

## **Potential Migrants: the Overlap between Migration and Human Rights in Ethiopia**

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### **ABSTRACT**

The multilayered causes and trends of migration in Ethiopia vary from time to time. Despite the awareness on human rights violations faced in destination countries, and the challenges related to irregular migration; migration remains an ongoing phenomenon in Ethiopia. There is a movement of people from rural to urban, urban to rural and to international. The social, economic, political, situations of the country, and the desire for better opportunities contributes to the migration of people from and within Ethiopia. The migration trend in Ethiopia especially to the Middle East, and people's decision to leave their places of origin despite the human rights violations perpetuated in the process of migration is explained through the economic opportunity rational choice model. The paper highlights the overlap between migration and human rights violations faced by migrants. Hence, argue migration from Ethiopia takes place at the cost of violation of individual human rights. The paper discusses the connection between development and migration and deconstruct the human rights violations at the various stages of the migration process.

The paper argues the process and journey towards migration makes migrants susceptible to various human rights violations. It attempts to show the overlap using primary data from a research conducted in 2013 and 2017 that focuses on the consequence of irregular migration and the human rights violations faced by migrants. Secondary data resources are used to explain existing gaps and challenges in addressing the human rights violations in Ethiopia. Stories from thirteen migrants is used to explain the challenges and human rights violations. Migrants have to overcome the challenges faced at the different stages of the migration process. One is the violation of rights perpetuated by different actors such as brokers,

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traffickers, and smugglers which victimizes migrants on the move. The second is the failure of government institutions and structures to curb the impact of human trafficking and irregular migration, and the reliance on private agencies in processing overseas employment to potential migrants. In addition, the paper analyzes laws; such as the “Ethiopia’s Overseas Employment Exchange 923/2016, which replaced the former Employment Exchange Proclamation 632/2009 to curb the problem of irregular migration. The article asserts the need for strict implementation of the law in place to overcome the human rights violations against the migrant. The first section of the paper discusses causes of migration in the context of the link between migration and development. The second and following sections discuss and analyze connection between migration and human rights.

### **Migration, Development and Human Rights**

The question of migration and human rights have for long gone hand in hand; whether migration and the free movement of people is a human right and/or positive attribute to the economic development of the individual and the country at large. Migration and development for long are perceived to go hand in hand. Economic problems such as poverty, lack of means of production, lack of job opportunities, increasing unemployment are considered push factors for many migrants from developing countries. The emphasis on the importance of migration for development shadows the challenges faced by migrants in the “process of migration” (Mihret, 2013). Many migrants attempt to leave their places of origin and country despite awareness on the possible challenges that are faced on the different stages of the migration process. A study made on the Knowledge, Attitude and Practice (KIP) of migrants show that potential migrants and returnees intend to migrate despite the prior experience and knowledge they already have on the journey (RMMS, 2014). However, there is still presumption and lack of knowledge about potential and actual migrant’s decision-making process (IOM 2018).

There is a considerable amount of literature published on the relationship between migration and development. Castles and Miller (2009) asked a critical question whether migration is conducive to the development of countries of origin (p.73) and the

individual migrant. Accordingly, there is an ongoing debate between two opposing views: “migration optimists” and “migration pessimists.” The “migration optimists” assumes migration creates a conducive condition for development while the “migration pessimists” argue migration undermines the development of origin (Castles and et al, 2014). For so long there is also a strong tendency to correlate migration and development in economic contexts. International organization, nongovernmental organizations and states have trumpeted the potential of migration to development (Bakewell, 2008). The International Organization for Migration in its 2018 report stated migration can generate a very large benefit for migrants and their families and countries of origin (IOM, 2018; p.3). However, there is also a division on what causes migration. Different scholars and theories have attempted to answer this question. Massey (1998) argue that three forces caused the spread of international immigration- market consolidation, human capital formation, and social capital formation. Massey argued economic insecurity and the demand for labor in the market economy create opportunities for ways of self-insuring against risk (pp.23-24).

Migration on the other hand is considered to be a rational action; a strategy adopted by individuals and a household to overcome economic problems. The belief in better opportunity in developed nations, the social and economic remittance as the result of migration are considered pull factors. Migration, according to the push and pull model or the neoclassical economic of migration, takes place as the result of better employment opportunities in destination countries and the low living standard and lack of opportunities in country of origin (Chatty, 2010). For Massey and et al (1993) migration is the result of differential in wages and employment and a rational decision made by the individual. The push-pull model (the neo-classical theory) further perceives that the causes of migration lie in a combination of ‘push factors’ impelling people to leave their areas of origin, and ‘pull factors’ attracting them to certain receiving countries (Castle & Miller, 2009; p. 21).

Deshingkar & Grimm (2004) argue that even if migration cannot be the cure for the poor, it can bring many benefits. On the other hand, while the neoclassical approach focuses on the voluntary action of an individual to migrate, other theories also have a particular angle

through which they frame the causes of migration. The “World System Theory” developed in the 1970’s frames migration under the framework of the Marxist political economy which sees migration process as a means of mobilizing cheap labor for capital (Chatty, 2010; p. 12). On the contrary, in the 1980’s the “New Economics of Labor Migration Approach” emerged that argues migration decision is not made by isolated individuals but by families, households or even communities. (Castles and Miler, 2009). Its unit of analysis as compared to the neo-classical approach is not the individual rather the group - the household in the case of Ethiopia.

