.<sup>120</sup> In the course of prosecution, adjudication, conviction and imprisonment, the process should also take the nature of the crime into account.<sup>121</sup>

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<sup>112</sup> Article 34 of UNTOC (2001).

<sup>113</sup> Article 6(2) (b) of UNTOC (2001).

<sup>114</sup> Article 5 of UNTOC (2001).

<sup>115</sup> Article 1 of UNTOC (2001).

<sup>116</sup> UNODC Legislative Guides (2004:193-97).

<sup>117</sup> UNODC Legislative Guides (2004:120).

<sup>118</sup> Article 11(5) of UNTOC (2001).

<sup>119</sup> Article 20(1) of UNTOC (2001).

<sup>120</sup> Article 11(2) of UNTOC (2001).

<sup>121</sup> Article 11(1) of UNTOC (2001).

The above-mentioned legal instruments, in addition to criminalising the act of trafficking, also highlight the need to place special emphasis on women trafficking. This can be inferred particularly from the Trafficking in Persons Protocol, which places special emphasis on women and children trafficking.<sup>122</sup>

### **3.3. Who is a Trafficker?**

Distinct from other crimes, human trafficking is characterised by a high rate of women perpetrators. Among other factors, this is attributed to the fact that the victims themselves will start recruiting so as to escape continuous exploitation.<sup>123</sup>

Due to the nature of the trafficking, all the three elements of trafficking may not be executed by a single individual.<sup>124</sup> Observing this fact, UNTOC, besides punishing principal perpetrators, requires states parties to punish individuals who intentionally or knowingly took part in organising, directing, aiding, abetting, facilitating, or counselling of organised criminal groups.<sup>125</sup> In a similar manner the Trafficking in Persons Protocol requires states parties to punish individuals who intentionally or knowingly act as accomplices and who organise and direct human trafficking.<sup>126</sup> From the reading of the two instruments, it is clear that the question as to who is a trafficker is not limited to individuals who take the lead in the trafficking process, but also includes individuals who knowingly and intentionally took part in organising, aiding, directing, abetting, facilitating or counselling of human trafficking.<sup>127</sup>

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<sup>122</sup> The Preamble of the Trafficking in Persons Protocol (2000).

<sup>123</sup> UNODC Report (2010:47).

<sup>124</sup> M. Roth (2010:19).

<sup>125</sup> Article 5 of UNTOC (2001).

<sup>126</sup> Article 5 of the Trafficking in Persons Protocol (2000).

<sup>127</sup> UNODC Legislative Guides (2004:267).

Moreover, 'traffickers' are not only natural persons, but also include legal persons.<sup>128</sup> Corporations working in the area of tourism, entertainment, labour recruitment, airlines and travel agencies have been identified as potential entities which take part in human trafficking. Consequently, the answer as to who is a "trafficker" should not be restricted to natural persons but includes legal persons too.<sup>129</sup>

### **3.4. Consent of the Victim**

Almost all victims of trafficking give their consent directly or indirectly. Consent of the victim has been a controversial and challenging issue, as it was raised as one ground of defence in criminal cases.<sup>130</sup> Some countries criminalised trafficking irrespective of the consent of the victim while other countries require the consent of the victim in some instances, to differentiate this from lawful activities.<sup>131</sup>

The controversy is cleared by the Trafficking in Persons Protocol, as it provides that the consent of the victim is irrelevant once it is demonstrated that the victim has given consent due to deception, coercion, force or other prohibited means used by the traffickers.<sup>132</sup> The position taken by the protocol reflects the long-standing principle of international human rights law, which stipulates that a person is said to have consented if s/he was free to give his/her consent and would have consented without being deceived.<sup>133</sup>

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<sup>128</sup> Article 11 of UNTOC (2001).

<sup>129</sup> UNHR (2010:187).

<sup>130</sup> UNODC Toolkit (2008:6).

<sup>131</sup> K. Bales (2005:130-31).

<sup>132</sup> Article 3(b) of the Trafficking in Persons Protocol (2000).

<sup>133</sup> A. Gallagher (2010:28).

### 3.5. The Question of Jurisdiction

The rules relating to criminal jurisdiction are key in the investigation and prosecution of transnational human trafficking.<sup>134</sup> As traffickers take advantage of globalisation and pass through several jurisdictions, law enforcement agencies should be able to operate regardless of jurisdiction.<sup>135</sup>

UNTOC requests states to introduce territorial and extra territorial jurisdiction rules.<sup>136</sup> States are obliged to exercise jurisdiction when the offence is committed within their territory<sup>137</sup> or on board or vessel flying its flag or on an aircraft registered under its laws.<sup>138</sup> UNTOC also encourages states to establish extra-territorial jurisdiction, in particular when their national interest is affected. This happens when their nationals are victims or when their nationals take part in human trafficking activities.<sup>139</sup>

Although these rules of jurisdiction enable countries to exercise jurisdiction on various grounds, they do not eliminate all the barriers in the investigation of transnational criminal cases. Consequently, countries should use the international cooperation mechanisms along with jurisdictional rules.<sup>140</sup>

### 3.6. Investigating and Prosecuting Organised Crime

Organised criminal groups operate effectively without financial and boundary restrictions while law enforcement agents are limited in resources and barred by

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<sup>134</sup> UNODC (module 1) (2009:23).

<sup>135</sup> UNHR (2010:190).

<sup>136</sup> UNODC Legislative Guides (2004:104).

<sup>137</sup> Article 15(1) (a) of UNTOC (2001).

<sup>138</sup> Article 15(1) (b) of UNTOC (2001).

<sup>139</sup> Article 15(2) of UNTOC (2001).

<sup>140</sup> UNODC Legislative Guides (2004:40-1).



rules of jurisdiction.<sup>141</sup> Thus, in some instances organised criminal groups operate more effectively than the justice system.<sup>142</sup> The problem is exacerbated by the fact that some criminal justice systems do not recognise organised crimes as offences, which means special controls become necessary.<sup>143</sup>

The issue of organised crime is treated in two different ways: some countries enacted laws governing organised crime, while others use 'conspiracy' provisions of criminal laws to combat organised criminal groups.<sup>144</sup> The Racketeer Influenced and Corrupt Organisations Statute (RICO) of the USA,<sup>145</sup> and the 1982 Organised Crime legislation of Italy and Canada are examples of specific organised crime laws.<sup>146</sup>

The traditional street-level police investigation strategies have proven ineffective in combating organised crime.<sup>147</sup> Noting the difficulty, organised crime laws also provide special investigative techniques and procedures that boost the power of law enforcement agencies and eliminate the barriers in the investigation and prosecution of organised crime cases.<sup>148</sup>

The special investigative mechanisms like electronic surveillance, undercover agents, controlled delivery of drugs and testimonies of accomplices, enhance the investigation of organised crime.<sup>149</sup> Electronic surveillance, which is one of the best investigation techniques, is done by the intercepting of wire and oral communication. As most organised criminal groups use internet and phones, electronic surveillance

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<sup>141</sup> A. Leong (2007:77).

<sup>142</sup> F. Allum and K. Siebert (2003:2).

<sup>143</sup> A. Leong (2007:77).

<sup>144</sup> S. Admoli, A. Nicola *et al* (1998:132).

<sup>145</sup> K. Smith (2011:761).

<sup>146</sup> UNODC Legislative Guides (2004:28-31).

<sup>147</sup> S. Admoli, A. Nicola *et al* (1998:132).

<sup>148</sup> S. Admoli, A. Nicola *et al* (1998:132-33).

<sup>149</sup> L. Paoli and C. Fijnaut (2004:39).

enables investigators to gather information they might not get through other means.<sup>150</sup> Similarly, using undercover agents, law enforcement agencies gather information by posing as criminals.<sup>151</sup> These special techniques enable law enforcement agencies not only to gather information regarding the plan, operation and chain of organised criminal groups, but also serve as preventive tools.<sup>152</sup>

However, the investigation mechanisms can violate human rights such as the right to privacy if their application is not restricted. Most countries allow the use of special investigative techniques upon a court order. Investigators are also required to turn off the interception when the information is not relevant to the investigation.<sup>153</sup>

Organised crime laws also incorporate provisions that lessen the burden of proof. For example, RICO allows the use of evidence from previous trials. It also permits prosecution of multiple organised crimes committed in different places within the past ten years.<sup>154</sup> Unlike the indictment of the ordinary crimes it allows prosecutors to charge the multiple criminal offences in one indictment. In addition to criminal punishment, RICO enable victims to bring civil suits against the perpetrators.<sup>155</sup>

For example, in the investigation of the Zambada Garcia Organised criminal group, which was led by one of the Mexican drug lords, Ismael Zambade Garcia, using extradition and mutual legal assistance, US federal agencies arrest more than 240 suspects.<sup>156</sup> In the charge presented before the Northern District Court of Illinois, Ismael, along with ten members of the criminal organisation, were charged using

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<sup>150</sup> A. Leong (2007:170-71).

<sup>151</sup> P. Padhy (2006:235).

