



## TO

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## SUBJECT

# Framework Review of Positive Law Impacting the Protection of Child Domestic Workers in Ethiopia

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## Introduction

As part of the System Change in Ethiopia consultancy for The Freedom Fund and its programme, “Reducing the Prevalence of Domestic Servitude in Ethiopia,” this Framework Review considers the underlying legal and policy context relevant to the protection of child domestic workers (CDW) in Ethiopia. The three broad areas related to CDW protection are: child protection and child rights; human trafficking; and labour law. These three areas intersect and influence each other and need to be considered holistically due to the nexus between CDW, their exploitation, and human trafficking. Thus, protection of CDW can be viewed primarily from the perspective of trafficking. It is nevertheless worthwhile to state the controlling law for each area separately, to allow for a fuller understanding of the entire legal framework. What is meant by legal framework for the purpose of this review is the governing, or controlling, law as seen in the international legal instruments and Ethiopian legislation and regulation. The main focus of the review will be on this positive law.

This review spends significant time considering human trafficking law as it is particularly relevant to CDW in the urban areas of Ethiopia. Most of the children involved in domestic work in Addis Ababa and other urban areas of the country have

travelled from rural locations to work. Some of these journeys were taken independently or without the involvement of third parties, but many of them involve people facilitating the movement of children to work. Additionally, CDW face a substantial risk of forced labour or slavery-like conditions due to the nature of domestic work by children. Thus, much of the abuse confronted by CDW meet the legal definition of human trafficking, making the law of human trafficking central to the protection of CDW. Many CDW are also separated from parents or other adults who could advise or assist them, kept apart from their peers, and/or lacking identification documents, all of which place them in a dangerous position and subject to trafficking. As CDW are working, labour law is another key area of concern for this research. The review also discusses the interplay of trafficking and labour laws with the broader protections found in legal instruments that protect the rights of children more generally, as the two types of law mutually reinforce one another.

First, this review considers international and continental legal instruments starting with the overarching international framework for child protection and child rights, as they are applicable to CDW and their protection generally. Then follows a discussion of the two broad approaches in international law to child trafficking, which implicates labour law as well. Next is a brief review

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of relevant continental African instruments and then the national Ethiopian law and policy documents. Subsequently, there is a bibliography of the laws mentioned as well as the relevant academic and research publications used in developing the review. One reason for this structure is because the national Ethiopian law in this area is largely based upon the international legal instruments, so it is useful to see the international conventions first and then see how they are applied in the Ethiopian context.

For the purposes of this Framework Review, only laws directly applicable to CDW protection have been considered and the primary focus is on those laws currently in force in Ethiopia. Thus, the review primarily looks at international law that has been accepted by the Ethiopian government, through either ratification or accession. Nevertheless, there will be a brief discussion of the main aspects of certain instruments even when they have not been ratified or acceded to by Ethiopia,<sup>1</sup> where they represent a clear indication of the customary international law and the sense of the international community on issues related to CDW protection, such as International Labour Organisation (ILO) Convention No. 189 (C189) relating to the rights of domestic workers. Along the same lines, the review of domestic Ethiopian legal instruments is narrowly focused on the specific laws most relevant to CDW protection. Hence, our look at Ethiopian labour law, for instance, concentrates on the legislation and policy relevant to the protection of the rights of CDW, although many other aspects of Ethiopia labour law could apply to CDW in other ways to lesser or greater degrees. For one such example, any collective bargaining provisions that are part of Ethiopian law have not been analysed

in this review.<sup>2</sup> Additionally, the consideration of the laws applicable to human trafficking and/or labour have been analysed primarily in relation to their impact on CDW in the urban areas of Ethiopia.<sup>3</sup> In both the international/continental portion of this review and the national Ethiopia section, relevant policy documents are considered as well.

Lastly, the Framework Review is a desk review and, as such, research for this review took place online and through informal enquiries to researchers unaffiliated to the consultants as well as between the consultants themselves. Where possible and desirable, online references to documents relied upon, such as websites, have been included throughout the review. A list of all legal instruments and publications mentioned or relied upon is included in the bibliography section at the end of the review.

## Recommendations

While recommendations for further action are stated or suggested throughout the review, they have also been aggregated here for ease of reference:

- Train criminal investigators and prosecutors on child protection and child rights law, especially taking account of the best interests of the child and the child's right to be heard in the context of human trafficking criminal investigations and prosecutions.
- Establish tools to use and/or procedures to follow for criminal investigators and prosecutors to ensure their compliance with the provisions of the Convention on the Rights of the Child, particularly consideration of the best interests of the child.

<sup>1</sup> For the ratification status of ILO conventions, see, e.g., ILO NORMLEX, "Up-to-date Conventions and Protocols not ratified by Ethiopia" [https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11210:0::N0::P11210\\_COUNTRY\\_ID:102950](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11210:0::N0::P11210_COUNTRY_ID:102950)

<sup>2</sup> See, e.g., Proclamation No. 1156/2019, art. 125 (discussing collective agreements). While true that the formation of labour unions by CDW would impact the protection of CDW, that is quite unlikely at present and so beyond the scope of this review.

<sup>3</sup> One such example is with the provisions of the Ethiopian human trafficking proclamation concerning the National Partnership Coalition (NPC), which was established to coordinate governmental work on migration. As governmental migration management structures do not directly impact CDW protection, they have not been explicated in detail, but the basics of NPC functioning have been discussed to provide needed background.



- Advocate for the repeal of the Trafficking Proclamation's (Proclamation 1178) exemption of child labour from aggravated penalties for perpetrators that are applied to other types of child trafficking.
- Advocate for the explicit inclusion of domestic workers as protected employees under the Labour Proclamation (Proclamation 1156).
- Advocate for the ratification of ILO Convention 189 and/or the incorporation of some or all of the protections for domestic workers in Convention 189 into Ethiopian national law.
- Strengthen understanding of the impact of gender, ethnic or racial identity, and disability on CDW protection, and advocate for an explicit consideration of these identities in the formulation and implementation of laws to protect CDW.
- Promote the African Committee of Experts on the Rights and Welfare of the Child taking on a stronger protective role for CDW, perhaps through strategic litigation or lobbying work.

These recommendations are based on the consideration of the legal instruments that follows but should not be considered as an exhaustive list. Also, the recommendations have not been analysed to determine if they are appropriate within the context of The Freedom Fund's current programme. For example, the recommendations have not been compared to the existing logical framework or theory of change.

## International and Continental Legal Instruments

The safety and protection of CDW centre on two main bodies of law that often intersect, those concerning human trafficking and labour law. However, as mentioned in the introduction, there is significant interplay between human trafficking,

labour law, and instruments protecting children and child rights. There are two main approaches to human trafficking taken in international law. These approaches are named after the entities behind the leading international conventions for each of them and called in this review, the UN and ILO Approaches; each of these approaches will be considered in turn.<sup>4</sup> However, before looking at these two approaches to child trafficking in international law, the review must initially consider the international framework for child protection and child rights that undergirds both trafficking approaches.

