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Articles

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Editor's Note

Meron Zeleke (PhD)

Editor in Chief of EJHR

The fourth Volume of EJHR focuses on understanding the complex and multilayered relationship between migration and human rights evident at different stages of migratory cycle, different categories of migrants, policy and legal frameworks.

The working definition of the term “migrants” as adopted in this volume draws on IOM’s definition of a migrant¹, an umbrella term that encompasses different categories of people on the move: a migrant is any person who is moving or has moved across an international border or within a State away from his/her habitual place of residence, regardless of (1) the person’s legal status; (2) whether the movement is voluntary or involuntary; (3) what the causes for the movement are; or (4) what the length of the stay is. This understanding of a migrant is a critique of the simplistic binaries of forced vs. voluntary, refugee vs. economic migrant etc.; a phenomenon Apostolova (2015) describes as ‘categorical fetishism’². Koser and Martin (2011)³, allude the distinction between ‘refugees’ on the one hand and ‘migrants’ on the other does not reflect realities of migration processes as positionality is a dynamic process that might change in different context and across time.

Available evidence in the field of migration and refugee studies shows the interplay of several factors as drivers of migration. At the very initial stage of the migration cycle, also called the “push factors” of migration, most studies conducted in the Ethiopian context often remain at the descriptive level focusing on the various factors that underline a migration project without *adopting a human-rights lens*. They tend to be descriptive in nature and often fail to underscore national, regional and international human rights norms and standards, which can be powerful programmatic and methodological tools for improving migrants’ rights.

¹ <https://www.un.org/en/sections/issues-depth/migration/index.html>

² Raia Apostolova. 2015. Economic vs. Political: Violent abstractions in Europe’s refugee crisis. Central European University.

³ Kalid Koser and Susan Martin. 2011. The Migration-displacement nexus: Patterns, processes and policies. Berghahn Books.

Despite several incidences of exploitation, migrants' rights have remained on the margins of the national human rights agenda in Ethiopia, which studies in the field of migration also reflect. The human rights approach of the “push factors”, on the other hand, recognizes the fact that triggers of migration include multidimensional violations of basic economic, social, civil and political rights. This approach helps to go beyond identifying the "push" factors and examine the degree to which different forms of “economic migration” are, in fact, “voluntary” or are rather related to structural factors that underpin violations of rights at places of origin, transit and destination.

This fourth volume of EJHR has seven contributions. The contribution by Benyam Mezmur eloquently discusses how the engagement of UN Committee on the Rights of the Child with State Parties on child migration issues was significantly informed or influenced by the migration crisis in Europe. He critically reflects on continuous guidance provided by CRC committee and the two Joint General Comments (JGCs) on children in the context of international migration. The contribution by Fana and Frehiwot, calls for a comprehensive understanding of determinants of migration and policy making, drawing on agency of the migrants. The authors substantiate their argument drawing on a study conducted in Tigray and Addis Ababa. The contribution by Nicola et al is based on qualitative data collected by the Gender and Adolescence: Global Evidence (GAGE), a nine-year mixed methods longitudinal research and evaluation study. In their contribution the authors discuss how migrant flows need to reflect on the rights of all migrants, including adolescent girls and boys.

The contribution by Tadesse, Fassil and Jaxu accents the need to analyze and understand the evolving legal frameworks, institutional response mechanisms, challenges and opportunities. The contribution by Kiya draws on an ethnographic study conducted on Ethio-Sudanese border town and discusses how migration industry is influenced by broader social and political considerations. The contribution by Felegeberhan elucidates existing gaps in protection of rights of migrants by illustrating how the lack of enforcement and implementation of existing policies further exacerbates the vulnerability of prospective labour migrants from Ethiopia.

The article by Sehin and Joanna reflects on the unequal power relations created through domestic work and how perceived or real danger plays a significant role in the self-discipline of domestic workers. The

authors also discussed the agency of the domestic workers by illustrating everyday forms of resistance that enable migrant women retain a sense of self and dignity.