<sup>152</sup> S. Admoli, A. Nicola *et al* (1998:154-55).

<sup>153</sup> S. Admoli, A. Nicola *et al* (1998:34).

<sup>154</sup> B. Ohr (2001:51).

<sup>155</sup> W. Forbes (2008:260).

<sup>156</sup> K. Small and B. Taylor (2005:8).

RICO for distributing an estimated amount of 200 metric tons of cocaine and heroin in the USA. RICO also helped the prosecutor to charge multiple crimes such as trafficking in drugs, bribing officials, and use of weapons, all of which took place between 2005 and 2008.<sup>157</sup>

What has been said about organised crime investigation also applies for transnational human trafficking. However, due to the nature of the crime, the investigation and prosecution of trafficking cases has some special features as described below.

### 3.7. Investigation and Prosecution of Transnational Human Trafficking Cases

'I did not believe in police. I really believed what my trafficker said. My trafficker said they will put you in jail; they will send you back... she said in this country, dogs have more right. And I believed. I believed everything she said because she has been living here for long time, she knows, she speaks English, she has money, everything and I did not have anything.'<sup>158</sup>

These are the words of one of the victims of trafficking in the USA. Although, this shows the fear of a single trafficking victim, it underlines the general perception of victims towards law enforcement agencies. Even on occasions when victims have been contacted by law enforcement agents, as victims are told by the traffickers not to disclose the actual facts, the victims will not reveal the truth.<sup>159</sup>

The victims' fear is not groundless, as most countries tend to arrest, prosecute and convict victims on grounds of illegal entries, falsified documents and participation in illegal activities such as prostitution, rather than considering them as victims.<sup>160</sup> For

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<sup>157</sup> *United States of America v Joaquin Guzman-Loera et al* (2009).

<sup>158</sup> *The Crime of Human Trafficking* (2006:8).

<sup>159</sup> A. Richard (1999:32).

<sup>160</sup> A. Gallagher and P. Holmes (2008:331).

these reasons, most trafficking victims fear<sup>161</sup> and lack trust in the criminal justice system and fail to collaborate with law enforcement agencies.<sup>162</sup> But, without the cooperation of victims, investigation and prosecution of human trafficking cases becomes difficult.<sup>163</sup>

Apart from the challenge associated with victims in the course of an investigation law enforcement agents are required to investigate overseas as well facing language and cultural barriers. Thus, the investigation and prosecution of transnational human trafficking cases are regarded as the most labour and time-intensive crimes.<sup>164</sup>

An effective criminal justice response to human trafficking necessitates strong anti-trafficking legislation. That covers trafficking for all kinds of exploitation and applies regardless of gender. In addition to the common forms of trafficking, it also needs to embrace forced marriage, illegal recruitment, debt bondage, participation in organised crime and money laundering. This can be done by enacting special anti-trafficking legislation such as was done in Bolivia, Indonesia and the US, or by amending existing laws to include anti-trafficking provisions as done by Australia and Germany.<sup>165</sup>

Anti-trafficking measures also necessitate the establishment of a special investigation and prosecution division consisting of well-trained professionals in the field of anti-trafficking. The structure, finance and establishment of the special investigations unit must be designed so that it can tackle the problem effectively.<sup>166</sup> A

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<sup>161</sup> The Crime of Human Trafficking (2006:8).

<sup>162</sup> A. Farrell, J. Mc Devitt and S. Fahy (2008:25).

<sup>163</sup> A. Gallagher and P. Holmes (2008:332).

<sup>164</sup> A. Farrell, J. Mc Devitt and S. Fahy (2008:24).

<sup>165</sup> A. Gallagher and P. Holmes (2008:321-22).

<sup>166</sup> UNODC Handbook for Parliamentarians (2009:36-7).

good example is the United Kingdom is (UK) multi-agency human trafficking centre, which consists of trafficking specialists from different disciplines.<sup>167</sup>

Human trafficking investigation agencies can proceed by way of investigations through informants or by identifying suspicious spots or businesses.<sup>168</sup> For instance, through the coordination of organised crime agencies and other UK authorities, local searches undertaken on 822 premises such as brothels, massage parlours and saunas on 3 October 2007, the UK police rescued 167 victims who originated from China, South East Asia, and Eastern Europe.<sup>169</sup>

Apart from the other factors, as women are the main victims of trafficking, the investigation and prosecution of human trafficking should be designed in a gender-sensitive manner.<sup>170</sup> This can be done by taking note of international best practices and by importing investigation and prosecution techniques used elsewhere in rape, sexual exploitation and domestic violence cases.<sup>171</sup> As most victims experience severe trauma, investigators should be skilled and be supported by experts.<sup>172</sup> Moreover, victims need to be treated with a great degree of humaneness and respect and should be informed about their rights and opportunities.<sup>173</sup>

Although the duty to investigate and prosecute traffickers primarily lies with the state, the gathering of evidence, examination of witnesses, search and seizure cannot be achieved without international cooperation.<sup>174</sup> A good example is the practice of the

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<sup>167</sup> A. Gallagher and P. Holmes (2008:324).

<sup>168</sup> The Crime of Human Trafficking (2006:11-3).

<sup>169</sup> Pentameter Facts and Figure available at [http://www.policeoracle.com/news/Pentameter-Facts-and-Figures\\_16691.html](http://www.policeoracle.com/news/Pentameter-Facts-and-Figures_16691.html) (accessed on 6 October 2011).

<sup>170</sup> UNODC Handbook for Parliamentarians (2009:34).

<sup>171</sup> A. Gallagher and P. Holmes (2008:333).

<sup>172</sup> UNODC (module 3) (2009:10).

<sup>173</sup> A. Gallagher and P. Holmes (2008:330).

<sup>174</sup> C. Fijnaut (2001:280).

European Union. Although most European Union countries have enacted anti-trafficking and organised crime laws, the investigation and prosecution of human trafficking is supported by the European Union Human Trafficking Task Force, which facilitates investigation among 13 European Union countries.<sup>175</sup>

Apart from sentencing traffickers, equal weight should be given to the seizure and confiscation of the proceeds from trafficking. This is very important as it discourages traffickers and avoids the use of the proceeds to expand trafficking.<sup>176</sup>

Transnational human traffickers often operate in criminal networks. Hence, in order to combat trafficking effectively, criminal justice systems should use organised crime rules with anti-trafficking laws as this gives investigators and prosecutors more discretion in managing trafficking cases.<sup>177</sup> For instance, by using organised crime legislation prosecutors can charge multiple crimes linked with human trafficking such as rape, forged documents and money laundering, in one indictment.<sup>178</sup>

For example, in the case of *State of New Jersey Vs. Allen Brown et al*<sup>179</sup> Allen Brown, with his seven collaborators, who profited from the sex trade forced the victims to bring the daily quota of wages that ranged from 500 to 1 000 US dollars, were charged with racketeering, human trafficking, money laundering, promoting prostitution, tax evasion, drug and weapon offences by using RICO with other anti-trafficking laws of USA.<sup>180</sup> Similarly, in the *Giant Labour Solutions* case,<sup>181</sup> eight Uzbekistani accused were charged with trafficking victims to the USA for labour

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<sup>175</sup> A. Gallagher and P. Holmes (2008:336).

<sup>176</sup> UNODC Legislative Guides (2004:273-74).

<sup>177</sup> K. Smith (2011:781).

<sup>178</sup> K. Smith (2011:781).

<sup>179</sup> *State of New Jersey v Allen Brown et al* (2009).

<sup>180</sup> *State of New Jersey v Allen Brown et al* (2009).

<sup>181</sup> *United States of America v Abrorkodja Askarkhodjaev et al* (2009).

exploitation. The charges were racketeering, forced labour trafficking, immigration violations, identity theft, visa fraud, extortion, money laundering and other crimes.<sup>182</sup>

Academics as well as practitioners tend to regard human trafficking as one part of organised crime, however, when it comes to the investigation and prosecution of human trafficking as part of organised crime, the practice seems to focus on other types of organised crimes such as drug trafficking. For this reason there are few investigations and prosecutions of human trafficking cases as organised crime cases. For instance, although human trafficking has been included in the list of RICO as one predicate offence ever since 2003, prosecuting human trafficking cases using RICO started only six years later in the case of Giant Labour Solution cases, 2009.<sup>183</sup>

One of the reasons for the failure to investigate human trafficking cases as organised crime is due to the nature of the crime. For instance, it is almost impossible to use undercover agents for human trafficking cases, as the undercover agent needs to be a real victim and go through exploitation and experience the harsh consequences of trafficking.<sup>184</sup>

Another factor is that there are different definitions of organised crime in different countries. Although some national laws recognise human trafficking as organised crime, not all national laws incorporate human trafficking under the organised crime legislation.<sup>185</sup>

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<sup>182</sup> *United States of America v Abrorkodja Askarkhodjaev et al* (2009).

<sup>183</sup> K. Smith (2011:761).

<sup>184</sup> A. Richard (1999:32).

<sup>185</sup> C. Bruckert and C. Parent (2002:13-5).