## Convention on the Rights of the Child

There have been international initiatives to protect the rights of children back to 1924,<sup>5</sup> and the present Convention on the Rights of the Child (1989) (CRC) and its General Comments are the most important sources showing the international standards for the protection of CDW. The CRC and associated law are applicable to both the UN Approach and the ILO Approach to human trafficking that will be discussed below, and these CRC requirements are independent legal protections for children in international law. Ethiopia ratified the CRC in 1991.<sup>6</sup>

All CRC provisions need to be interpreted in light of the four cardinal principles of the CRC that appear near the start of the convention: Non-discrimination (Art. 2); Best Interest of the Child (Art. 3); Right to Life, Survival, and Development (Art. 6); and Respect for the Views of the Child (Art. 12). While the approaches to human trafficking that are discussed in this review mention child trafficking generally, they do not clearly state the CRC cardinal principles to protect children. It is, therefore, important to recognize

<sup>4</sup> See Dottridge, M. & Jordan, A. (2012). "Children, Adolescents and Human Trafficking: Making Sense of a Complex Problem," Issue Paper No. 5, at 3-4. Washington, D.C.: American University Washington College of Law. <https://resourcecentre.savethechildren.net/node/7120/pdf/7120.pdf>. (Discussing the UN Approach versus the ILO Approach)

<sup>5</sup> See UN Documents, "Geneva Declaration on the Rights of the Child (1924)," accessible at <http://www.un-documents.net/gdrc1924.htm>.

<sup>6</sup> See United Nations Treaty Bodies, "UN Treaty Body Database: CRC Ratification Status," accessible at [https://tbinternet.ohchr.org/\\_layouts/15/TreatyBodyExternal/Treaty.aspx?Treaty=CRC&Lang=en](https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?Treaty=CRC&Lang=en).



that the protections for children contained in the CRC apply to both the UN and ILO Approaches to human trafficking on top of the text of the relevant conventions and protocols. For example, prosecutors should think about whether it is in the best interest of the child to move forward with a trafficking criminal case, and also hear what the child wants as regards any trafficking criminal case with which they are involved. This is necessary to give effect to Articles 3 and 12 of the CRC. It does not mean that government officials make agree with what the child victim or witness to human trafficking wants, for instance, but they must take it into consideration. This too often does not occur in practise.

Other articles of the CRC significant to the protection of CDW include the Article 19 protection of children from abuse and neglect, including exploitation, as CDW are subject to exploitation.<sup>7</sup> This article is noteworthy as it provides a justification for social programmes to provide support to CDW as they are particularly at risk of abuse. Also directly relevant to CDW is CRC Article 20, on the protection of child without its family, which is the typical situation for CDW in Addis Ababa and which gives rise to an entitlement under the CRC to special protection. Along the same lines are other rights extended by the CRC that it is difficult for CDW to access due to their lack of parents in residence and/or the other conditions of their domestic work. Children, including CDW, further have the right to health (Art. 24); to an adequate standard of living for the child's physical, mental, spiritual and social development (Art. 27); to an education (Art. 28-29); and to leisure (Art. 31).<sup>8</sup>

The CRC goes on in its later articles to address issues closer to the heart of protection of CDW: the right for children to be protected from work that

threatens health, education, or development (Art. 32); the right to be free from sexual exploitation (Art. 34); and, most directly on point, a general prohibition against "the sale of or traffic in children for any purpose or in any form" (Art. 35).<sup>9</sup> Hence, Article 32 broadly protects children economic exploitation and children's hazardous work. The CRC also has which buttresses the provisions of the Palermo Trafficking Protocol without adding much in the way of explaining what is included in the term "traffic". *Id.*, art. 35.

CRC General Comments serve to assist stakeholders to better understand how to apply the CRC. For example, two parts of CRC General Comment No. 13 (2011) (CRC GC13) on the "right of the child to freedom from all forms of violence" provide examples of additional guidance regarding the interpretation of CRC Articles 34-35. In its paragraph 72, CRC GC13 sets forth elements that governments should incorporate into their criminal justice system processes that protect the rights of children facing violence and abuse. CRC GC13 paragraph 76 provides countries with guidance specifically about child trafficking and how to cooperate across borders to address that issue. This complements the various provisions in the UN Approach instruments that will be discussed below that go into cross-border cooperation at length. In General Comment No. 16 (2013) (CRC GC16), the discussion of "State obligations regarding the impact of the business sector on children's rights" does not relate to the protection of CDW per se but is relevant in a broader sense because it speaks to labour exploitation. Indeed, CRC GC16 reiterates the four cardinal principles of the CRC in relation to children working, and further discusses how they apply in specific instances related to the work of children. Relevant to CDW particularly are paragraphs 35-37 that discuss protecting

<sup>7</sup> Many, if not most, of these provisions of the CRC are mirrored at the continental level in the African Charter for the Rights and Welfare of the Child, such as its Article 16 protection of children from abuse and neglect that is essentially identical to the one in CRC art. 19. The African charter is described more fully later in the review.

<sup>8</sup> *Id.* (these provisions of the CRC all of analogues in the African charter).

<sup>9</sup> *Id.* (same).



children's rights within the informal economy, as many CDW do not have written contracts, are paid in cash, and their earnings are not reported to the tax authorities.

## Two Approaches to Human Trafficking

The explanations in the CRC commentary and in the text of the legal instruments involved do not, unfortunately, eliminate uncertainty where child trafficking is concerned. This is particularly the case as child trafficking involves complicated issues on the borderlands between criminal abuse and labour. Dottridge and Jordan, among others, point out that the lack of precision in defining the term "child trafficking" can create confusion. Many children globally, and in Ethiopia, "want or need to work and who are not suffering from physical or psychological abuse" but may be classified as trafficked children due to a broad application of the rules set forth in the relevant international instruments. Dottridge & Jordan, at 8. See also Gamlan, et al., at 13.<sup>10</sup> Partially these difficulties in classifying whether a child has been trafficked or not are due to the inherent complexities of child labour in developing countries, particularly those with a significant informal sector that permit work from age 14, such as Ethiopia. Exacerbating the situation is the frequently hidden nature of domestic work itself, which takes place outside of more-regulated commercial establishments and is

in the home instead. See Gamlan, et al. *passim*. That said and recognizing that the CRC and its provisions on child protection and child rights apply to CDW no matter which approach to human trafficking is used, it is worthwhile to look at the two approaches to human trafficking that exist in international law at present.