For the optimist’s migrants have the potential to contribute towards the development of the household. One of such debates is the impact remittance has on the household. When a migrant left the place of origin, there are some who are left behind and will benefit from the remittance received. (Rapoport and Docquier, 2005; p.9). In addition, sending family members abroad helps to diversify their labor portfolios and control risks stemming from unemployment, crop failures or commodity price fluctuation (Massey 1999; p. 305). While the theories on the causes of migration are not limited, all these explanations assume migration as a positive outcome.

The work by Nyberg-Sørensen and et al (2002) also debates for the ‘migration development nexus’ and highlights the contribution of migration in the local, national and international context. In addition, structural forces in developing countries that promote emigration, and structural forces in developed societies that attract immigrants serve as causes for migration (Massey 1999). On the other hand, Czaika and De Hass (2013) argue the problem with migration policies and their lack of impact is that international migration is driven not only by structural factors such as labor market imbalances, inequalities in wealth, but also political conflicts in origin countries, factors on which migration policies have little or no influence (p. 487).

Hence, the combination of both push and pull factors contribute to the migration of people from Ethiopia to other parts of the world. It is estimated that over two million Ethiopians reside outside their country: of those traveling to the Middle East and Gulf Countries for work more than 60 percent travel irregularly, including with the

help of migrant smugglers and as a result of human trafficking (IOM, 2017; p.2). The increasing number of people migrating from the rural part of Ethiopia to urban cities is a growing phenomenon and is an attribute to challenges faced by the majority of youth in relation to unemployment and resource scarcity of farmland in the rural areas. These growing population in the urban area contributes to the growing migrant population attempting to emigrate. Pankhurst and Feleke (2005) found that there is more of rural-urban and urban-urban migration than rural - rural and urban-rural migration as the result of destitution in rural areas and construction work opportunities in urban areas.

One of the major causes for the growing migration from Ethiopia is the unemployment and underemployment; which is also attributed to the rapid population growth (MoLSA, 2009). According to the 2007 Populations and Housing Census, 45% of the Ethiopian population is the youth under the age of 15 (CSA, 2008). Consequently, Ministry of Labor and Social Affairs (MoLSA) National Employment Policy and Strategy (2009) recognizes that there are many more under 15 entering the work force each year than old people leaving the labor force. The Ministry identifies underemployment - as "the proportion of workers who are available and ready to work more hours" which is more of a phenomenon of rural areas (p.7). According to Harris and Todaro (1970) "two-sector model" migration is the result of wage difference between rural and urban areas, and migration will continue as long as the expected urban real income at the margin exceeds real agricultural product - i.e., prospective rural migrants behave as maximizers of expected utility (p.127).

Despite changes in economic progress in the country many Ethiopians struggle with unemployment, underemployment, precarious self-employment and unprotected informal jobs (Carter and Brigitte 2016, p.6). MoLSA clearly identifies the gap in the unemployment and underemployment in the country and suggests there is a high probability for the emigration from Ethiopia. The educated youth in the urban areas have difficulties to accessing job and get employed while in the rural areas the prevailing poverty and underdevelopment play critical role as push factors. According to Günter Schröder (2016), the migration of Ethiopians across the Mediterranean to Europe has climbed steadily since the beginning

of 2014. There is some evidence that outward migration has increased in recent years. Figures on legal migration from the Ethiopian Ministry of Labour and Social Affairs (MoLSA) report shows that around 460 thousand migrants between September 2008 and August 2013, of which 83 percent traveled between September 2011 and August 2013 (MoLSA.n.d; p13).

Castles (2004), explain “Structural Dependence on Emigration” as a measure developing countries engage in exporting labor to reduce unemployment and improving the balances of payment, securing skills and investment capital and stimulating development (p. 860). For a developing country like Ethiopia faced with a growing unemployed population, migration can serve the same purpose of reducing the unemployed youth and encouraging migration. Hence, the increasing number of people migrating to urban areas and emigrating to countries outside Ethiopia requires policies, structures and institutions that guarantee protection of the rights of migrants.

### **Migration and Human Rights**

There are a growing number of people moving across borders through regular and irregular channels. Migration is a phenomenon that takes place across different parts of the world. The international migrants worldwide have increased from 173 million in 2000, to 220 million in 2010 and reached 258 million in 2017 (UNDESA, 2017). Since recent years, the increasing migration and displacement occur due to conflict, persecution, environmental degradation, and lack of human security and economic opportunities (IOM, 2018). On the contrary, most receiving countries have restrictive structures of laws, policies, and institutions against the growing number of people seeking refuge and protection outside their place of origin.

Sovereign states remain the main actors in the process of migration management within their own country and also in the management of their borders and selection of which nationals allowed into their territory or not (Jubilut and Lopes 2017). The classification of migrants sometimes gets tricky as there are so many categories. Francesca Vietti and Scribn (2013) argue that the distinction between "voluntary" migrants or "free population movements" and

"forced" or "involuntary" highlights the complexity of the challenge (p. 23). Diverse rationales and distinctions are made by states (such as migrant, migrant worker, clandestine, documented, undocumented migrant, refugee and asylum-seeker) which also serve in the elaboration of rights (Goodwin-Gill, 1989), and in the subjection of the migrant. It also serves to distinguish who deserves protection and who doesn't.