## 2.8. Summary

The various international instruments that deal with human trafficking require countries to enact strong anti-trafficking laws that facilitate the investigation and prosecution of traffickers. As human trafficking is also one type of organised crime, in the investigation and prosecution of trafficking cases, countries use domestic laws dealing with human trafficking and organised crime, along with international cooperation mechanisms. This is very crucial as it enhances the investigation and prosecution of trafficking cases.





# CHAPTER FOUR

## INVESTIGATION AND PROSECUTION OF TRANSNATIONAL WOMEN TRAFFICKING IN ETHIOPIA

### 4.1. Introduction

On 29 August 2011, the American television news programme, Central-News Network (CNN) broadcast the case of Shweyga Mullah, an Ethiopian trafficking victim who was working as a maid for Hannibal Gaddafi and his wife Aline Gaddafi. She sustained extensive burns from boiling water that was poured on her by Aline Gaddafi.<sup>186</sup> Twenty days later, on 18 September 2011, one prominent Ethiopian newspaper, *The Reporter*, published the visit of the Saudi Arabian Employment Agency's representatives to Ethiopia and their announcement to employ at least 45 000 Ethiopian housemaids and labourers per month.<sup>187</sup>

These are just two examples that show the misery of Ethiopian trafficked women and the high demand for Ethiopian employees in other countries. But such news does not surprise Ethiopians, as it is a notorious source of grief for many.

However, this kind of information triggers questions such as: what is the basic reason for women trafficking from Ethiopia? What is the response of the Ethiopian government? Are there any laws governing human trafficking? If there are any, how do these laws regulate the issue of women trafficking? This chapter addresses these and other questions.

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<sup>186</sup> Sadistic Brutality in Libya available at <http://edition.cnn.com/video/#/video/world/2011/08/28/rivers.scarred.after.gadhafi.cnn?iref=allsearch>, (accessed on 18 September 2011).

<sup>187</sup> More than 45 000 Ethiopian workers are in need each year in Saudi Arabia available at <http://www.ethiopianreporter.com/news/293-news/3424----45-----.html> (accessed on 18 September 2011).

## 4.2. Women Trafficking from Ethiopia

Similar to many African countries, most Ethiopians have a poor standard of life. Studies indicate that more than half of the population earn less than 1 \$ US dollar a day.<sup>188</sup> Unfortunately, Ethiopian women are the main victims of this poverty. The majority of Ethiopian women are denied equal access to education, trainings and employment opportunities. For this reason very few women work as public servants.<sup>189</sup> For example only 28 per cent of the civil servants are women. Even worse, only 1.79 per cent of the positions are occupied by professional women, while 98 per cent of the women work in lower positions which do not require decision making capacity.<sup>190</sup>

Due to the various problems in Ethiopia, at present migration is considered as a means of survival and a strategy to improve life. Hence, a significant numbers of Ethiopians are forced to migrate legally and illegally.<sup>191</sup> Although there are no specific data indicating the scale of migration from Ethiopia, it is generally agreed that more Ethiopian women migrate compared to men.<sup>192</sup> Migrants leave the country mainly in two ways: by taking air flights or crossing borders to neighbouring countries on foot. At the Ethiopian-Djibouti border, everyday 10 to 80 persons are estimated to cross the border illegally.<sup>193</sup>

The 'culture of migration' that honours cross-border migration as a personal, social and economic achievement is another catalyst for transnational migration. This culture is more prevalent in the rural parts of Ethiopia such as Arsi, Jimma and Wollo

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<sup>188</sup> S. Gish, W. Thay *et al* (2007:37).

<sup>189</sup> Report of the Federal Democratic Republic of Ethiopia (2006:3).

<sup>190</sup> E. Kebede (2005:2).

<sup>191</sup> ILO (2011:8).

<sup>192</sup> E. Beshah (2008:18).

<sup>193</sup> ILO (2011:44-6).

where women are forced to migrate to support their families at the expense of their education, marriage and children.<sup>194</sup> The high demand for labour in the common destination countries Kuwait, Saudi Arabia, the Sudan, U.A.E. and Lebanon, enhance migration from the country.<sup>195</sup> The discovery of petroleum oil in Sudan has boosted the demand of cheap manpower from Ethiopia.<sup>196</sup>

Besides helping their families by sending money, Ethiopian migrants also support the economy through remittances. Based on the Human Development Report of 2009, it is estimated that Ethiopia gets US \$ 359 million every year from remittances, which accounts for 1.5 per cent of the gross domestic product, most of which is attributed to women migrants.<sup>197</sup>

The first Ethiopian women migrants left the country in 1989 for Saudi Arabia and Kuwait, where they were employed as housemaids.<sup>198</sup> Ever since that time, Ethiopian women migrate at an increasing and alarming rate.<sup>199</sup> About 30 000 Ethiopian women migrate to the Middle East annually through legal means. But, 30 000 Ethiopian women are estimated to migrant illegally.<sup>200</sup> The majority of the women leave the country as potential housemaids. However, most of them end up as victims of trafficking as they are deceived regarding the type of work, payments or working hours.<sup>201</sup> In some destinations, particularly in brothels near the oil fields of Sudan, the victims are exploited in the sex trade although they leave their villages

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<sup>194</sup> ILO (2011:23).

<sup>195</sup> USA Report (2010:144).

<sup>196</sup> ILO (2011:76).

<sup>197</sup> ILO (2011:7-8).

<sup>198</sup> B. Fernandez (2011:89).

<sup>199</sup> E. Beshah (2008:18).

<sup>200</sup> B. Fernandez (2011:90).

<sup>201</sup> GTZ (2003:17).

hoping to be employed as domestic workers.<sup>202</sup> Until now there are no specific statistics indicating the number of victims. However, in Lebanon alone, there are between 20 000 to 25 000 estimated trafficked Ethiopian women.<sup>203</sup>

Due to the lack of awareness and poor access to information in the rural parts of Ethiopia, more women are trafficked from the rural parts.<sup>204</sup> Traffickers mainly target young women, with 83 per cent of the victims being between 20 to 30 years.<sup>205</sup> Women who fail the national education exam are susceptible to being trafficked.<sup>206</sup> The majority of the victims are from poor families. Their families sell cattle or borrow money to finance the victims' migration.<sup>207</sup>

The victims are recruited by different people, including families, friends, local brokers, tourists and returnees.<sup>208</sup> Travel and employment agencies also use their legitimate businesses as cover to traffic women.<sup>209</sup> The common traffickers to the Middle East are merchants engaged in import and export, travel and tourism businesses. From the trafficking of each woman, traffickers earn an average of US \$ 800.<sup>210</sup> These traffickers use their business networks to facilitate the trafficking by establishing contacts.<sup>211</sup> Events such as the Muslim pilgrimages of Hajj and Oumra are also used as a pretext to traffic women, particularly to Saudi Arabia.<sup>212</sup>

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<sup>202</sup> USA Report (2010:144).

<sup>203</sup> GTZ (2003:24).

<sup>204</sup> GTZ (2003:24).

<sup>205</sup> B. Fernandez (2011:91).

<sup>206</sup> ILO (2011:22).

<sup>207</sup> ILO (2011:27).

<sup>208</sup> ILO (2011:30).

<sup>209</sup> E. Kebede (2005:25).

<sup>210</sup> K. Fitzgibbon (2003:86).

<sup>211</sup> B. Fernandez (2011:90).

<sup>212</sup> Ethiopia Country of Origin Report (2007: 131).

The common social, economic and political consequences of human trafficking also affect Ethiopian women victims, their families as well as the nation. The borrowing and selling of assets in order to finance the travel of the victims and the 'culture of migration' have a negative impact on the very existence of families. In the regions where the rate of trafficking is high, trafficking increases vulnerability of children and the rate of divorce.<sup>213</sup> Apart from its effect on the society, Ethiopia's economy in the process is suffering from the loss of productive labour.<sup>214</sup>

#### **4.3. Conditions in Destination Countries for Ethiopian Women Migrants**

In the common destination countries for Ethiopian women, which mean the Middle East, employing a foreign domestic worker designates high social status.<sup>215</sup> Many of these workers come from the Philippines, Indonesia, Sri Lanka, Nepal, Ethiopia and Somalia. Normally, the domestic workers are obliged to work 12 to 16 hours a day, with little or no payment. Even when they finish their daily chaws they are taken to their employer's relatives or friends to work for them. In addition to the burden of work, often the domestic workers face physical, sexual and psychological abuse.<sup>216</sup>

Although domestic workers are in high demand in the Middle East, their rights are hardly protected. For example, under Kuwaiti labour law domestic workers are not protected. While other Kuwaiti national laws stipulate the obligation to protect the right of domestic workers, due to poor law enforcement, the rights of domestic workers are hardly protected.<sup>217</sup> Similar practices have been reported in Saudi Arabia, where numerous cases of violations against domestic workers are never

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<sup>213</sup> ILO (2011:54).

<sup>214</sup> ILO (2011:56).