As researchers note: "Instruments that have dealt with human trafficking date back to the abolition of slavery. They include provisions within the Slavery Convention (1926) and the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery (1956)."<sup>11</sup> However, the current state of international criminal law regarding human trafficking and smuggling is defined by the UN Convention against Transnational Organised Crime (2000) (UNTOC)<sup>12</sup> and its protocols on anti-trafficking and human smuggling: United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (2000) (Palermo Trafficking Protocol)<sup>13</sup> and United Nations Protocol against the Smuggling of Migrants by Land, Sea and Air (2000) (Migrant Smuggling Protocol).<sup>14</sup> The approach of the UNTOC and its protocols, sometimes called the "UN Approach", can be contrasted to the approach set forth in the various ILO conventions dealing with child labour, several

<sup>10</sup> Gamlan, J. et al. (2013). Is domestic work a worst form of child labour? The findings of a six-country study of the psychosocial effects of child domestic work, *Children's Geographies*, 1-14.

<sup>11</sup> King, L. (2008). International Law and Human Trafficking, *Human Rights & Human Welfare*, at 88. <https://www.du.edu/korbel/hrhw/researchdigest/trafficking/InternationalLaw.pdf>. King sets forth a number of other international law instruments "that include segments against the trafficking of persons": Universal Declaration of Human Rights (1948), International Covenants on Civil and Political Rights (1966), and Convention on the Elimination of all Forms of Discrimination Against Women (1979). See *id.* These instruments will not be analysed as they are general instruments that are broadly applicable and do not specifically reference human trafficking, human smuggling, and/or child labour issues. We, however, acknowledge their impact on the development of human trafficking and smuggling law.

<sup>12</sup> The UNTOC was ratified by Ethiopia in 2007. See, e.g., United Nations Treaty Collection (UNTC), "United Nations Transnational Organised Crime Convention", accessible at

[https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=XVIII-12&chapter=18&clang=en](https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-12&chapter=18&clang=en) (also with treaty's text).

<sup>13</sup> For the protocol's text and Ethiopia's accession in 2012, see, e.g., UNTC, "United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organised Crime", accessible at

[https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=XVIII-12-a&chapter=18&clang=en](https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-12-a&chapter=18&clang=en) (note that Ethiopia does not accept the jurisdiction of the International Court of Justice (ICJ) for human trafficking crimes).

<sup>14</sup> Ethiopia also acceded to the Migrant Smuggling Protocol in 2012, see, e.g., UNTC, "United Nations Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organised Crime", accessible at

[https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=XVIII-12-b&chapter=18&clang=en#EndDec](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-12-b&chapter=18&clang=en#EndDec) (note the same reservation regarding Ethiopia's rejection of ICJ jurisdiction under this protocol).



of which discuss what types of child labour rise to the level of trafficking in persons.

A labour-focused approach to child trafficking also has a long history, with early international conventions addressing the massive expansion of industry and the unrest caused thereby in the early decades of the 20<sup>th</sup> Century, such as the Hours of Works Convention (Industry), 1919 (No. 1) (C1). More directly applicable to the discussion in this review is that child trafficking is touched on in three, more contemporary ILO conventions and one global recommendation: Minimum Age Convention, 1973 (No. 138) (C138); Worst Forms of Child Labour Convention, 1999 (No. 182) (C182); and Domestic Workers Convention, 2011 (No. 189) (C189), including C189's Domestic Workers Recommendation, 2011 (No. 201) (R201). Ethiopia has yet to ratify C189, as mentioned in the introduction, or fully implement the protections C138 and C182.<sup>15</sup> These ILO conventions will be investigated more fully in the section to follow on the "ILO Approach" to child trafficking.

## Gender, Ethnic or Racial Identity, and Disability

Neither approach to addressing child trafficking and, hence, the protection of CDW comprehensively accounts for issues around gender, ethnic or racial identity, and/or disability. Commentators and academics critique the lack of focus on these issues,<sup>16</sup> which is particularly troubling due to research that shows that gender plays a major or even the key role in determining who is trafficked.<sup>17</sup> Ethnic and racial identities also

strongly relate to who is trafficked.<sup>18</sup> Both women, including girls, and people of colour are trafficked at levels disproportionate to their percentages of the population at large. Field experience has also demonstrated that people with disabilities are at particular risk of human trafficking, and that being trafficked can cause people to develop disabilities.<sup>19</sup> Furthermore, the intersection of gender, ethnic, racial, and disability identities frequently increase the risk of human trafficking as traffickers "tend to prey on 'excluded populations.'" Butler, at 1508 (quoting U.S. Dep't State, Trafficking in Persons Report 2013). The impact of gender, ethnic or racial identity, and disability requires further in-depth consideration going forward, notwithstanding the omission of the topic from the texts of the controlling legal instruments of the UN and ILO approaches and is a subject ripe for advocacy with Ethiopian officials. The CRC General Comments mentioned before could provide some guidance in this regard, as child protection in international law has dealt with these issues more thoroughly. See, e.g., CRC GC13, at para. 72(b) (regarding gender dimensions of violence against children),

## The UN (or UNTOC) Approach

The UN Approach is set forth in the UNTOC and its two relevant protocols, named above. As the UN Approach is based on the UNTOC, Palermo Trafficking Protocol, and Migrant Smuggling Protocol, it could also be fairly called an UNTOC approach. The parallel structures of the Palermo Trafficking Protocol and the Migrant Smuggling Protocol and their express connection to the

<sup>15</sup> See ILO NORMLEX, "Ratifications by Ethiopia", accessible at [https://www.ilo.org/dyn/normlex/en/f?p=1000:11200:0::NO:11200:P1\\_1200\\_COUNTRY\\_ID:102950](https://www.ilo.org/dyn/normlex/en/f?p=1000:11200:0::NO:11200:P1_1200_COUNTRY_ID:102950)

<sup>16</sup> See Patterson O. (2011). "Trafficking, Gender & Slavery: Past and Present," in *The Legal Parameters of Slavery: Historical to the Contemporary*. Harvard Law School: The Hourston Institute. [https://scholar.harvard.edu/files/patterson/files/trafficking\\_gender\\_slavery\\_12\\_20\\_11\\_cambria\\_autosaved.pdf](https://scholar.harvard.edu/files/patterson/files/trafficking_gender_slavery_12_20_11_cambria_autosaved.pdf)

<sup>17</sup> See Gacinya, J. (2020). Gender inequality as the determinant of human trafficking in Rwanda. *Sexuality, Gender & Policy*. 3:70–84. <https://doi.org/10.1002/sqp2.12018>.

<sup>18</sup> Butler, C. The Racial Roots of Human Trafficking, 62 *UCLA L. Rev.* 1464 (2015). <https://www.uclalawreview.org/racial-roots-human-trafficking/>

<sup>19</sup> See U.S. Office for the Victims of Crime, Technical Assistance Center, "Victims with Physical, Cognitive, or Emotional Disabilities," accessible at: <https://www.ovcttac.gov/taskforceguide/eguide/4-supporting-victims/45-victim-populations/victims-with-physical-cognitive-or-emotional-disabilities/>.