The issue of the violation of the Human rights of migrants is an important aspect that needs attention in the designing of policies and their implementation. The most vulnerable groups for human rights violations are those with low and unskilled workers, migrants who enter underground economy, those that are trafficked, smuggled, and also those whose asylum applications are rejected (Ghosh, 2008; p. 36). In general, most vulnerable groups are the ones that fail under the cracks in the system and human rights protection. It is also important to make the distinction between emigration and immigration and its contribution in either provision of rights or violation of human rights. By looking at the use and politicized nature of the term "emigration is recognized as a human right, but immigration is not" (Pecoud and Guchteneire 2006, p.75), as countries put in place policies that target immigrants as threats to the host community. In most cases, migrants face multifaceted human rights violations.

In situations where people are forced to leave their place of origin because of human rights violations at the country of destination, it further perpetuates violation of human rights. Migrants experience multidimensional human rights violation in countries of origin, transit and destination. Migrants that fail under traffickers' control and who profit off their exploitation coerce the migrant into life threatening danger (Maher, 2002). Sexual and physical violence are among the threats faced in transit areas, particularly for irregular migrants who cannot come through the legal/regular channels (Vietti and Scribn 2013).

Many have researched and concluded that the human rights violation in the country of destination are immense (De Regt 2010; Fernandez, 2010). Violation of rights in the form of physical, sexual and psychological abuses are prominent problems faced by Ethiopian migrants in the Middle East. For instance, 163, thousand Ethiopian migrants were forcefully returned from Saudi Arabia to

Ethiopia after an amnesty period granted for undocumented migrants came to an end in November 2013 (De Regt and Tafesse 2015). The government of Ethiopia put an effort to bring the returnees to their country with a promise of integrating them easily within the society.

According to the former Foreign Minister Tedros Adhanom, the government worked around the clock to bring its citizens home and achieved to repatriate 115,465 Ethiopians (72,780 men, 37,092 women, and 5,593 children) from Saudi Arabia. Consequently, the Ethiopian government declared a temporary ban on legal migration to the Middle East in order to tackle the human rights violations, harsh treatment and suffering faced by Ethiopian migrants in the Middle East and to address the gaps in policy. This in turn has resulted in people to take illegal routes (Carter and Brigitte 2016). In addition, the ban on migration, poverty, and loss of livelihood forced migrants (significantly women) to migrate through irregular channels with the help of unregistered and unlicensed brokers (Tayah, 2016). The journey taken by migrants who are trafficked and smuggled is a risky process, which has resulted in human rights abuses and the death of many (Carter and Brigitte 2016).

According to the International Council on Human Rights Policy report 2010 irregular migrants especially those who are smuggled and trafficked are the least protected in laws and practices. The report highlighted the need for governments to develop and promote more balanced policies on the basis of human rights principles for the migrants. The causes for migration and the choices made by migrants towards migration are complicated. The choices on the journey, whether to take irregular or legal channels, whether influenced by brokers, families or friends, traffickers, and smugglers remains a challenge to the protection of the migrant's rights.

The interviews made with migrants for this research purpose shows that most of them rely on brokers who provide them with information and guidance. Migrants experience each step of the migration process as it unfolds rather than of obtaining full information about it. In the process of their migration and during the journey, it is difficult to categorize "the migrant" in one group of people on the move; their status falls into different categories of



getting smuggled and trafficked; but many fall in between categories of being smuggled and trafficked (International Council on Human Rights Policy, 2010). In order to understand and get the full picture of the migratory journey, it is important to explore and analyze the situation of the migrants starting but not limited to before departure, during transit, at the border, within country of destination and return to country of origin (Ibid).

While all these processes are important, this paper focuses on the causes of migration and the human rights violation that potential migrants face before departure, and experiences of the returnees. Multifaceted human rights violations that irregular migrants face in the process of migration are discussed in the consecutive sections with an attempt to shed light on the existing international and national legal instruments in the protection of migrant rights.

### **International and Local Legal Instruments in the Protection of the Rights of Migrants**

As much as destination countries are engaged in the management of the flow of in and out migration with their border, they also have the responsibility to guarantee protection and safety to their citizens, and migrants who need protection. Migration has been framed as a challenge for many migrant receiving countries as migrants are considered to bring social, economic and cultural problems to host societies that entail policies and measures to prevent migrants from entering the country of destination. The closing of borders and strengthening immigration policies are among the strict mechanisms adopted. Restraining and limiting the movement of people is possible although it cannot be a long-lasting solution. Movement is people's right, freedom, and it is what is liberty for man. As enshrined in the Universal Declaration of Human Rights (UDHR) 1948; Article 13 and 14.