<sup>215</sup> B. Fernandez (2011:89).

<sup>216</sup> M. Mahar (2002: 729-30).

<sup>217</sup> ILO (2011:13).

investigated.<sup>218</sup> In both these countries, domestic workers are not allowed to leave without their employer's permission. Even in instances where they commit crimes out of anger, rather than mitigating their punishment, they are given harsh punishments.<sup>219</sup> On 3 August 2011, an Ethiopian housemaid who was abused and threatened to be deported by her employer was sentenced to death by a Saudi Arabia court for killing her employer and her two-year-old child, without mitigating the punishment considering the abuse that pushed her to the crime.<sup>220</sup>

The increase in the number of death in domestic workers in the Middle East has created suspicion. For example, in 1997 in Lebanon alone, 47 Sri Lankan domestic workers were reported to have committed suicide, all of them by jumping from their employers' apartments.<sup>221</sup> Similarly, between 1996 and 1999 the Ethiopian newspapers have reported the return of 67 bodies of Ethiopian women from the Middle Eastern countries. All of them were alleged to have committed suicide. Although the governments in this region claim such instances are natural deaths, there is high suspicion that these deaths are the results of foul play. The doubt is supported by the fact that there is almost no legal action taken against for violating the rights of domestic workers.<sup>222</sup>

Noticing the severity of women trafficking, the Ethiopian government started to take action. Among other things, it created the private employment agency and established an Inter-Ministerial National Committee.<sup>223</sup> The government also

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<sup>218</sup> Human Rights Watch (2010:12-3).

<sup>219</sup> ILO (2011:14).

<sup>220</sup> Ethiopian Maid Sentenced to Death in Double Murder case available at <http://ethiopiaforums.com/ethiopian-maid-sentenced-to-death-in-double-murder-case> (accessed on 8 October 2011).

<sup>221</sup> R. Jureidini (2004:74).

<sup>222</sup> UNICEF (2003:31).

<sup>223</sup> UNICEF (2003:31).

concluded a bilateral agreement with the government of Kuwait and Sudan and banned migration for work in Lebanon, Syria and Qatar.<sup>224</sup>

But, as Ethiopia has no diplomatic representatives in the common destination countries, even where the victims call for help, there is no Ethiopian diplomat to represent and safeguard their rights.<sup>225</sup>

#### **4.4. Organisations Working against Human Trafficking in Ethiopia**

The effort to combat human trafficking in Ethiopia is carried out by governmental and non-governmental institutions. The Ethiopian Ministry of Labour and Social affairs, the Ministry of Justice, the Federal Police Office, the Ministry of Foreign Affairs, and the Ministry of Women's Affairs are the main government bodies.<sup>226</sup>

In 1999 the Ministry of Foreign Affairs established an Inter-Ministerial National Committee which aims to work on the prevention and protection of women trafficked to the Middle East. However, until now the committee has not been very active.<sup>227</sup>

The investigation and prosecution of trafficking cases is mainly conducted by the Ministry of Justice and the Federal Police. The Federal Police also work in raising public awareness about human trafficking.<sup>228</sup>

The International Labour Organisation, the United Nations Children's Fund, the Ethiopian Women's Lawyers Association, and the Good Samaritan Association are

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<sup>224</sup> ILO (2011:64).

<sup>225</sup> E. Kebede (2005:11).

<sup>226</sup> E. Kebede (2005:41).

<sup>227</sup> ILO (2011:62).

<sup>228</sup> Ethiopia Country of Origin Report (2007:135).

non-governmental organisations that work in assisting victims by providing shelter, medical assistance, psychological counselling and lobbying the government<sup>229</sup>

Acknowledging the prevalence of trafficking, both the governmental and non-governmental organisations have identified five key regions with a high trafficking rate. The Ethiopian Immigration Authority verifies the legality of migrants at the identified security checkpoints. Through this mechanism, the border guards at the Ethiopia-Somalia border have been able to stop numerous illegal migrations.<sup>230</sup>

#### **4.5. Ethiopian Laws Addressing Human Trafficking**

The newly promulgated Ethiopian Constitution comprises many of the fundamental human rights. The right to life, liberty and security of people, the right of the accused, the right to freedom of expression and religion are few examples. Moreover, it incorporates provisions that aim to protect the rights of women and which prohibit any kind of traditional harmful practice, customs and notions that suppress women.<sup>231</sup> The Ethiopian constitution also prohibits human trafficking under article 18(2) which provides as follows:

‘No one shall be held in slavery or servitude; trafficking in human beings, for whatever purpose it might be, is prohibited’.<sup>232</sup>

In addition to the domestic laws, international agreements ratified by Ethiopia are considered as integral part of the nation law.<sup>233</sup> Ethiopia is member of numerous international instruments such as the United Nations Convention on the Elimination of all Forms of Discrimination against Women, the United Nations Convention for the

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<sup>229</sup> Ethiopia Country of Origin Report (2007:135).

<sup>230</sup> Ethiopia Country of Origin Report (2007:136).

<sup>231</sup> Article 35(4) of the Ethiopian Constitution (1995).

<sup>232</sup> Article 18(2) of the Ethiopian Constitution (1995).

<sup>233</sup> Article 9(4) of the Ethiopian Constitution (1995).



Suppression of the Trafficking in Persons and the Exploitation of the Prostitution of Others, ILO Private Employment Agencies Convention and the 2000 United Nations Convention against Transnational Organized Crime (UNTOC). However, the Trafficking in Persons Protocol has not been ratified.<sup>234</sup>

The 2005 Ethiopian Criminal Code, the Employment Exchange Service Proclamation No. 632/2009 and the Labour Proclamation No. 377/2003 are additional laws that embrace anti-trafficking provisions.<sup>235</sup>

Proclamation No. 377/2003 mainly governs the employee-employer relationships within the country; it also incorporates provisions governing the employment relationship of Ethiopians in foreign countries. Under Article 175 stipulates that an Ethiopian may only be employed in a foreign country on the condition that the Ministry of Labour and Social Affairs have been assured that their human rights and dignity will be protected.<sup>236</sup>



The Employment Exchange Service Proclamation No. 632/2009 aims to protect the rights, safety and dignity of Ethiopians who are sent or employed abroad through private employment agencies.<sup>237</sup> Accordingly, it obliges private employment agencies to ensure the protection of human rights, safety and dignity of employees. The agencies are also required to guarantee that the Ethiopian workers.<sup>238</sup> In cases of failure to comply with these obligations, the liability rise with the employment agency and the third party who employs the worker.<sup>239</sup>

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<sup>234</sup> E. Kebede (2005:13).

<sup>235</sup> Y. Endeshaw, M. Gebeyehu and B. Reta (2004:60).

<sup>236</sup> Article 175 of Proclamation No. 377 (2003).

<sup>237</sup> The Preamble of Proclamation No. 632 (2009).

<sup>238</sup> Article 20(1) of Proclamation No. 632 (2009).

<sup>239</sup> Article 22 of Proclamation No. 632 (2009).

Apart from the above-mentioned legislation, the Ethiopian Criminal Code encompasses provisions that prohibit slavery, slavery like practices, women and child trafficking, sending employees without a licence, participation in illegal associations that are engaged in slavery and human trafficking activities.<sup>240</sup>

#### **4.6. The Definition of “Human Trafficking” and “Trafficker” under Ethiopian Laws**

Although Ethiopia is highly affected by human trafficking there is neither specific legislation nor a policy that regulates the problem of trafficking.<sup>241</sup> Thus, the definition of human trafficking under the Ethiopian legislation can only be inferred from the scattered provisions that criminalise trafficking.<sup>242</sup>

For example, article 597(1) reads

“Whoever by violence, threat, deceit, fraud, kidnapping or by the giving of money or other advantage to the person having control over a woman or a child, recruits, receives, hides, transports, exports or imports a woman or a minor for the purpose of forced labour is punishable with rigorous imprisonment...”<sup>243</sup>

Article 635 states

“Trafficking in women or minors, whether by seducing them, by enticing them, or by procuring them, or otherwise inducing them to engage in prostitution even with their consent is punishable...”<sup>244</sup>

From a reading of the two articles one can infer the definition of human trafficking involves the exploitation of women and children for the purpose of labour and sexual exploitation. However, the definition excludes other forms of exploitation such as organ trafficking. It also fails to recognise the trafficking of men.

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<sup>240</sup> W. Sheferaw (2010:21).

<sup>241</sup> Y. Endeshaw, M. Gebeyehu and B. Reta (2004:57).

<sup>242</sup> ILO (2011:59-60).

<sup>243</sup> Article 597 of the Criminal code of Ethiopia (2005).

<sup>244</sup> Article 635 of the Criminal code of Ethiopia (2005).

From a reading of article 20 and article 22 of the Employment Exchange Services Proclamation, human trafficking denotes the human right violation of persons who are sent abroad by employment agencies for the purpose of employment.<sup>245</sup> This proclamation has a broader scope and applies regardless of sex and age. However, it only applies to individuals who become victims of trafficking after being sent by private employment agencies.