Finally, I would like to thank members of the editorial committee, the external reviewers involved in the peer review process and the authors for their valuable contributions in maintaining the quality and ensuring the continuity of the EJHR. Furthermore, I would like to thank Elsabet Samuel and Dagim Mellese for the copyediting and Bethlem Wondimu for assisting with the formatting. Last but not least, I would like to thank the Ethiopian Human Rights commission for sponsoring the publication of this and preceding volumes of EJHR and for the fruitful collaboration with the Center of Human Rights.

Meron Zeleke (PhD)

Editor in Chief of Ethiopian Journal of Human Rights

August 2019,

Every “i” Dotted and Every “t” Crossed? : Reflections on The Joint General Comments on The Human Rights of Children in The Context of International Migration, and Their Application in The Horn of Africa

Benyam Dawit Mezmur

1 INTRODUCTION

The child migrant and refugee crisis is almost a global one. In 2017, there were more than 258 million migrants globally,¹ of whom 14% were under 20 years of age.² Safe and regular pathways are critical, *inter alia*, to reduce the instances of the heartbreaking image of the tiny corpse of Alan Kurdi washed up on the Turkish beach in 2015 that at least made headlines, though it seems that the world is becoming far too immune to such tragedies.

The UN Committee on the Rights of the Child (CRC Committee) has engaged with State Parties on child migration issues since its early days, and has provided continuous guidance on the nature of State Parties obligations.³ In 2017, the CRC Committee further consolidated its guidance to State Parties by adopting, together with the Committee on Migrant Workers (CMW Committee), two joint General Comments (JGCs) – on children in the context of international migration.⁴

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¹ United Nations “International Migration Report 2017” (ST/ESA/SER.A/403) (December 2017) available at <http://www.un.org/en/development/desa/population/migration/publications/migrationreport/docs/MigrationReport2017.pdf> 1.

² United Nations, *Ibid* 10.

³ It adopted General Comment No. 6 (2005) on treatment of unaccompanied and separated children outside their country of origin.

⁴ The first one is Joint General Comment (JGC) No. 3 of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 22 of the Committee on the Rights of the Child is entitled “general principles regarding the human rights of children in the context of international migration” while the second one is joint general comment No. 4 of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 23 of the Committee on the Rights of the Child entitled “State obligations regarding the human rights of children in the context of international migration in countries of origin, transit, destination and return”. The CMW Committee monitors the implementation of the Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW)

Arguably, the process and adoption of the JGCs was significantly informed or influenced by the migration crisis in Europe. It might even be intimated that the orientation of the JGCs and the issues emphasized therein are slanted towards issues with which State Parties that are countries of destination often grapple.

The first JGC focused on general principles, while the second one emphasized States Parties' obligations in respect of children in the context of international migration. The JGCs contain the rich and up-to-date jurisprudence of the CRC Committee in respect of children in the context of international migration.

Even though child migration occurs all over the world, each region has its own particular patterns and context. In the Horn of Africa (namely Djibouti, Ethiopia, Eritrea, and Somalia) where all four are State Parties to the CRC and not the CMW, children on the move are a growing concern, where trafficking/smuggling, violence against migrant children, and forced and involuntary returns are all part of the identified trends.

This article, after the introduction, provides a brief background to the JGCs. Thereafter some specific thematic issues that are contentious or unclear are identified for discussion. These issues are: the concept of a "joint" General Comment;⁵ age determination; best interests; firewalls; non-refoulement; right to family life; child marriage and migration; and immigration detention. Given the fact that it has been over 18 months since the adoption of the JGCs in October 2017, the manner in which they have proved to be relevant and are being used in the Concluding Observations (COBs) of the CRC Committee will be identified and assessed. Even though none of the COBs discussed in this section are on State Parties in the Horn of Africa, as these State Parties have not yet been reviewed since the adoption of the JGCs, the objective of the discussion here is also to assist to decipher and tentatively assess the relevance of the JGCs in respect of some of the

⁵ For example, the Australian Government offered its views on the draft JGCs under four headings and 10 sub-headings. It challenged the concept of a "joint" General Comment. Submission of Australian Government: Draft joint general comment No. 3 of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 21 of the Committee on the Rights of the Child on the Human Rights of Children in the Context of International Migration (August 2017) available at: https://www.ohchr.org/Documents/HRBodies/CMW/JointGC_CRC_CMW/Add/AustralianGovernment.pdf

issues that would arise in the context of the Horn of Africa countries. Then, with the rights of migrant children in the Horn of Africa as a backdrop, the article proffers some tentative thoughts on the advantages, and potential shortcomings of the applications of the JGCs in the sub-region. A conclusion sums up the discussion.