*Article 13 (1) Everyone has the right to freedom of movement and residence within the borders of each State. And (2) Everyone has the right to leave any country, including his own, and to return to his country. Article 14 (1) Everyone has the right to seek and to enjoy in other countries asylum from persecution. And (2) This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations.*

Judy Fudge (2012) argues that human rights are invoked and applied based on humanity and personhood, not dependent on the political membership in host states (p. 96). Free movement is a fundamental right that needs recognition. Juss (2006) argues human rights are “dignity rights” inherent in human beings that are based on the moral equality. Juss further contend that the right to free movement is integral to the enduring existence of liberal democracies since liberal democracies extol the virtues of civic equality. Thirty-six percent of the adult population in the Sub Saharan Africa, an estimated 166 million, say they would migrate if they get the opportunity. According to GALLUP study (2011) made on potential migrants the study found the desire to migrate permanently is highest in sub-Saharan Africa and lowest in Asia (Esipova and et al, 2011). However, the causes for migrating varies from place to place. For instance, in the case of Ethiopia in the period between January-June 2018, 1.4 million people were internally displaced from their homes (Root, 2018). The opening of the legal channel by the Ministry of Labor and Social Affairs is expected to increase to the flow of migrants to the Middle East.

### **Major Actors in the Process of Overseas Employment and Legal Regimes and Policies in Ethiopia**

Migration and its processes involve actors from the individual migrant to the various institutions and agencies within and outside the country. Each actor has the role to play in the facilitation of the migration process. The primary role in guaranteeing protection to the migrant lays within the government. In the case of Ethiopia, the Ministry of Labor and Social Affairs is the major actor that manages the legal migration from Ethiopia.

The Ministry of Labor and Social Affairs (MoLSA) has the responsibility of enforcing legal migration. It has also been responsible for the provision of the pre-departure orientation for those migrants who have finished their process with private employment agencies. However, the pre-departure orientation had its own drawbacks. It is a half day orientation that includes oral presentation and movies that show testimonies of returnees who have suffered as a result of their migration to the Middle East. The trainings are given in Amharic language in a room of more than two hundred migrants, and who predominantly don't comprehend

and speak Amharic. This made the pre-departure orientation ineffective and it was more of a one step in the process of migration (Mihret, 2013) than a good provision of information and guidance to migrants who had already finalized their documentation. Despite such training and going through the legal channel, migrants are not guaranteed that their rights are protected. The lack of protection and ineffective policies by the government of Ethiopia both in the country and country of destination made the human rights violation worse.

Private Employment Agencies (PEAs) are one of the main actors in the process of migration. PEAs are intermediaries between the migrant, the government and the employer. According to Proclamation No. 632/2009:

*“Private employment agency means any person, independent of government bodies, which performs any one or all of the following employment services without directly or indirectly receiving payments from workers: a) services of matching offers of and application for local employment without being a party to the employment contract; b) services of making a worker available locally or abroad to a third party by concluding a contract of employment with such a worker.”*

On the other hand, the new Ethiopia’s Overseas Employment Proclamation No. 923/2016 defined Private Employment Agency as:

*“‘Private Employment Agency’ Or ‘Agency’ means any person other than a Government body, which makes a worker available to an overseas employer by concluding a contract of employment with such a worker;” (Part one General Definition, Article 1).*

The other actors that are highly involved in the recruitment and facilitating the process of migration are brokers, smugglers and traffickers. Brokers “*Delalas*” are people who make the recruitment through the help of “*facilitators*” who are people living close to the community, family, relatives of migrants. The brokers use *facilitators* in order to win trust of the potential migrants and to avoid chances of being recognized by the main responsible person in the community (Yoseph, and et al, 2006; p.63). The interviews conducted with migrants and returnees explain the extent to which

brokers play an important role in convincing and recruiting potential migrants from different part of the country.

Brokers are the first encounters and information providers to the potential migrant. Brokers also serve in linking the migrant and private employment agencies to process their employment visa. According to a research conducted in 2013, women intending to migrate to the Middle East first point of interaction is with a broker who is sometimes a neighbor, relative, or friend of a friend (Mihret, 2013). The broker directs the potential migrant to the different processes. In some cases, a broker pays the cost of processing the visa in exchange for three months of wages (Kuschminder 2014).

In an interview conducted with a broker working in Addis Ababa, he said:

“Our main intention is to convince as many interested females about the positive outcome of migration and linking them with a PEA that get us a better commission. Also, in some instances what makes our job easy is when friends share information about the benefit of migrating to the Middle East and recommend their friends to the same agency we are working with”.

IOM’s 2018 migration report highlights the power of social connections and the strength of influence it has on the decision-making process of the migrant. Information gathered from social connections is more trustworthy than government information (IOM 2018, p. 177).

The influence made by brokers and the partnerships between brokers and PEAs creates a space where the potential migrant decision-making process is influenced.

### **Legal Regimes and Policies in Ethiopia**

The Ethiopian government has adopted numerous laws and policies in an attempt to manage the migration process in the country. The Ethiopian government has adopted the international convention that guarantees human rights protections to its citizens. Despite the fact that the Universal Declaration of Human Rights (UDHR) is a non-binding legal document, it is an international customary law that enshrines basic rights of an individual human

being for equality and dignity, the same level of entitlement in rights; whether a migrant or not. The UDHR has also inspired a series of principles stipulated under subsequent treaties that protect the rights and dignities of people regardless of their status.