The preceding paragraphs show the vagueness of the concept of human trafficking under Ethiopian legislation. Taking the common features from the above-cited provisions, for the purpose of this paper, human trafficking under Ethiopian law is defined as: women and child recruitment and transportation by using violence, threat, deceit or through other means for the purpose of sexual and labour exploitation.

Accordingly, based on the above definition and provisions of the criminal code, the concept of 'trafficker' includes principal offenders and individuals who carried or transported or aided the trafficking of women and children for the purpose of sexual and labour exploitation, having the knowledge or intent.<sup>246</sup> The notion of a trafficker also extends to associations, gangs and juridical persons (e.g. companies) who took part in enslaving, trafficking or exploitation of human beings.<sup>247</sup>

#### **4.7. Consent of the Victim under Ethiopian Laws**

The issue of consent of the victim in human trafficking cases can be inferred from the human trafficking provisions and the general provisions governing criminal acts. The

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<sup>245</sup> Article 20 and article 22 of Proclamation No. 632 (2009).

<sup>246</sup> Article 597 and article 32(2) (a) of the Criminal Code of Ethiopia (2005).

<sup>247</sup> Article 599 and article 638 of the Criminal Code of Ethiopia (2005).

provision which deals with women and child trafficking for sexual exploitation clearly stipulates the consent of the victim cannot serve as a defence.<sup>248</sup>

Similarly, the provision which deals with consent of the victim for all criminal acts stipulates that the consent of the victim can be raised as a defence only in cases that are punishable upon complaint, such as adultery. Regarding crimes that are punishable upon accusation such as rape, murder and human trafficking, the consent of the victim cannot be raised as a defence.<sup>249</sup>

#### **4.8. Jurisdiction under Ethiopian Laws**

Ethiopian law enforcement agencies can exercise their power when a crime is committed within the territory of Ethiopia. The territory comprises the land, air and water bodies.<sup>250</sup> In cases where offenders escape and take refuge in other countries, law enforcement agencies are obliged to request that they be extradited.<sup>251</sup> If the requested state fails to extradite, the prosecution of the refugee should be requested.<sup>252</sup>

Law enforcement agencies have extra-territorial jurisdiction when crimes are committed against the state's safety or integrity or against its institutions, essential interests or currency of the country.<sup>253</sup> For crimes that are committed by organised criminal groups that threaten the health and morality of the public, such as drug

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<sup>248</sup> Article 635 of the Criminal Code of Ethiopia (2005).

<sup>249</sup> Article 70 of the Criminal Code of Ethiopia (2005).

<sup>250</sup> Article 11 of the Criminal Code of Ethiopia (2005).

<sup>251</sup> Article 11(3) of the Criminal Code of Ethiopia (2005).

<sup>252</sup> Article 12(1) of the Criminal Code of Ethiopia (2005).

<sup>253</sup> Article 13 of the Criminal Code of Ethiopia (2005).

trafficking and human trafficking, law enforcement agencies can exercise extra-territorial jurisdiction.<sup>254</sup>

#### **4.9. Organised Crime under Ethiopian Law**

Ethiopia is one of the countries that uses the provisions of conspiracy to manage the issue of organised crime. Thus, the concept of organised crime can be inferred from the conspiracy provisions, which means an agreement among two or more persons to commit serious crimes. The phrase 'serious crimes' designates crimes that are punishable with five or more years of imprisonment.<sup>255</sup> The punishment of human trafficking ranges from five to 20 years of imprisonment. Hence, cases involving two or more traffickers are regarded as organised crime under Ethiopian law.

Unlike in other countries, the Ethiopian Criminal Code does not criminalise mere participation in criminal organisation.<sup>256</sup> Organised crime under the Ethiopian Criminal Code is not stipulated as one type of crime, but as an aggravating circumstance for punishment.<sup>257</sup>

#### **4.10. Investigation and Prosecution of Transnational Women Trafficking in Ethiopia**

Given the magnitude of trafficking from Ethiopia, one might expect a high number of human trafficking prosecutions. However, even in regions with high trafficking rate, the initiation and prosecution of trafficking cases is extremely meek.<sup>258</sup> In one of the

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<sup>254</sup> Article 17(1) (b) of the Criminal Code of Ethiopia (2005).

<sup>255</sup> Article 478 of the Criminal Code of Ethiopia (2005).

<sup>256</sup> Article 35 of the Criminal Code of Ethiopia (2005).

<sup>257</sup> Article 478(3) of the Criminal Code of Ethiopia (2005).

<sup>258</sup> W. Sheferaw (2010:27).

highly affected regions, Dire Dawa, although 3 000 Ethiopians are estimated to be smuggled and trafficked each year, only 15 cases are reported monthly.<sup>259</sup>

The challenges faced by other countries in the investigation of transnational human trafficking are also shared by the Ethiopian criminal justice system. However, due to socio-cultural factors, the criminal justice system faces additional difficulties. The 'culture of migration', besides tolerating and encouragement of migration also discourages the reporting of trafficking cases. Individuals who know about the incidents of trafficking are unwilling to testify or to collaborate with the authorities.<sup>260</sup>

The corrupt practice of law enforcement officials in human trafficking cases is also additional hindrance.<sup>261</sup>

The challenges in the investigation of trafficking cases increase the impunity of traffickers. Although Ethiopians are trafficked in high numbers, up until 2010 the Federal Prosecutor's offices initiated only 222 prosecutions. Of this number 48 cases were temporarily terminated as the accused failed to appear before court, while 55 cases were temporarily terminated due to the failure to bring witnesses to court and other reasons. Disgracefully, out of the 222 case only in 10 cases were the accused convicted.<sup>262</sup>

The investigation of human trafficking is conducted by the Human and Narcotic Trafficking Division of the Organised Crime Investigations Unit.<sup>263</sup> The investigation of trafficking cases was entirely led by police officers. However, as of September 2010 the Human Trafficking Division was re-established and includes prosecutors as

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<sup>259</sup> ILO (2011:20).

<sup>260</sup> ILO (2011:71).

<sup>261</sup> ILO (2011:72).

<sup>262</sup> W. Sheferaw (2010: 28-30).

<sup>263</sup> ILO (2011:71).

well as police officers.<sup>264</sup> The establishment of a special investigative unit can be appreciated as a step ahead to fight human trafficking. However, the trafficking division fails to operate with all its capacity as it is confronted by financial and material constraints and lack of professionals.<sup>265</sup>

The investigation of trafficking cases can start upon receipt of information or initiative taken by the investigation division.<sup>266</sup> On occasions when informants initiate an investigation, the investigator is expected to gather all relevant facts such as the name or description of the offender, the names and addresses of the principal witnesses and other evidence that is pertinent for the investigation of the case.<sup>267</sup> However, in order to facilitate the visa process, almost all victims trafficked to the Middle East change their names to Muslim names. This hinders the identification and initiation of criminal cases as the victims will have two identities.<sup>268</sup>

Human trafficking cases can be initiated by law enforcement agencies, however law enforcement agencies are discouraged to identify and initiate trafficking cases.<sup>269</sup> This can be inferred from the low rate of identification of trafficking victims. For example, although many Ethiopians are victims of trafficking between 2003 and 2006 only four victims were identified by law enforcement agencies.<sup>270</sup>

Based on the information obtained, the investigators will examine witnesses, gather evidences, interrogate and arrest traffickers. This can be executed by applying the domestic as well as international laws that permit territorial and extra-territorial

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<sup>264</sup> M. Tekelu (2010:3).

<sup>265</sup> Ethiopia Country of Origin Report (2007:132)

<sup>266</sup> Article 17 and article 19 of the Criminal Procedure Code of Ethiopia (1961).

<sup>267</sup> Article 24 of the Criminal Procedure code of Ethiopia (1961).

<sup>268</sup> Ethiopia Country of Origin Report (2007:133).

<sup>269</sup> ILO (2011:72).

<sup>270</sup> UNODC Global Report (2009:113).

exercise of jurisdiction. However, most of the international instruments are not translated into Ethiopia's working languages nor are professionals familiar with them.<sup>271</sup> Hence, in the investigation of transnational trafficking cases investigators mainly use domestic laws.<sup>272</sup>

Although Ethiopia criminalises human trafficking as well as participation in organised crime, the investigation and prosecution of these crimes is conducted as although they are ordinary offences. Moreover, as Ethiopia has neither a law of evidence nor rules that regulate investigations, questions such as how to carry out an investigation, what kind of techniques and methods of investigation to use, and the kind of evidence to gather are governed by the general provisions of the constitution, which stipulates that any evidence obtained through coercion is inadmissible.<sup>273</sup>

Even if the anti-corruption legislation allows for the interception of telephones and other communication networks upon court order, it is only restricted to corruption cases.<sup>274</sup> The use of these techniques is highly doubtful as it can violate the constitutional right to privacy. This can also be inferred from the investigators' and prosecutors' manual, which do not provide for the use of any special investigation techniques.<sup>275</sup>

In investigating human trafficking cases investigators should not only focus on punishing the suspects rather the investigation needs to gather information regarding the proceeds obtained from human trafficking instances and confiscate it. The criminal justice system can be used not only to imprison traffickers but also to

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<sup>271</sup> Y. Endeshaw, M. Gebeyehu and B. Reta (2004:58-9).