UNTOC allow them to be read as a coherent part of the same approach with the main distinctions being on the exact type of behaviour of people on the move they seek to criminalise. Both protocols also apply to children, the Palermo Trafficking Protocol explicitly so.

The UNTOC itself, however, is not concerned with the investigation and prosecution of human trafficking and smuggling crimes as such, leaving those offences unmentioned in the main convention text, but rather with crimes committed by criminal organisations (Article 5); money laundering (Articles 6-7); corruption (Articles 8-9); and obstruction of justice (Article 23). The convention's main body instead creates the international structure upon which global work against human trafficking and smuggling depends. Namely, the UNTOC sets forth, among other items, how State parties to the convention can domesticate and prosecute offences named in the convention (Article 11); confiscate and/or seize the proceeds of crimes recognised therein (Articles 12-14); investigate such crimes (Articles 19-20); and cooperate with other State parties to investigate such crimes (Articles 25-27). Also discussed is the jurisdiction of the convention (Article 15); extradition of relevant criminal defendants (Article 16); mutual legal and other assistance amongst State parties (Articles 18 and 29); witness protection (Article 24); and victim assistance (Article 25), among other topics. This thumbnail survey of the provisions of the UNTOC demonstrates that a majority of its articles deal with technical and procedural aspects of the investigation and prosecution of serious crimes with international impact, rather than setting forth and defining the scope and make-up of those serious crimes. Further, the UNTOC expressly permits protocols in its Article 37, which states that the protocol is to "be interpreted together with" the text of the convention itself (Article 37(4)), and both

of the relevant protocol reiterate the same. See Palermo Trafficking Protocol, art. 1, and Migrant Smuggling Protocol, art. 1. Thus, the international system created by the UNTOC and adhered to by its state parties, including Ethiopia, provides the framework within which national laws and policies have been developed regarding human trafficking and smuggling criminal offences.

The two UNTOC protocols relevant to the instant discussion, the Palermo Trafficking Protocol and the Migrant Smuggling Protocol, delve deeply into the substantive criminal law aspects of the crimes of human trafficking and smuggling, with a particular emphasis on the international nature of such crimes. Looking at the two relevant protocols, both follow a similar structure, in which the protocols define what acts are criminalised; set forth how to protect victims of those crimes; and discuss how State parties can cooperate in the investigation of defined crimes. It is also notable the extent to which these protocols clearly supersede and incorporate provisions from earlier international legal instruments dealing with similar issues. See, e.g., *supra* fn.2; see also, e.g., Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others (1949) (being an example of a convention still technically in force but largely superseded by various provisions of the Palermo Trafficking Protocol and the Migrant Smuggling Protocol).<sup>20</sup> While mentioned previously it is worth stressing that the UNTOC protocols are the controlling international law on the subject of human trafficking and smuggling at present.

In light of the foregoing, a consideration of the substantive impact of the Palermo Trafficking Protocol must begin with the definition of trafficking in persons found in its article 3(a):

*“Trafficking in persons’ shall mean the recruitment, transportation, transfer,*

<sup>20</sup> For text of the convention <sup>see</sup> UNTC, “Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others”, <sup>accessible at</sup>

[https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg\\_no=VII-11-a&chapter=7&clang=en](https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=VII-11-a&chapter=7&clang=en)



*harbouring or receipt of persons, by means of the 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...*"

This, UNTOC Article 3 structures the definition of trafficking around three elements: movement with a third party's involvement, means of abuse, and purpose of exploitation. See Dottridge & Jordan, at 4. Article 3 goes on to state that consent is "irrelevant" if the acts meet the requirements of the definition in the article and that children have been trafficked even if none of the means set forth in the article (e.g. force, coercion, abduction, etc.) have been used. Palermo Trafficking Protocol, art. 3(b)-(d). Therefore, children who move for purposes of work, even in the absence of abusive means, can be considered as trafficked under the Palermo Trafficking Protocol as "children do not have the same legal capacity as adults to engage in certain forms of work."<sup>21</sup> The Palermo Trafficking Protocol does not go into detail regarding what level of work is required to rise to the level of trafficking, although ILO C182 on the worst forms of child labour does further define and categorise types of harmful child labour, which will be further discussed below, along with other relevant ILO conventions.

The Palermo Trafficking Protocol also restricts its own application by limiting it to criminal offences

that "are transnational in nature and involve an organized criminal group," *id.*, art. 4, which necessarily excludes the protocol from applying to purely domestic types of human trafficking and/or behaviour carried out by individuals that are not part of an organised group. State parties may expand the definitions of the Palermo Trafficking Protocol in its own national law. See *Id.*, art. 5(1). The second part of the protocol provides for protections of trafficking victims – namely, privacy, safety, and assistance, see *id.*, art. 6-8 – and the third and fourth parts focus on practical measures for State parties to cooperate and facilitate implementation of the protocol. See *generally id.*, art. 10-20. Thus, the operative sections of the Palermo Trafficking Protocol are centred on articles 3-4, with most of the rest of the text of the protocol orbiting around and dependent on the definition of the crime of human trafficking set forth in articles 3-4.

While the Migrant Smuggling Protocol only applies to migrants crossing international borders, as will be explained more fully below, and is therefore not applicable to the large majority of CDW in Addis Ababa that are the subject of this project, it is nevertheless worthwhile to consider the smuggling protocol in this review. The smuggling protocol demonstrates how the unauthorised crossing of international borders changes the approach of international law to people on the move. Simply put human trafficking requires abuse of the people involved and human smuggling does not. Human smuggling, as defined by the Migrant Smuggling Protocol, only requires a "financial or other material benefit" connected to "the illegal entry of a person into a State Party of which the person is not a national or a permanent resident." Migrant Smuggling Protocol, art. 3(a).<sup>22</sup>

To reiterate, the Migrant Smuggling Protocol, unlike the Palermo Trafficking Protocol, does not

<sup>21</sup> Dottridge & Jordan, at 4.

<sup>22</sup> A full consideration of its provisions is beyond the scope of this review, but it should be noted that the Migrant Smuggling Protocol

unpacks and defines some of the terms in its operative definition, see Migrant Smuggling Protocol, art. 3(b)-(c); requires that violations of the protocol be transnational in nature and involve an organized





require any showing of abuse or use of force or coercion. Thus, commentators can see human smuggling can be seen as a primarily economic crime, as opposed to as a crime of violence. While true that smuggling can, and often does, turn into trafficking, it need not and does not always. It is important not to conflate the terms and recognize the violence inherent in trafficking. This distinction must be kept in mind when devising proportionate and useful legal and programmatic responses to human trafficking and smuggling, as the most effective and appropriate responses for the different situations may diverge.