These international instruments include the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention on the Rights of the Child (CRC) to which Ethiopia is a signatory. Ethiopia has also accession status for the International Convention on the Elimination of All Forms of Racial Discrimination (CERD) and has ratified the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). Other important instruments in the protection of the migrants are the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, where Ethiopia has accession status and has not yet signed.

These international conventions guarantee the individual with rights that are inalienable. Ethiopia has also adopted few International Labor Organization (ILO) conventions with particular focus guaranteeing safety and protection to the labor force. The ILO conventions adopted are the Private Employment Agencies Convention (No. 181, 1997); the Abolition of Forced Labor Convention (No. 105, 1957); the Discrimination (Employment and Occupation) Convention (No. 111, 1958); and ILO Convention No. 182 on the Worst Forms of Child labor. (Yoseph et al. 2006: 87). Article 9 (4) of the Constitution of the Federal Democratic Republic of Ethiopia (FDRE) states: *“All international agreements ratified by Ethiopia are an integral part of the law of the land”,* which makes the international instruments adopted to be upheld by the government.

Nevertheless, despite the Ethiopian government effort in sending workers overseas for domestic work purpose and the widespread reliance on domestic workers in the country; the government failed to adopt and sign the ILO Convention NO. 189 that focuses on domestic workers and setting the standard in which domestic workers are protected from violations of their rights. Failure to adopt the convention may perpetuate human rights violations against domestic workers. According to Human rights Watch, in many countries domestic workers are excluded from national labor

laws, leaving them no legal right to limits on their hours of work, a minimum wage, or adequate rest.

The 1990 Convention on the Protection of the Rights of All Migrant Workers and Members of their Families is one of the major instruments in identifying and protecting the human rights of migrants. Human rights violations that happens in the country of destination should not eliminate the focus on the violation of rights that takes place in the country of origin. In most cases, traffickers, smugglers and brokers are considered as agents of human rights violation. The youth who are potential migrants are the ones vulnerable to human rights violations faced within their own country. According to MoLSA women migration to the Middle East has dominated the last decade from Ethiopia (Kuschminder, 2014), especially migration for domestic work. However, in 2013, the government of Ethiopia closed the legal channel in an attempt to address the problems faced by many irregular migrants that are deported from Saudi Arabia and to tackle the negative consequences of migration dominated by traffickers and smugglers.<sup>1</sup> In such instances where legal channels are closed; irregular pathways are likely to be more realistic (if not the only) option open to potential migrants from these countries (IOM, 2018; p.173). While various researches validated this point (Tayah, and Adamnesh, 2016; Fernandez, 2011, De Regt 2010), it is important to highlight gaps in laws, regulations and policies as well as the lack of government structures are contributing factors to the violation of rights prior to migrant's departure from their country.

### **Ethiopia's Overseas Employment Proclamation" Proclamation No. 923/2016**

As much as migrant receiving countries put restrictive immigration rules and policies in place, sending countries can also play an important role in regulating peoples' movement. The Ethiopian government enacted policies that aim at preventing migrants that are going to the Middle East through irregular channels. In the year

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<sup>1</sup> According to Proclamation No. 909/2015 "Prevention and Suppression of Trafficking in Persons and Smuggling of Migrants - "human trafficker" or "migrant smuggler" means a person; a) by any means directly or in directly, in violation of the law or by his personal initiation, commits or attempts to commit the crime of Human Trafficking and Smuggling of Migrants. B) participants as an accomplice in the crimes of trafficking in personas and Smuggling of Migrants.

2009, the Ethiopian government showed such efforts by adopting the Employment Exchange Service Proclamation 632/2009. Prior to the temporary ban on migration to the Middle East, this proclamation served as a guiding tool for private employment agencies, and the experts who monitor the activities of these PEAs. The Employment Exchange Proclamation required PEAs to be active agents in finding jobs and placement of a migrant into work. This created a wide gap in which the migrant is faced with challenges that emanate as the result of manipulation of the system by profit making PEAs (Interview with Expert from MoLSA). The PEAs, by working with brokers in different parts of the country, target potential migrants to luring them into migration.

The perpetuation of violating the rights of the migrant does not stop in the country of origin, rather it continues in the country of destination. Complaints by family members, returnees and migrants who have been trapped to remain out of work and in search of other jobs focuses on the lack of agency representatives and branch offices in the country of destination.

*Lelise is a returnee from Kuwait. She said, "I had the best job. I was happy with the family and everything was going great for me. After working for 8 months in the house, I had a love affair with my employer's son. I believed we were in love. Once the mother knew our situation, I started to get bitten and treated badly. I was forced to work long hours without proper food and time to eat. After a year and one month I realized my pregnancy and informed the family. They kept me in the house without pay and working hard. I tried to approach the agency representative for help without any success. When my due date approached, I was taken to the hospital to give birth. However, once I gave birth to my son I was let go, and forced out of the house. I was then deported without a son and the salary I worked for." (Interview 2017).*

In another interview conducted with returnees at AGAR Ethiopia, it is clear to identify the grave reality of disconnect, and physical and emotional hurt faced by both the migrant and family members.