<sup>272</sup> R. Messele (2002:38-9).

<sup>273</sup> Ethiopian Professionals Training centre (2007:17).

<sup>274</sup> Article 46 of the Revised Anti-Corruption Proclamation No. 343 (2005).

<sup>275</sup> M. Tekelu (2010:3).



confiscate the proceeds they obtained from trafficking. However, although the Ethiopian law allows for the confiscation of illicitly acquired funds and properties in criminal cases there is no practice in human trafficking cases. Moreover, in Ethiopia there is no anti-money laundering law. Consequently, the traffickers are left to enjoy from the laundering of the proceeds they obtain from trafficking.<sup>276</sup>

The training manuals on human trafficking cases require investigators to take note of the nature of the crime in the investigation process. However, there are no clear and obligatory requirements to make the investigation of human trafficking gender-sensitive.<sup>277</sup>

Prosecutors are also required to consider the nature of the crime in evaluating evidences and making legal desiccation.<sup>278</sup> However, except for corruption cases which only require proof on a balance of probabilities,<sup>279</sup> in all other crimes, including human trafficking cases, prosecutors are required to prove the guilt beyond reasonable doubt.<sup>280</sup>

The various obstacles in the investigation process, together with the onerous burden of proof carried by the prosecution, results in few successful prosecutions. For example, in 1999 the Trafficking Investigation Division received 400 complaints. But only 40 of these complaints were investigated and passed to the prosecutor. Unfortunately, out of the 400 cases only two reached to the court.<sup>281</sup>

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<sup>276</sup> Ethiopian Parliament discussed Anti-money laundering law (available at <http://www.icpat.org/index.php/about-us-mainmenu-110/295-ethiopian-parliament-discusses-anti-money-laundering-law> accessed on 14 August 2011).

<sup>277</sup> W. Sheferaw (2010:33-4).

<sup>278</sup> W. Sheferaw (2010:33-4).

<sup>279</sup> Article 33 of the revised anti-corruption proclamation no. 343 (2005).

<sup>280</sup> M. Tekelu (2010:5).

<sup>281</sup> E. Kebede (2005:20).

#### 4.11. Practical cases

Out of the very few cases that reach prosecution stage, the following three cases will illustrate the general picture of women trafficking in Ethiopia and in particular it will highlight how traffickers operate in an organised manner. All the three cases involve more than two traffickers working in concert with each other. This fits the definition of organised crime under the Ethiopian law. The following section is a brief overview of the three cases of women trafficking from Ethiopia.

#### 4.12. The case of *Mr. Shu Gune v The Federal Public Prosecutor*<sup>282</sup>

Mr. Shu Gune is a Chinese man who owns a traditional Chinese Restaurant in Addis Ababa. Besides his business, he also works closely with his wife Mrs. Jane and Chinese friends who operate a hotel in China. Mr. Gune and his associates traffic Ethiopian women to China for the purpose of sexual exploitation. Mr. Gune undertakes the business in Addis Ababa; he is in charge of recruitment and finalising the process of trafficking from Addis Ababa to Beijing. On the other hand, Mrs. Jane frequently travels from China to Ethiopia. She also facilitates and welcomes the Ethiopian women and introduces them to the group members in China. The group members in China are responsible for confiscating the victims' passport, collecting profit from the sexual business that they are forced into, and ensuring that the victims will not report to the police.

The facts of the case are that, Bethelehem (26 years), Zenashe (28 years) and Samrawit (23 years) are Ethiopian women who did not manage to finish secondary school. All three women were informed by close friends and family members about the job opportunities being offered by Mr. Gune. As they were desperate for jobs, all

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<sup>282</sup> *Mr. Shu Gune v The Federal Public Prosecutor* (2010).

of them went to see Mr. Gune, who also informed them that they can work as waitresses for good salaries. As they agreed to travel, Mr. Gune arranged and finalised their travel within a few days. When they arrived in Beijing on 15 April 2010, they were welcomed by Mrs. Jane, who then took them and introduced them to the hotel owner. Unfortunately, the three women, as well as other three Ethiopian women who also came before them through Mr Gune, were locked up in one of the hotel rooms.

All three women were raped and forced into illegal prostitution business. When they refused, they were threatened, beaten and even raped as a means of punishment. On average, they were forced to have sex with 6 to 8 men per day. Their health was also at risk. As most customers do not use condoms, the women also become pregnant. Besides, the coercion and sexual exploitation inflicted everyday these women were suffering from hunger as they were given food only once a day. On 1 June 2010, Bethlehem, Zenashe and Samrawit were released and they managed to return to Ethiopia. However, upon their return back home, though they confronted Mr. Gune about the situation, he claimed he did not recognise them nor had he ever met them in his entire life.

#### **4.12.1. Investigation**

The case of Mr. Shu Gune was initiated by the three victims on 3 June 2010. They told the investigator the name and address of their witnesses and suspects. Based on the information obtained, the investigator examined three witnesses, who testified that they knew that Mr. Gune and his wife were sending Ethiopian women to China. They also testified that the communication and travel arrangements were done by Mr. Gune for the three victims.

The investigator also collected documents showing the date of the victims' departure and return from China. A letter presented by other victims to the Ethiopian Embassy in China that narrates the deceit and misery inflicted by Mr. Gune's network was also attached in the docket. However, though the investigator requested the Ethiopian Immigration Authority to ban the travel of Mrs. Jane, she was able to return.

The docket in this case shows the effort of the investigator to get additional information. Nevertheless, there was neither an extradition nor a mutual legal assistance request. As a result, at the end of the investigation, the investigator only managed to interrogate and arrest Mr. Gune.

#### **4.12.2. Prosecution**

The prosecutor initiated proceedings on 2 July 2010. The accused Mr. Gune was charged with two counts. The first count related to trafficking of the victims for the purpose of labour exploitation and the second count related to trafficking for sexual exploitation.

#### **4.12.3. Outcome of the case**

On 18 August 2010, Mr. Gune was convicted and sentenced on both counts to 10 years imprisonment and fined 42 000 birr (which is equivalent to \$ 2 500 US Dollars).

#### **4.13. The Case of *Mr. and Mrs. Demissie v The Federal Public Prosecutor*<sup>283</sup>**

Mr. and Mrs. Demissie is an Ethiopian couple living in Addis Ababa. They have three children. The youngest, Genet lives with them, while the other two daughters live in Sudan. Besides their family ties, members of this family are engaged in sending Ethiopian women abroad. Mr. and Mrs. Demissie, with their daughter, Genet, recruit

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<sup>283</sup> *Mr. and Mrs. Demissie v The Federal Public Prosecutor* (2010).

and finalise travel arrangements. The two daughters live in Sudan, with Mr. Yasin, who acts as a middleman, welcomes the Ethiopian women in Sudan, and finds them jobs but collects their salary.

In the case at hand, Kidest (19 years) is an elementary school student who was living with her mother. As her mother is single and uneducated, they lived simple, poor lives. For this reason, Kidest was looking for an option that could change the family's life. On one occasion, Kidest and her mom were informed by their neighbours, Mr. and Mrs. Demissie, about the good working opportunities in Bahrain. The couple also mentioned the names of women within the neighbourhood that were sent through them and who returned with cash. Given their struggle to live, Kidest decided to give up her education and travel for work. Her travel was financed through money borrowed from families and friends. On 22 February 2006 Kidest left Ethiopia, hoping to work in Bahrain.

When Kidest arrived at her destination, she was welcomed by Mr. Yasin, who then took her to a place where he gathers women trafficked from Ethiopia. While talking with the other women, she realized she has been deceived and sent to Sudan. Even worse, up until she started to work as housemaid, she was continuously raped by Mr. Yasin for four consecutive months.

Although she worked for 11 months, she did not get any payment since Mr. Yasin took the salary. Kidest was also not allowed to leave her place of work nor call anyone. She therefore decided to run away and start to work as a prostitute. Until her surrender to the Sudanese government as an illegal immigrant at the end of 2009, she was working as a prostitute. After spending four years in Khartoum, Kidest

returned to Ethiopia in February 2010. However, soon after her return, for seven months she was suffering from mental problems.

#### **4.13.1. Investigation**

The Case of Mr. and Mrs. Demissie was initiated by Kidest. She also gave information regarding the names and addresses of witnesses and suspects. The three witnesses in this case were the two sisters of Kidest and her mother. All three witnesses testified to the fact that Kidest was told about the high paying job by Mr. and Mrs. Demissie. They also neither affirmed the fact that after Kidest left Ethiopia that she did not call home nor send money.