One aspect to consider regarding the UN Approach created by the UNTOC in the context of protecting CDW is that the UNTOC is primarily concerned with enforcement and punishment. The UNTOC and its protocols, therefore, set forth a structure on how to criminal investigate and prosecute crimes that have already been committed, but largely neglects the underlying causes of these crimes and how to prevent them from occurring. Only one article deals with the prevention of transnational organised crime in the entirety of the UNTOC, compared to the numerous articles that discuss investigating and prosecuting such crimes. Its Article 31 seeks to promote the prevention of transnational organised crime, but most of that article's attention is on stopping criminal syndicates from participating in the legal economy (Article 31(2)). While there is mention of rehabilitating people convicted of crimes covered by the UNTOC in subsection Article 31(3) as well as evaluating and improving methods to combat organised crime, such as in subsections Article 31(4)-(7), there is no discussion of the root causes

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criminal group, *see id.*, art. 4; directs State parties to domesticate the provisions of the protocol, *see id.*, art. 6; and specifies practical measures for State parties to cooperate and facilitate implementation of the protocol. *See generally id.*, art. 10-25.

<sup>23</sup> The International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (1990) (Migrant Rights Convention) is another international instrument that could apply to trafficked or smuggled persons to protect their rights. The Migrant Rights Convention straddles the border between people moving for economic reasons and trafficked people engaged in forced

of crime or how poverty and inequality could create conditions favourable to the commission of organised crime. This lack of emphasis on prevention is mirrored by the Palermo Trafficking Protocol and the Migrant Smuggling Protocol, both of which give short shrift to preventing the crimes they address along the same lines as the UNTOC itself. *See, e.g.*, Palermo Trafficking Protocol, art. 9, and Migrant Smuggling Protocol, art. 15.

While the UNTOC and its protocols home in on investigation, prosecution, and punishment of human trafficking and smuggling, there are two publications that speak to the issue of human rights in the context of trafficking in persons and that should be considered persuasive precedent of customary international law. While neither is, therefore, a binding commitment on countries or courts,<sup>23</sup> they raise important issues around human rights in anti-trafficking criminal cases. One is from the UN Office of the High Commissioner for Human Rights (OHCHR): Recommended Principles and Guidelines on Human Rights and Human Trafficking (2002) (Recommended Guidelines).<sup>24</sup> The Recommended Guidelines provide a necessary rebalancing to ensure that human rights are accounted for during the investigation and prosecution of human trafficking crimes. As befits an OHCHR publication, the Recommended Guidelines focuses on the promotion and protection of human rights as part of the law enforcement response to human trafficking, specifically by centring the rights of survivors of trafficking. *See* Recommended Guidelines, at 1-2 and Guidelines Nos. 1, 6, 8. The guidelines single out the protection of child survivors of trafficking as needing particular care

labour and provides protection for both categories. *See, e.g.*, Migrant Rights Convention, art. nos. 8-11. Ethiopia has not, however, ratified or acceded to this convention. *See* OHCHR, "Status of Ratification Interactive Dashboard", accessible at <https://indicators.ohchr.org>.

<sup>24</sup> Extensive elaboration of the meanings contained in the Recommended Guidelines can be found in a subsequent publication of OHCHR, which is beyond the scope of this review but amplifies the discussion of relevant themes. *See generally* OHCHR Recommended Principles and Guidelines on Human Rights and Human Trafficking: Commentary (2010).



and attention. See *id.*, Guideline No. 8. While not stated explicitly, this includes rights-sensitive approaches to policing. As the guidelines say, “Law enforcement officials must ... be sensitized to the paramount requirement of ensuring the safety of trafficked persons.” *Id.*, Guideline No. 5. The distinct possibility that government officials may be implicated in human trafficking is also broached directly in a way that does not occur in either protocol. See *id.*, Guideline Nos. 5, 10. Further, the Recommended Guidelines speak clearly about the need to work on prevention and not just prosecution. “Strategies aimed at preventing trafficking should take into account demand as a root cause.” *Id.*, Guideline No. 7. No such clear statements on rights-based investigation or prevention strategies can be found in either of the protocols.

The other relevant publication – Human Rights Standards for the Treatment of Trafficked Persons (1999) (HR Standards) – was promulgated by a consortium of consortia that are deeply concerned with both trafficking and human rights.<sup>25</sup> The HR Standards highlight the omission of trafficking within one country from the scope of the Palermo Trafficking Protocol, noting that the “violations and harms suffered by in-country victims are no less than for cross-border victims.” HR Standards, at 3; see also *id.*, Standard no. 2 (arguing against discrimination between internal and international trafficking). Presumably trafficking within one country was knowingly excluded for political reasons, and not due to any criminal law policy. HR Standards also aims to decouple the historic linkage between women and children seen in a number of international law instruments, saying that the linkage “often encompasses the treatment of women as if they are children and denies women the rights attached to adulthood”. *Id.*, at 2.

<sup>25</sup> The issuing consortia of the Human Rights Standards for the Treatment of Trafficked Persons were the Global Alliance Against Traffic in Women, Foundation Against Trafficking in Women, and International Human Rights Law Group. These entities can be broadly conceived of as coalition bringing “together human rights, anti-trafficking and sex workers’ rights movements in a joint lobby.” Wijers,

The standards also state that “do not contain specific provisions addressing the special status, rights and needs of the girl child or children generally.” *Id.* At this point in the document, reference is made by the HR Standards to the CRC serving to provide child-specific protection to trafficked children. See *id.*<sup>26</sup> Finally, the HR Standards, as with the Recommended Guidelines, expressly seek to protect the survivors of trafficking, especially in the context of criminal investigation and prosecution. See *id.*, Standard nos. 4-7.

## The ILO Approach

Unsurprisingly, ILO is much more focused on the labour and work aspects of human trafficking and smuggling than the UNTOC and its protocols. Indeed, to the extent that the relevant ILO conventions, and R201, touch on human trafficking and smuggling at all, it is in the context of labour and work. That said, the so-called ILO Approach builds upon the UN Approach in several important ways. Most specifically, ILO makes clear the distinction between child labour and child trafficking, where child trafficking requires movement and involvement of a third party whereas child labour need not have either. Both categories are prohibited but are different types. See Dottridge & Jordan, at 6.

This methodology is taken forward most importantly in C182, which “focuses on the four worst categories of child labor”, Dottridge & Jordan, at 7. C182’s article 3 sets forth these categories: child slavery and practices like slavery; child prostitution and pornography; using a child for illegal activities, particularly related to illicit narcotics; and any other work that is likely to “harm the health, safety or morals of children”. C182, art.

M. (2015) Purity, Victimhood and Agency: Fifteen years of the UN Trafficking Protocol. *Anti-Trafficking Review*, at 58.

<sup>26</sup> Although not mentioned by the HR Standards, as mentioned before in this review, the CRC generally requires primacy for the best interests of the child when considering children. See CRC, art. 3(1).