*Kassech left the country with a hope to make a better living for her family and herself. She left her work and processed her migration with the assistance of a neighborhood broker and a PEA. However, after working for a year, Kassech found herself in a critical pain and emotional imbalance that resulted from working for more than*

*16 hours per day. Kassech is receiving mental health treatment and rehabilitation at AGAR Ethiopia. After long period of separation from her family, Kassech is able to establish contact with her father who lives in Jimma. Kassech's father who came to Addis Ababa to meet his daughter after her rehabilitation process said, "For a long time I lost my faith and hope. I tried to get information on her whereabouts. There was no hope. I knew I lost my daughter. When I receive a call from AGAR Ethiopia regarding my daughter and that she is receiving treatment for mental disorder, I praised my God and started praying for her recovery."*

These stories explain the challenges migration has brought both to the migrants and to their families.

In Part two of the proclamation under the section "Pre-conditions to Obtain License"<sup>2</sup>, the proclamation clearly states that an applicant who wishes to operate as a PEA that engages in overseas employment shall: -

- 2(a) submit an authenticated document showing that he has appointed a representative in the country where he sends workers, and that the appointed person has a license to engage in employment exchange activity from the concerned authority;*
- b) submit an evidence, verified by the embassy or consular office in the country to which the private employment agency sends workers, showing the existence of a sufficient office and a facility that provides temporary food and sheltering services;*

However, the challenge remains. Migrants who leave the household they are employed in as a result of harsh working conditions and human rights violations explain that the inability to easily get in touch with their sending agency and their representative is challenging. Hiwot who has been receiving mental disorder treatment at AGAR Ethiopia explains her journey:

*"My trip was processed by an agency in Addis Ababa. Among the many promises made was I will be able to change employers if anything is to happen. When I reached Saudi Arabia, a representative welcomed me and took me to a dormitory where there were many Ethiopians like myself. After two days, my employer came and get me. After working for four months, I*

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<sup>2</sup> For more detail please refer to part two, Article 2 (a), (b), (c), (d) of the Proclamation NO. 923/2016



*couldn't handle the harsh working condition and sleepless nights. I tried to call the representative many times but failed to get help. Finally, I decided to leave the house. I was captured by "Shurta" (police) the same day and remained in prison for 2 years with no help and assistance." (Interview 2017).*

According to the interviews conducted with returnee migrants there is a high expectation on the role of PEAs and their representative offices could do in countries of destination. Especially, the migrants hoped agency representing offices can get them re-hired and assist them in getting their pay from their employers in times of misunderstanding between the employee and employer.

During my field work in (2013) in assessing the operation of MoLSA and the mechanism placed to address complaints, I interviewed families who are unable to reach their daughters through the PEAs. In an interview conducted with a father and son who came to MoLSA to file a complaint against a PEA, the extent of the problem migrants face in country of destination is explained.

*"My daughter has been calling to update us on her situation. She was also able to send us some money within the first five months of her arrival in Saudi Arabia. Now it has been one year since we have heard any news from her. We have tried to contact the agency that sent her abroad. No hope. Now we are here (MoLSA) to seek assistance from the government." (Interview 2013)*

On a similar account, an uncle interviewed in 2013 explained the challenge in getting updates and calls from his niece who left for Kuwait with his assistance.

*"I thought I was helping my brother and his wife when I processed and paid all the cost to send my niece. We all thought she will make her family's life better. I was eager to hear all good news from her and my brother. However, it seems the more we expected to hear from her the more her whereabouts disappear. We went to the PEA almost every day in hope of good news. Today, it is our second day at MoLSA to check if they have any information about her. God's will, I hope to take good news to my brother. (Interview 2013)*

This kind of failure to maintain communication with migrants led to the closure of PEAs and inactivation of their license. In addition, the unavailability of strong consular office and Embassy made migrants vulnerable to human rights violations. Such gaps within the PEAs and the government weakness in the provision of system and structures that guarantee safety and protection to the migrants led to the violation of rights both in the country of origin and destination. The provision of the proclamation didn't help to protect the rights of the migrants. Also, the increasing number of victim migrants, returnees and the deportation of undocumented migrants from Saudi Arabia alerted the government to design a nuanced and strong policy. The ban on migration remained in place for four years. During this period, the government of Ethiopia worked on a new proclamation with the aim to strengthen the structure and law that guarantee protection of potential migrants' workers who are interested to work overseas.

Consequently, the government lifted the ban on migration in 2016, and adopted Ethiopia's Overseas Employment Proclamation (Proclamation No. 923/2016). The justification for adopting a new proclamation was to make sure migrants go through a path towards legal migration. Hence, the proclamation is expected to create favorable conditions and to protect the rights and dignities of Ethiopians who are willing to work overseas. This proclamation asserts that there are changes from the previous proclamation (Employment Exchange Proclamation 632/2009). The formulation of the proclamation stipulates the government's belief that safe and legal migration contributes to the development of the migrant and to the macro level growth of the country. The emphasis on the link between migration and development creates the need to migrate through legal channels in order to benefit more from the overseas employment. These efforts are also supported by international organizations such as International Organization for Migration (IOM). In order to strengthen such effort by the government in adopting Ethiopia's Overseas Employment Proclamation; international organizations like IOM provide "Training of Trainers (ToT), and support to different representatives of organizations working on the migration management.