In addition to these witnesses, the investigator requested information from the Ethiopian Immigration Authority, Ministry of Foreign Affairs and Ministry of Social and Labour Affairs. Accordingly, documents attesting to Kidest departure to Sudan and a document that indicated the suspects were unlicensed to send individuals were presented. At the end of the investigation Mr. and Mrs. Demissie were only interrogated. Moreover, there was no request for extradition nor for mutual legal assistance.

#### **4.13.2. Prosecution**

The prosecutor initiated the case in 21 September 2010. Mr. and Mrs. Demissie were charged under article 598(2) as co-perpetrators for sending and letting the victim abroad without having a private employment license.

#### **4.13.3. Outcome of the Case**

On 9 December 2010 the Federal High Court sentenced Mr. Demissie to 8 years imprisonment and fined him 2 000 birr, while, Mrs. Demissie was sentenced to 5 years imprisonment and fined 2 000 birr. However, the case was appealed to the

Federal Supreme Court, which reduced the imprisonment of both accused to 3 years and 5 months, respectively and ordered them to pay 1 500 birr (equivalent to \$ 88 US dollars).

#### **4.14. The case of *Hussen Abdella Ture*<sup>284</sup>**

Ture and Dechasa lived in different regions of Ethiopia, while Abduljebar lived in Sudan. Although these men lived in different places, they operated in close cooperation in recruiting and transporting individuals to Sudan. The three men also found employment opportunities for the recruited individuals. In the course of an operation, each of them had an assignment. For example Dechasa was in charge of recruiting and transferring the individuals to Ture whereas Ture collected the persons from Dechasa and transported them to the Ethiopian-Sudanese border. On the other hand, Abduljebar receives them from Ture and finds them employment in Sudan. The whole exercise is executed upon the payment of money.

In the case at hand, Dechasa successfully recruited 11 women from the rural parts of Ethiopia (Arisi), all of whom were looking for employment. Upon learning this fact, Ture took the women from Dechasa and arranged their travel. Accordingly, on 20 August 2010 all the women started the journey to Sudan. However, before transferring them to Sudan, Ture collected fees from them. Nevertheless, for one of the women, Hawi, he was told to collect the money from a bank, which resulted in his arrest and the rescue of the women.

##### **4.14.1. Investigation**

The case of Hussen Abdella Ture was initiated upon a phone call by one of family members of Hawi to the Federal Police Commission. Based on this information, the

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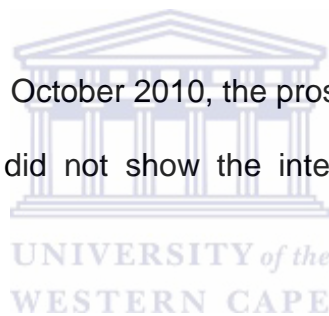
<sup>284</sup> The case of *Hussen Abdella Ture* (2010).

investigator learnt that the fee payable to Ture was to be paid through the bank. This enabled the investigator to communicate with the regional police officers and request the arrest of the suspect.

In this case, the investigator examined three police officers who were involved in the arrest of the suspect. Additionally, Hawi also stated her recruitment and travel arrangement by the network. However, although the investigator tried to trace and hear what other victims said, his efforts were not successful as most of the victims were travelling without any identity card or using passports, which would have helped to trace them.

#### **4.14.2. Outcome of the Case**

After examining the case, on 1 October 2010, the prosecutor closed the case, stating that the evidence presented did not show the intention of the suspect to traffic women.



The writer has tried to enquire whether the investigation is still continuing on the other suspects, but in all the three cases the investigation or the efforts to prosecute the remaining suspects have stopped. In all of the cases additional victims were not rescued nor have all suspects been arrested.

The preceding cases show how Ethiopian women are trafficking and the response of the criminal justice system. In the subsequent sub-topic the writer will make analysis of the cases in line with the laws and will point out the drawbacks. In the subsequent sub-topic the writer will make analysis of the cases in line with the laws and will point out the drawbacks.



#### **4.15. Analysis of the cases Vis-à-vis Human Trafficking laws**

The above cited cases apart from describing how the criminal justice of Ethiopia responds to trafficking cases, it also confirms the general facts mentioned under women trafficking from Ethiopia.

##### **4.15.1. The General Overview of Human Trafficking in Ethiopia**

In all the three cases the victims are young women who decide to migrate due to their poverty and lack of education. The victims are also deceived about the type of work they will find, their destination or payment; and they suffered from mental and health problems. The cases also show the prevalence of trafficking in women. Out of the fifteen victims that were involved in the above cases, there was not even a single man among them.

##### **4.15.2. The General Elements of the Crime of Human Trafficking**

The general elements of the crime of human trafficking are also clear in all the three cases namely: action, means used and purpose of trafficking. In all the cases the victims were recruited through deceptions and for the purpose of labour and sexual exploitations. For example, in the case of *Mr. Shu Gune v The Federal Public Prosecutor*, the victims were told that they would work as a waitress but they were forced to work in sex business. Similarly, in the case of *The Case of Mr. and Mrs. Demissie v The Federal Public Prosecutor*, although the victim has consented to go and work in Bahrain was deceived and sent to Sudan instead.

##### **4.15.3. The Organised Nature of Human Trafficking in Ethiopia**

Most instances of transnational human trafficking cases are the results of individuals that work in an organised manner. The above cases serve to illustrate this point. In

all the cases there are traffickers who are responsible to recruited, transport and to ensure the exploitation of the victims. The case of *Mr. Shu Gune v The Federal Public Prosecutor* is a good example, the suspect in this case was responsible for recruitment, while his wife and the other group members were in charge of transporting and exploiting the victims.

#### **4.15.4. The Definition of Human Trafficking and its Application**

Besides attesting the general concept of human trafficking, the above cases also show the incapacity of the Ethiopian criminal justice system in combating women trafficking. This is attributable both to the weak laws and implementation failures. First, although there are laws governing human trafficking none of the laws have defined human trafficking in a precise manner. This is a challenge to law enforcement authorities, as investigators need to be well aware what they are investigating and prosecutors also need to have a clear understanding of how to prepare charges of human trafficking. The misunderstanding caused by the lack of clear law can be inferred from the case of *Mr. Shu Gune v The Federal Public Prosecutor* in which the prosecutor charged the accused with both sexual and labour exploitation counts, although the victims only suffered from sexual exploitation.

#### **4.15.5. The Effects of Organised Crime Law in Investigation and Prosecution**

Organised crime under Ethiopian laws includes human trafficking and captures it as an aggravating ground of punishment. However, the laws regulating organised crime fail to acknowledge organised crime as a distinct crime that needs special investigation and prosecution mechanisms. Organised crime laws should also be supported by anti-trafficking laws that consider the nature of the crime and lower the burden of proof in order to secure punishment. The weaknesses of the organised

crime and human trafficking laws have forced law enforcement agencies to stick to the ordinary rules of investigation. This can be inferred from the analysis of all the above cases. For instance, in the case of *Hussen Abdella Ture* if special investigation techniques such as interception of telephone were applied the investigator would have gathered more evidence. The lower burden of proof would also have saved the prosecutor from closing the case on the ground of insufficiency of evidence.

#### **4.15.6. Absence of Confiscation of Proceeds of Human Trafficking**

The traffickers in the above cited cases were profiting from trafficking, however, as there is no practice of confiscation of the proceeds of trafficking. Hence, the investigators as well as prosecutors only target to secure punishment. Therefore, traffickers only risk being punished but they still enjoy the proceeds they obtained from trafficking. Moreover, there are no simultaneous civil proceedings which ensure that the traffickers pay compensation to their victims or are barred from enjoying the ill-gotten funds from human trafficking.

#### **4.15.7. Lack of Gender- Sensitive Investigations**

A gender-sensitive investigation should be carried out by investigators alongside councillors, as questions that may cause shock to the victims can be raised. Unfortunately, in all the above cases, although the victims went through shocking abuses, the investigator was asking them the details of their abuse. This can be inferred particularly from the case of *Mr. Shu Gune v The Federal Public Prosecutor*, in which the victims were asked the details of the rape without any councillors' assistance.

#### **4.15.8. Lack of the Exercise of Extra-territorial Jurisdiction**

In all the above cases the victims have crossed borders. In such cases, the Ethiopian Criminal Code as well as the international laws ratified by Ethiopia such as UNTOC, request law enforcement authorities to extend the investigation beyond borders. Hence, in all the cases since some of the suspects were outside Ethiopia, the investigator could ask for the extradition of the suspects or gather evidences using mutual legal assistance. However, in none of the cases, law enforcement authorities tried to exercise their power beyond the jurisdiction of Ethiopia. For example, in the *case of Hussen Abdella Ture*, by using the bilateral agreement with the Sudan government or applying the jurisdiction rules of the Ethiopian Criminal Code, the investigator should have arrested Abduljebar who was collecting the trafficked women in the Sudan. But, as the investigations rely on the domestic laws, traffickers in other jurisdictions are left to enjoy impunity.