3(a)-(d). These worst forms of child labour overlap significantly with child trafficking despite the theoretical distinction between the two types of crimes. Nevertheless, included in this definition of the worst forms of child labour is child trafficking itself, which is said to be a slavery-like condition. See *id.*, art. 3(a). These four categories of unacceptable child labour are targeted for elimination by State parties to C182 through penal and other sanctions. See *id.*, art. 6(1) (mandating the elimination of these worst forms of child labour) and art. 7(1) (directing State parties to apply sanctions to promote such elimination). C182 also seeks to prevent children from engaging in such labour as well as protect children who have been involved in such labour. See *id.*, art. 7(2). Ethiopia has ratified C182, and it is in force in the country. See fn.6 *supra*. Child trafficking is, thus, doubly prohibited in international law in both the UN Approach and the ILO Approach, although none of the positive law instruments of either approach provide much guidance to policymakers or adjudicators as to the exact scope of what constitutes child trafficking.

Of the two other key ILO conventions, C138 and C189, only one is in effect in Ethiopia. Ethiopia has ratified C138, see fn.15 *supra*, and has set the country's minimum age for work at 14 years old due to its ongoing economic and social development. See C138, art. 2(4) (permitting a minimum work age of 14, rather than 15, in certain circumstances). Setting a minimum age for child labour is essentially the whole substance of C138. As discussed at the outset of the review, C189 has not been ratified by Ethiopia. It is worthwhile, however, to consider the workings of C189, the domestic workers convention, as its provisions have direct applicability to migrant CDW in Ethiopia. C189 deals with "work performed in or for

a household or households" and people engaged in such "work within an employment relationship". C189, art. 1(a)-(b). So, domestic workers doing domestic work, in the language of the convention. See *id.* C189 aims to protect the human rights of domestic workers, including, without limitation, "the effective abolition of child labour". *Id.*, art. 3(2)(c). To that end, C189 requires the application of the minimum age limits of C138, showing how these two ILO conventions mutually reinforce one another. See *id.*, art. 4. C189 also prohibits "abuse, harassment and violence" against domestic workers, which demonstrates its alignment with C182 as well. See *id.*, art. 5. These articles of C189 make the implicit guarantees for CDW found in the other ILO conventions explicit.<sup>27</sup> Ratification of C189 and/or incorporating some or all of the protections for domestic workers in C189 into Ethiopian national law could be an important part of an advocacy strategy to strengthen the legal basis for protecting CDW in Ethiopia. This is particularly the case as the three ILO conventions most relevant to the protection of CDW in Ethiopia all reinforce and reference each other, and they spell out with some specificity how to protect CDW, which is needed considering the absence of precise mechanisms to protect CDW in the UN Approach.<sup>28</sup>

## Continental Instruments in Africa

In addition to the globally-applicable international instruments addressing child trafficking and child labour issues, there are two continental instruments applicable to African contexts that apply to Ethiopia that bear discussing: the African Charter for the Rights and Welfare of the Child (ACRWC) and the Ouagadougou Action Plan to Combat Trafficking in Human Beings (Ouagadougou Action Plan).<sup>29</sup> Ethiopia has ratified

<sup>27</sup> The remainder of C189 deals with specific protections for domestic workers such as, for example, requiring 24 consecutive hours of rest per week in article 10(2) and having a healthy workplace environment in article 13(1).

<sup>28</sup> See the discussion *supra* of the Recommended Guidelines and HR Standards.

<sup>29</sup> Organization of African Unity; European Union (2006). Ouagadougou Action Plan to Combat Trafficking in Human Beings, Especially Women and Children, as adopted by the Ministerial Conference on Migration and Development in Tripoli, 22-23 November 2006. Addis Ababa: OAU. Accessible at <https://hdl.handle.net/10855/40658>.



the ACRWC while the Ouagadougou Action Plan is an unenforceable understanding between continental cooperation entities that nevertheless provides guidance for African countries confronting human trafficking.

The ACRWC parallels the structure of the CRC, and it aims to protect children from labour, sexual exploitation, and trafficking in articles 15, 27 and 29, respectively. The reiterates and reconstitutes the protections for children found globally in the CRC, ILO C182, and/or the UNTOC and its protocols. The ACRWC text does not add any additional explanation as to the types of exploitation prohibited beyond what is found in other international instruments. One note on the anti-trafficking provisions of article 29 of the ACRWC is that it prohibits the use of children in begging, which is a specific measure not seen in the other international instruments discussing child trafficking.

Monitoring of ACRWC implementation is vested in an African Committee of Experts on the Rights and Welfare of the Child (Child Rights Committee). See ACRWC, art. 32-41 (creating the Child Rights Committee). The Child Rights Committee not only monitors the implementation of the ACRWC, it is also charged with promoting and protecting the rights set forth in the ACRWC. See *id.*, art. 42(a)-(b). State parties to the ACRWC must report to the committee every three years on an ongoing basis, see *id.*, art. 43(1)(b), and the Child Rights Committee may also initiate investigations on “any matter falling within the ambit of the present Charter.” *Id.*, art. 45(1). The investigatory power of the Child Rights Committee is formally constrained by any reservation made by a state party, but no additional permission to investigate is set forth in the text of the convention and individuals may

make complaints directly to the committee. See *id.*, art. 44(2). Further, the findings of any investigation are to be published in a report that is available to the public. See *id.*, art. 45(2)-(4). Unfortunately, the Child Rights Committee appears to have exercised this broad grant of investigatory authority rarely, even when compared to other African convention entities with investigatory power.<sup>30</sup> Notwithstanding their passive exercise of the authority granted in the ACRWC, the Child Rights Committee has the inherent authority to take a much greater role in protecting children continentally in Africa. Advocating with the committee to take such a stronger protective role, perhaps through strategic litigation or lobbying work, could be worthwhile.

Ouagadougou Action Plan is structured as a series of general principles followed by lists of actions that States in Africa and Europe should consider implementing. The general principles recapitulate most of the goals set forth in other international instruments relevant to human trafficking, including such noncontroversial statements as human trafficking “is a scourge which states are determined to address.” Ouagadougou Action Plan, at 2. The suggested measures that follow the general principles do provide some additional detail in four areas: prevention and awareness raising; victim protection and assistance; legislative framework, policy development and law enforcement; and cooperation and coordination. See *id.*, at 3-7. Most of the mentioned actions follow what is mentioned in other instruments. Most relevant to CDW in Ethiopia are several suggestions that discuss protecting children at risk of being trafficked, but with such vague admonitions like: “Adopt specific measures to promote the rights of the child and protect children from trafficking.” *Id.*, at 3. Another such helpful

<sup>30</sup> See Nanima, R. (2021). Evaluating the role of the African Committee of Experts on the Rights and Welfare of the Child in the COVID-19 era: Visualising the African Child in 2050, 21(1) *Afr. Hum. Rights L.J.* at 71. Accessible at: <http://dx.doi.org/10.17159/1996-2096/2021/v21n1a4> (comparing the difference in number of decisions handed down between the Child Rights Committee and the African