In 2016, IOM in partnership with MoLSA trained 420 people in five regional states and two self-administered cities (IOM 2016). Such

trainings aim to increase knowledge on potential challenges and opportunities for labor migrants from Ethiopia, and to harnessing the immense potential of labor migration (ibid). The 2018 Migration Report also emphasized that migration can generate large benefits to the migrants, their families and the country at large. (IOM, 2018; p.3).

In this section, the paper attempts to highlight the major changes made on the proclamation, and questions to what extent these changes can guarantee the protection of migrants' rights.

The proclamation affirms the Ethiopian government's commitment to guarantee the safety and dignity of Ethiopians going abroad for employment. It also attempts to enhance the government's role in the follow-up and monitoring of the overseas employment exchange services.

One of the major differences with the current and former proclamations is their scope. Proclamation 632/2009 was applicable for Ethiopians going abroad for employment through PEAs, it also allowed citizens to work abroad for personal services of non-profit making purposes. However, Proclamation No. 923-2016 clearly limits its scope to apply only for two cases as stated in Part one, Section 3(1) and (2):

- 1/ overseas employment relation of Ethiopians' conducted by public employment organs, through Agency or on direct employment;*
- 2/ Ethiopians travelling to abroad to engage in overseas contracts of house maid services for non-profit making purposes.*

This proclamation similarly confers the government with a duty in the provision of jobs to the migrant. It allows the MoLSA to provide recruitment placement services to government organizations in receiving countries based on a government to government agreement (Proclamation 923/2016).

However, the PEAs remain to play a vital role in processing the overseas employment for potential migrants. According to Proclamation NO. 923/2016 "Private Employment Agency" or "Agency" means:

*“any person other than a Government body, which makes a worker available to an overseas employer by concluding a contract of employment with such a worker.”*

On the other hand, the proclamation is believed to allow the government to follow-up and monitor the overseas employment exchange services. The Proclamation 923/2016 puts preconditions to obtain license and requires agencies to fulfil certain criteria. The responsible body of the government to provide the license is the MoLSA. Part four of the Overseas Employment Exchange Proclamation identifies that the applicant needs to have capital not less than Birr one Million and have offices and representatives both in Ethiopia and in country of destination (Proclamation 923/2009). The increased startup capital will help to prevent the flourishing of many PEAs that might be found in default as in the years prior to 2013. The proclamation also requires PEAs to conduct recruitment only within the compound of their offices.

The proclamation (923/2016) also prohibits direct employment and restricts any attempt by employers to recruit and employ workers without going through agencies or the MoLSA. This can prevent the arranged recruitment and hiring of migrants between a broker and employer. Brokers being one of the active actors in the process of migration are also main human rights violators of the migrants. While the introduction of such policies has an indispensable value in preventing brokers and their illegal operation; it needs stronger mechanisms through which the government can control brokers in different parts of the country. As much as the proclamation regulates the activities of PEAs, there needs to be a strong sanction for brokers. However, this will also require the support of communities at large in informing government authorities about any activity of recruitment, trafficking and smuggling in their surroundings. The fact that brokers operate informally makes the control impossible.

The Ministry of Labor and Social Affairs is the responsible body in the implementation and monitoring of the rules enshrined in the proclamation. The Ethiopia’s Overseas Employment Proclamation 923/2016 clearly highlights the roles and responsibilities of each actor. While the government is responsible in the monitoring of the

activities in the process of recruiting and hiring of a worker, most responsibilities are shared with PEAs. According to part two of Proclamation 923/2016:

*“The services to be provided by the Ministry pursuant to Article 4 of this Proclamation<sup>3</sup> shall include interviewing and selection; causing medical examinations; approval of employment contracts, provision of pre-employment and pre-departure orientations, facilitation of departure of employed workers and other similar services.”*

The introduction of the new proclamation is a positive move by the government. However, to what extent that will address the challenges of rights violations faced by the migrants is questionable. This paper argues that involving PEAs as major actors in the process of recruitment and hiring process will create a gap where violation of rights will be perpetuated by private agencies themselves. This can happen as a result of conflict of interest between profit making and guaranteeing safety and protection to migrants both in the country of origin and destination, which still needs a comprehensive assessment of practices from the government side. One strategy devised in this proclamation is PEAs can only recruit and send workers to countries where the government of Ethiopia has contract with. The proclamation states overseas employment can only take place between countries where there is that bilateral agreement between the Federal Democratic Republic of Ethiopia and receiving country pertinent to the overseas employment.

The MoLSA is accountable to provide information on the where about of migrant workers overseas. During a research conducted in 2013, I have observed and interviewed families who file complaints against private employment agencies that failed to fulfill their part of the contract in maintaining contact and assisting their return home. Families have not heard from their children for more than a year and two seek justice. However, it has been difficult for the Ministry to assist these families. According to an expert from MoLSA, challenges they face include PEAs' failure to have offices in

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<sup>3</sup> “The Ministry may provide recruitment and placement services to Governmental organization in receiving country based on Government to Government agreement.”

destination countries and to report the number of migrants entered the destination country to the Ethiopian consular office or Embassy (Expert Interview).