#### **4.15.9. Lack of Interest by Law Enforcement in Trafficking Cases**

Although the Criminal Procedure Code of Ethiopia encourages law enforcement authorities to take the lead to initiate investigation of crimes such as human trafficking, the practice seems almost non-existence. One of the reasons is due to the lack of interest by law enforcement agencies to handle trafficking cases. This is also attested in all the three cases, as all of the cases are initiated by the victims themselves or their family members.

#### **4.15.10. Lack of Coordination among Ethiopian Authorities**

The preceding cases demonstrate the tolerance and weak cooperation among Ethiopian authorities to fight trafficking. For example, in the case of *Mr. Shu Gune v*

*The Federal Public Prosecutor* the police failed to arrest Mrs. Jane Gune who was within the jurisdiction of Ethiopia, due to the weak cooperation between the Ethiopian Immigration Authority and the Federal Police.

#### **4.15.11. Less Focus on the Victims**

In the above cited cases although the victims have informed the investigator about the presence of other victims who were also being exploited. However, there are no measures taken to save the victims from exploitations. In the case of *Mr. Shu Gune v The Federal Public Prosecutor* confirms this fact, as the victims informed the investigator regarding the presence of other victims who also went through the chain of the accused.

#### **4.15.12. The Incapacity of the Human Trafficking Investigations Unit**

All the cases were conducted by the Human Trafficking Investigations Unit. Although the investigations unit is established with the aim of handling human trafficking in a special way, in reality the division seems to have nothing special. The above discussion neither shows the special ability of the unit nor the treatment of trafficking cases in a different manner.

#### **4.15.13. Lenient Punishments**

The punishment against human trafficking in Ethiopia is too lenient compared to the seriousness of the crime. In principle the maximum prison sentence for human trafficking is 20 years. However, in practice the courts have been hesitant to hand out long prison sentences on those convicted of the crime. The case of *Mr. Shu Gune v The Federal Public Prosecutor* illustrates this point. In the case just cited, the accused person was convicted on two counts of human trafficking but, he was only

sentenced for 10 years imprisonment. Similarly, in the case of *Mr. and Mrs. Demissie v The Federal Public Prosecutor* the accused people were fined a mere \$ 80 US dollars. This is not sufficient punishment, as the court could have fined up to at least \$ 3 000 US dollars.

#### **4.16. Summary**

Similar to other developing countries, Ethiopia also suffers from human trafficking. Ethiopian women are the main target. Each year more than 60 000 Ethiopian women are estimated to be trafficked out of the country. Unfortunately, only few traffickers are prosecuted. Although there is legislation addressing the issue of human trafficking, not only do they fail to enhance the investigation and prosecution of human trafficking cases but also fail to define the crime precisely.

The human trafficking investigations division was established in the hope of combating trafficking from the country. Unfortunately, due to the absence of laws governing human trafficking in a special way, coupled with the lack of financial resources, the effort to combat trafficking has been unsuccessful.

## **CHAPTER FIVE**

### **CONCLUSION AND RECOMMENDATIONS**

#### **5.1. Conclusion**

Human trafficking is not a new phenomenon; rather it is rooted in the history of mankind. From the ancient Egyptian civilization until the present, individuals have been enslaved and exploited. However, as slavery is prohibited by each country in the world, the modern day slavery has taken the new form of human trafficking. Similar to the days of slavery, the victims of trafficking are controlled and exploited by traffickers.

Regardless of the prohibition of trafficking by many countries, individuals, irrespective of sex, religion, race and location are victims. Generally speaking, due to the social and political problems, developing countries are the origins of majority of the victims while industrialised states serve as destination countries where there is a high demand for labour. It is the socio-economic factors that discriminate and hinder women from education and employment opportunities, that force women to leave their states of origin, hoping for a better life. For this reason, most of the trafficking victims are women.

Transnational human trafficking involves the movement of victims across borders. This necessitates the participation of multiple individuals who are charged to recruit, transport and exploit the victims. Therefore, most instances of human trafficking are the result of organised criminal groups that operate in coordination within the state of origin, transit and destination. Criminal groups traffic individuals to profit out of their sexual or labour exploitation.

Usually traffickers using mechanisms such as force, deception and threat secure the consent of the victims. Traffickers control the victims through coercion, threat or by using drugs and alcohol. Often victims of trafficking are subjected to threats, physical and sexual violence, which exposes them to psychological, health and physical risks. In addition to the effects of trafficking on individual victims, trafficking also causes family disintegration, disturbs normal business transactions and causes lack of confidence in governments.

At present, trafficking is not only the concern of developing countries; rather, countries that are known as transit and destination countries suffer from the consequences of trafficking. Acknowledging the problem, anti-trafficking laws are enacted at national and international level. Anti-trafficking laws contribute significantly by defining the concept of trafficking and solving controversial issues. Efforts to investigate and prosecute organised criminal groups that operate in multiple jurisdictions have been hampered by several problems, including jurisdiction barriers and lack of special investigation techniques. The difficulty is solved by anti-trafficking and organised crime laws that stipulate special investigative techniques and prosecution rules. The implementation of international cooperation mechanisms such as; extradition and mutual legal assistance also help to fight the impunity of traffickers.

Through domestic and international laws that facilitate the investigation and prosecution of traffickers countries have successfully managed to prosecute traffickers who are even out of their territory. The United States, Canada and Italy are good examples in this regard.



Similar to other developing countries, Ethiopia is the origin of many victims of trafficking. Although trafficking affects both sexes, as in other countries, Ethiopian women are the main victims. The majority victims of trafficking go to the Middle Eastern countries hoping to work as domestic workers. However, countries in the Middle East not only fail to recognise the rights of domestic workers but also ignore their rights as human beings.

The Ethiopian government attempts to fight trafficking, using the criminal justice system. Hence, laws governing human trafficking have been enacted. The government has also ratified international instruments and has established a special trafficking investigation division. However, the criminal justice system is restricted as none of the domestic laws precisely define the human trafficking nor do they lay down special investigation and prosecution rules for trafficking cases. The challenge would have been reduced by using international laws; however apart from ratifying the international instruments, the government hardly tries to implement the international instruments.

Thus, more than 60 000 Ethiopian women are trafficked every year, mostly to the Middle Eastern countries. There have been 222 cases of trafficking since 2010. This shows the failure of the criminal justice system in fighting trafficking from the country.

## **5.2. Recommendations**

Human trafficking mainly affects women, as women are deprived of education and employment opportunities. Hence, the Ethiopian government should introduce laws and policies that promote and increase the participation of women in the social, economic and politics sectors of the country.

Given the fact that very little research has been done on the criminal justice response to trafficking from Ethiopia, further studies need to be conducted. The dearth of research is perhaps one reason why the criminal justice authorities are so listless when it comes to prosecuting traffickers. Research findings would also help the government to enact tougher measures against human trafficking.

As 'the culture of migration' is one factor that contributes to trafficking in Ethiopia, the government should work intensively on raising the awareness of the society about migration and its negative effects. It should also encourage the society to report trafficking cases and collaborate with authorities in the fight against trafficking.

The government also needs to sign more agreements with the destination countries, as the agreements are the grounds on which law enforcement authorities can present extradition and mutual legal assistance requests. Moreover, the Ethiopian government must establish diplomat to representatives in the common destination countries. The representatives need also have mechanisms to represent and safeguard the rights of Ethiopian workers in foreign countries.

The laws regulating human trafficking and organised crime should be amended to reflect the nature of the crime. These laws also need to provide for special investigative mechanisms that are designed to conducting investigations in a gender-sensitive manner. In addition, a law on evidence as well as on anti-money laundering should be enacted, as the law on evidence would strengthen the case for the prosecution because of the predictability of the admissibility of evidence. An anti-money laundering law is necessary because the proceeds that are derived from trafficking are usually laundered outside the country.

In addition to the domestic laws, the Ethiopian government should ratify the Palermo Trafficking in Persons Protocol. The international laws ratified by Ethiopia should be translated and introduced to law enforcement agencies. There is no point in ratifying treaties and not putting their provisions into effect at the domestic level.

The capacity of police, prosecutors, judges and immigration officials should be enhanced through in-depth training on a regular basis. There is an urgent need to train criminal justice personnel on how to go about investigating and prosecuting trafficking cases. The training should also include the punishment of traffickers.

Additionally, trafficking by its nature involves many criminals in multiple jurisdictions. For effective investigation to take place, it necessitates strong collaboration of the domestic law enforcement agencies with foreign authorities. Traffickers who are found in other jurisdictions should not be left to enjoy impunity rather; their extradition or punishment should be requested.

Since most of the victims are women and suffer from abuses, the investigation should be designed in a gender-sensitive manner. As the victims go through a lot of trauma, the investigation should also be supported by councillors.

The governmental and non-governmental stakeholders should work in close cooperation. A multi-disciplinary team should also be established with a duty to prevent trafficking and to protect the victims as well as conduct research on trafficking. They need to report publicly on their findings so that the general public becomes aware of the destructive nature of human trafficking.

On the top of all, the issue of trafficking urges political determination on the part of the government to fight the problem. Hence the Ethiopian government should have the political will and determination to fight human trafficking from the country.

(17 692 words)



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