Commission on Human and Peoples' Rights, with the latter handing down 30 times more decisions). See also ACERWC, “Table of Communications,” accessible at <https://www.acerwc.africa/table-of-communications/> (indicating a total of 16 cases heard in 16 years, of which six have been finally decided on the merits and none since 2015).



suggestion was: “Take measures to improve the economic and living conditions of families and extended families.” *Id.* No thoughts about which such measures to adopt or how to improve economic conditions are shared in the plan. It is perhaps not surprising that a 2019 evaluation of the impact of the plan concluded that “12 years after its adoption, it is not clear to what extent the Ouagadougou Plan of Action has contributed to efforts to address human trafficking within the region.”<sup>31</sup> Hence, the Ouagadougou Action Plan provides some general direction to policymakers and practitioners on how to combat human trafficking, but it neither provides binding authority nor technical guidance on how to successfully do so.

## Ethiopian Law

Ethiopia is, naturally, strongly influenced by international legal trends and is bound by its treaty commitments about child protection, human trafficking, and labour. Most domestic Ethiopian law is set forth in proclamations, which is the name for legislation passed by the country’s parliament, the Ethiopian House of People’s Representatives.<sup>32</sup> Subsequently, the applicable Ethiopian laws that domesticate key portions of the CRC, UN Approach, and ILO Approach referenced above will be explored.

The first set of proclamations to consider are the ones ratifying international and regional conventions relevant to the instant analysis:

- Proclamation No. 114/1998 (ratification of ACRWC);
- Proclamation No. 152/1999 (ratification of C138 and other ILO conventions); and

- Proclamation No. 335/2003 (ratification of C182).

The above-cited proclamations are short pieces of legislation that simply state that Ethiopia has ratified the conventions at issue without further elaboration or explanation. So, while this shows what has been accepted by the Ethiopian government, many international conventions have not been accepted. As has been previously noted, a variety of ILO conventions have not been ratified or domesticated by Ethiopia, most important of those to this discussion is C189 on domestic work. See fn.15. Ethiopia has also not adopted any law on domestic work or specifically child domestic work that differs from C189, there simply is not a proclamation that directly covers the subject. This is a major gap in the Ethiopian law impacting the protection of CDW, as has already been mentioned, and it is worth reiterating that ratifying and/or incorporating protections found in C189 into Ethiopia’s national law be included in any advocacy planning.

## Ethiopian Trafficking Law

The UNTOC, Palermo Trafficking Protocol, and Migrant Smuggling Protocol have all been ratified by Ethiopia, apparently in separate instruments, see fn.12-14; however, there is no proclamation dedicated to domesticating that ratification as there is for the conventions referenced in the proclamations delineated above. Nevertheless, both the previous and currently in-force proclamations addressing human trafficking and smuggling make express reference to Ethiopia’s signatory status to the UNTOC and its applicable protocols in their preambles. A closer analysis of these two, key proclamations demonstrate how Ethiopia’s law differs from the provisions of the

<sup>31</sup> African Union Commission. (2019). “Draft Report of The Evaluation of the Implementation Status of The African Union’s Ouagadougou Action Plan to Combat Trafficking in Human Beings, especially Women and Children (2006) in Africa,” at 6. Accessible at: <https://www.giz.de/en/downloads/2019%20Draft%20Evaluation%20Report%20on%20Ouagadougou%20Plan%20of%20Action%20ENG.pdf>.

<sup>32</sup> See Bekele, A., Haddis, D. & Melaku, N. (2016). “Recent law-making activity in Ethiopia,” briefing. Addis Ababa: Simmons & Simmons Law Firm, accessible at: <https://www.simmons-simmons.com/en/publications/ck0amec94nfnn0b36w9616o9d/21-recent-law-making-activity-in-ethiopia-4fr1ca>.



UNTOC and its human trafficking and smuggling protocols and how neither fully embrace international best practise in investigating or prosecuting human trafficking and smuggling crimes. These laws are: Proclamation No. 909/2015 (old human trafficking proclamation) (P909) and Proclamation No. 1178/2020 (current human trafficking proclamation) (P1178). As UNODC, the mandated custodian of the UNTOC and its protocols, stated in 2018, P909 “was not fully compliant to the Convention and supplementary Protocols.”<sup>33</sup> These shortcomings led to the efforts to amend P909 that bore fruit with the passage of P1178 in 2020.<sup>34</sup>

In many ways, P1178 echoes or even repeats the language found in the UNTOC and its protocols on human trafficking and smuggling. One example is in P1178’s definition of human trafficking that speaks of movement, means, and purpose, just like the UN Approach to trafficking. See *generally* P1178, art. 3. Pertinent to CDW, P1178 states, “recruitment, transportation, transferring, harboring, hiding or receipt of a child for the purpose of exploitation shall be considered “trafficking in persons” even if this does not involve any of the means” set forth in the proclamation. *Id.*, art. 3(3). The proclamation also mandates stronger penalties against perpetrators trafficking children. See *id.*, art. 4(1)(a). People who commit “child labor exploitation,” however, are exempted from any aggravated penalty. *Id.*, art. 4(3). Provision is made for victims of trafficking to receive “the necessary protection and support,” and children are specified as vulnerable have having special needs. *Id.*, art. 24(1). Article 24 goes on to state that victims should receive needed health and human services, as well as being provided with information about any pending criminal investigations or cases concerning their trafficking. See *id.* It also sets forth rules that aim

to avoid criminalising the victim by, among other things, barring them from being held in police stations or jails and not requiring them to testify in court. See *id.*, art. 24(1)(d) and art. 24(2).

While the P1178 makes admirable strides in not revictimising the victims of trafficking, it is weaker in its treatment of trafficked children who work or are forced to work. Considering how the proclamation makes it both easier to prosecute child trafficking, such as Article 6’s presumption of movement for trafficked children when movement has been shown for a trafficked adult and punishes most types of child trafficking more severely than trafficking of adults, it is striking the carve out creating more lenient punishment for child trafficking involving child labour in Article 4(3). This demonstrates how child labour is seen as less problematic than other types of child trafficking and suggests a lack of seriousness in the government’s approach to protecting CDW.