Another important aspect of the proclamation is responsibility assigned to employees who are interested to work overseas. The potential migrant needs to have a minimum of eighth grade education. It also requires the migrant to have a certificate of occupational competence issued by the appropriate competent assessment center. This certificate is assumed to prove the practical knowledge of the workers who will be employed in domestic work. Lack of knowledge and experience has been one of the main causes instigating violation of the rights of migrants. In addition, the proclamation indicates the need for awareness raising programs that include pre-employment and pre-departure orientation to citizens interested to work overseas.

The previous proclamation (632/2009) required PEAs to provide trainings and pre-employment orientations. However, the practicability of it was problematic. According to interviews conducted with PEA owners, there is a consensus that they will not be engaged in providing training for potential migrants. Even if there are expectations stated in the proclamation, and trainings provided to them by MoLSA concerning their duties and what the proclamation entails, the PEAs only fulfill what they call "the most basic of the requirements." They mainly compile the necessary documents about the migrant and the employer and reporting to the Ministry. Although the proclamation purports to govern PEAs, it also lacks an enforcement mechanism and a means of efficient monitoring system (Mihret, 2013).

Mihret (2013) characterized the pre-departure orientation provided by MoLSA as ineffective. According to Mihret, the use of Amharic language as means of instruction during trainings is found to be problematic. He argued that considering the composition of migrants who are coming from different parts of the country, the pre-employment trainings and pre-departure orientations should be inclusive of the migrant's mother tongue. Otherwise, whether the trainings are provided by the agencies or by the Ministry, it will only be to fulfill the criteria than of providing adequate information and training to migrants. It should also be noted that availability

and accessibility of information and provision of services in the migrants' mother tongue is an issue of human rights. Accessing the right information at the right time is central to migrants' contemplations and perceptions of migration, whether considering their options, choosing a destination, or determining the safest and most financially feasible routes (IOM, 2018).

## **Conclusion**

The link between migration and human rights is one of the growing phenomena in migration studies. The movement of people leaving their places of origin and looking for better opportunities characterized the last decades. Despite restrictive policies and challenges faced by irregular migrants in the process of migration and in destination countries, migration from Ethiopia remains to be characterized with human rights violation of migrants. The existence of restrictive policies and restrictions on who enters or not influences the decision-making process on the kind of journey the migrant takes. In most instances, potential migrants from Ethiopia to the Middle East uses both legal and irregular channels. For instance, the different processes<sup>4</sup> and irregular routes used by the prospective migrants makes them susceptible to human rights violations. However, human rights violations also take place in the process that involves legal channels.

Irregular migration has been and still is a major issue where there is a gap in addressing human rights concerns of potential migrants. Despite efforts made by the Ethiopian government in adopting policies and provision of laws that guarantee protection to potential migrants and victims of human trafficking, there is a wide gap in providing protection to the rights of migrants. However, the positive attempts made by the government of Ethiopia in adopting "Ethiopia's Overseas Employment Proclamation 923/2016, and lifting the ban on migration are important milestones to ensure citizens freedom of movement as stipulated under the Federal Constitution and International instruments to which Ethiopia is a state party. This paper discussed to what extent the proclamation

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<sup>4</sup> According to MoLSA some of the process required are getting a visa, health check-ups, getting approval of contract, getting police fingerprint clearance, approval from Ministry of foreign Affairs on the finger print, Getting a visa. This process in total is expected to cost the migrant 3,597Birr.

may attain its stated goal of providing protection and safety for those who are willing to work overseas. In this regard, the reliance on Private Employment Agencies in the provision of safety and protection to the migrants processing overseas employment is the major concern that this article paused. The recurrent government ban on migration to the Middle East, which is intended to guarantee human rights protection to its citizens, ended up in promoting irregular migration channels that are often associated with human rights violations and inhumane treatment of migrants.

Despite the availability of legal channels and laws that restrict the process of migrating through irregular channels, many have left the country crossing borders on sea and land illegally. The weakness in existing laws and poor monitoring system contributed to the violations of migrant's rights. Even though, PEAs have the responsibility to guarantee protection and safety for the workers they recruit and hire, there have been reports of suffering and abuse- physically, emotionally and finically from migrants' side. The involvement of brokers in the process of migration has also influenced the decision-making process and provision of information to potential migrants.

Opening and strengthening of Embassies and Consular offices with a designated department that handles migrant workers' concerns is very critical. For instance, in Saudi Arabia and other Middle East countries, the main challenge faced by migrants has been the lack of representation and a government body that follow up on the wellbeing of its citizens.

The paper argued, there is an overlap in policy and the rhetoric of advocating for protection of potential migrants. Actions by the state is detached from the provision of the necessary structures that guarantee the agency and human rights of the migrant. However, the adoption of new policies and laws can help in changing the trend and operation of working for migrants in the country of destination which will allow for the continuation of guaranteeing safety and protection of citizens both in the country of origin and destination countries. The government of Ethiopia also needs to adopt international conventions and instruments that guarantee more protection to groups such as domestic workers. Expecting protection to emigrants working in the Middle East as domestic



workers, and not being able to have similar laws in the country is a wider gap that needs to be addressed.

The Ministry of Labor and Social Affairs should guarantee the availability and accessibility of information and trainings to potential migrants in the language they understand. The gap between reaching out to larger communities and those in the process of migration will remain difficult unless all actors in the process of migration address the human rights needs of the migrant both in the country of origin and destination.

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