Another issue with both P1178 and its predecessor P909 is the primacy of law enforcement approaches to migration. The full title of P1178 is “Prevention and Suppression of Trafficking in Persons and Smuggling of Persons Proclamation No. 1178/2020,” which shows that the focus is on criminal investigation and prosecution. A concrete example of the same is shown by P1178’s Article 35(1) that states that the NPC must focus on preventing crimes in human trafficking, smuggling, and sending for work, with addressing the root causes creating the conditions for human trafficking being outside the ambit of the proclamation. This points to exactly the concern raised in the HR Standards, see Recommended Guidelines, Guideline No. 7, that an inordinate focus on criminal investigation and prosecution will impoverish attempts to get at the underlying problems that cause much of the human

<sup>33</sup> UNODC Eastern Africa, “UNODC Supports Ethiopia to Review Legislation on Trafficking in Persons and Smuggling of Migrants,” 13 Jun. 2018, [https://www.unodc.org/easternafrika/en/unodc-supports-](https://www.unodc.org/easternafrika/en/unodc-supports-ethiopia-to-review-legislation-on-trafficking-in-persons-and-smuggling-of-migrants.html)

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<sup>34</sup> P909 will not be specifically analysed herein as it is no longer controlling law.



trafficking. While “sending for work” is certainly related to labour migration, and internal migrants can face trafficking and smuggling, this focus leaves out other types of exploitation faced by CDW, such as sexual violence, and does not appear to prioritise protection of vulnerable migrants such as CDW. This single-minded approach to combating human trafficking mostly through prosecuting it means that the demand side, in which poor youths with few opportunities are willing to take dangerous risks to secure work, is under addressed. This is particularly the case for internal rural-to-urban migration, which does not have any dedicated legislation in Ethiopia. Proclamation No. 923/2016 (overseas employment proclamation) (P923) covers some of the issues faced by migrants moving for work or to look for work; however, it plainly applies only to Ethiopians seeking to work outside of the country and only those going to countries with whom Ethiopia has a bilateral agreement related to migratory work.<sup>35</sup> In practice, this means the P923 covers only a subsection of Ethiopian migrant workers – mostly domestic or manual labourers going to Gulf countries from Ethiopia – and certainly not to CDW who have moved from rural to urban areas in Ethiopia and are staying inside the country. See P923, art. 3. This is a significant gap in the coverage of people moving for work internally within Ethiopia, and especially for children who are one of the main groups engaged in rural-to-urban movement in the country.

## Ethiopian Labour Law

The general understanding amongst experts is that Proclamation No. 1156/2019 (labour proclamation) (P1156) does apply to CDW, as it is believed that the requirement of Article 3(1) that the labour proclamation applies only to contractual employment excludes domestic work undertaken

<sup>35</sup> P1178 also expressly criminalises sending people overseas to work without a required governmental licence. This provision does not require a showing of abuse or exploitation for it to be considered trafficking. See P1178, art. 11.

without a written contract. As the vast majority of domestic workers in Ethiopia, including CDW, do not have written employment contracts, it is often asserted that P1156 does not apply to them. This conclusion is strengthened by Article 3(2)(d), which states that P1156 also does not apply to “contracts of personal service,” which would seem to apply to domestic workers. However, the lack of definition of the relevant terms in the proclamation itself makes it possible to challenge this conclusion. Regarding the contractual relationship, nowhere in P1156 is a written contract required, only one that clearly stated and understood. See P1156, art. 4(2). In fact, P1156 says clearly that a contract of employment shall not be subject to any special form.” *Id.*, art. 5. Employers are even required to confirm an employment contract not in writing within 15 days from its agreement. See *id.*, art. 7. Thus, it seems plain that an oral employment contract of requisite specificity is a contract under the terms of P1156. Regarding the contract of personal service, traditional common law defines such as a “contract in which the skills or talents of a party are material.”<sup>36</sup> In most cases, a domestic worker does not need any specialised skills or talents, like a professional athlete or performer would, and it can be asserted that domestic workers should not be excluded by Article 3(2)(d) from protection by P1156. Nevertheless, these theories are ones of logic and would need to be tested in court.

Even if CDW were to be covered by the labour proclamation, the law does not account for the specific circumstances and needs of migrant CDW in urban areas of Ethiopia. P1156 provides generally for respecting human dignity of the worker (Art. 12(4)); ensuring occupational safety standards (Art. 12(5)); and covering the costs of certain medical examinations (Art. 12(6)), among other requirements. It also prohibits sexual

<sup>36</sup> Personal Services Contract”, Duhaime’s Law Dictionary, accessible at: <https://www.duhaime.org/Legal-Dictionary/Term/PersonalServicesContract>.



harassment or physical abuse of workers by employers. See P1156, art. 14(1)(h)-(i). There are also various provisions in the proclamation around the wages, working hours, holidays, leave, termination, suspension, and discipline of workers by employers. See, e.g., *id.*, art. 26-30 (regarding termination of employees). The portion of P1156 that seeks to safeguard working conditions for women may have some applicability in the context of domestic workers, the majority of whom are women or girls. These provisions bar sex discrimination, require equal treatment with men, stop evening work by pregnant women, and set forth other requirements for employing women. See *id.*, art. 87. Protections for “young workers” between the ages of 15 and 18 that are contained in Articles 89-91 of P1156 also could be used to protect CDW. These articles are primarily concerned with keeping children from doing work perceived to be dangerous, such as in mines or quarries. See, e.g., *id.*, art. 89(4)(c). It also restricts the number of hours children can work and prohibits overtime or night work. See *id.*, art. 90-91. However, even considering the protection for women and children found in P1156, the proclamation does not provide protections tailored to the situation of domestic workers generally or CDW specifically.

## Additional Research into Ethiopian Law

There is one directive in addition to P1156 that is particularly relevant to Ethiopian labour law. A directive, for reference, is a tertiary level of law-making undertaken administratively by various governmental entities, primarily ministries. See Bekele, A. et al., at ¶ 1. The Directive on Prohibited Occupations for Young Workers (2013) promulgated by the Ministry of Labour and Social Affairs (MOLSA). Unfortunately, this directive could not be obtained at present and is only available in Amharic. Therefore, this review will be

updated with the information in the directive once it is able to be read and analysed.

This is a similar situation for several other directives and policy documents that are believed to be relevant to the research in this desk review; however, they are also unavailable online and frequently have not been translated into English. Therefore, as part of the underlying consultancy, through the key informant interviews (KII) currently taking place, these other legal instruments are being requested. Those inaccessible instruments, if made available, will be included in a future revision of the review after the KII have been conducted.

Finally, there has not been an attempt to look more broadly at academic and research literature surrounding CDW and their protection in Ethiopia as part of this review. This would help to provide a fuller context for the plain text of the statutes and treaties impacting the rights and protection of CDW in Ethiopia. It could also serve to increase understanding of the social and economic situation of CDW, which would assist in the development of action and advocacy plans. This is, however, beyond the scope of the current review, which is solely focused on the positive law instruments impacting CDW in Ethiopia.





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Proclamation No. 909/2015 (old human trafficking proclamation),

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## Publications

*The publications cited in the review are listed alphabetically by author in this section. Although many of the publications below look more at the social and economic status of CDW rather than issues of protection and human rights, it is worthwhile to look at this body of work to help in the consideration of how to assist CDW to be safe and secure.*

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