2 Background to the Joint General Comments

Between 2015-2017, the CRC Committee together with the CMW, drafted and adopted two JGCs on children in the context of international migration.⁶ The Committees received a number of written contributions,⁷ and the drafting process also included a series of global and regional consultations held between May and July 2017 in Bangkok, Beirut, Berlin, Dakar, Geneva, Madrid and Mexico City.⁸ The JGCs were part of the same drafting and adoption process. In this respect, both JGCs contain a footnote that underscores that each should be read in conjunction with the other.⁹ While a legitimate question may be posed stating why the two JGCs were not made one document, the answer may lie in the word count for a General Comment as contained in Resolution 68/268, which limits it to 10 700 words.¹⁰

In an unusual departure from previous General Comments, which refer to “the rights of the child”, or “children’s rights”, the title of the JGCs refers to the “human rights of children”- probably without any significant substantive implications.¹¹ Furthermore, with regard to the title, it would be remiss not to underscore the fact that the JGCs cover the full gamut of countries of origin, transit, destination, as well as return.¹²

The JGCs are limited to international, and not applicable to internal, migration. Nonetheless, the scope of the JGCs is broad. As explicitly

⁶ See JGCs *supra*.

⁷ It is to be recalled that, according to para 14 of Resolution 68/268, the General Assembly “[e]ncourages the human rights treaty bodies to develop an aligned consultation process for the elaboration of general comments that provides for consultation with States parties in particular and bears in mind the views of other stakeholders during the elaboration of new general comments.”

⁸ JGC No 22 *supra*, para 1.

⁹ See the second “*” footnote in JGC No 22, and first “*” footnote in JGC No 23.

¹⁰ See General Assembly Resolution “Strengthening and enhancing the effective functioning of the human rights treaty body system” (A/RES/68/268) (21 April 2014).

¹¹ This is the same wording used during the 2012 Day of General Discussion organized by the CRC Committee.

¹² As explicitly included in the title of JGC No 23.

provided in JGC No 22, it “addresses the human rights of all children in the context of international migration”.¹³ This covers accompanied, unaccompanied, and separated; children as well as those who “have returned to their country of origin” or “were born to migrant parents in countries of transit or destination”.¹⁴ Based on experience with a number of countries, (some Eastern European countries where parents leave children behind to travel and work in Russia come to mind¹⁵), the JGCs also apply to children who “remained in their country of origin while one or both parents migrated to another country, and regardless of their or their parents’ migration or residence status (migration status)”.¹⁶

True to form, the JGCs do not make recommendations about preventing migration. In fact, the JGCs explicitly recognize that “migration can bring positive outcomes to individuals, families and broader communities in countries of origin, transit, destination and return...”.¹⁷ This is done without losing sight of the fact that some forms of migration, for instance, unsafe and/or irregular migration, are riddled with risks for violation of the rights of the child.¹⁸ Also, as a child-rights based approach would demand, the JGCs acknowledge the agency of children, and do not see every migrant child through a blanket “victim lens”.¹⁹ Furthermore, while the causes of migration are diverse, if any, they receive little mention in the JGCs.

The JGCs proceed in two systemic strands. The first one, JGC 22, as the title “on the general principles regarding the human rights of children in the context of international migration” indicates, covers: general

¹³ JGC No 22 *supra*, para 9.

¹⁴ *Ibid.*

¹⁵ Examples of this phenomenon have been noted in Moldova, Bulgaria, and Ukraine to name a few. See L Yanovich ‘Children Left Behind: The Impact of Labor Migration in Moldova and Ukraine’ Migration Policy Institute 23 January 2015 accessed at <https://www.migrationpolicy.org/article/children-left-behind-impact-labor-migration-moldova-and-ukraine> on 25 April 2018. Also see UNICEF ‘Children at Risk in Central and Eastern Europe: Perils and Promises’ accessed at <https://www.unicef-irc.org/publications/pdf/monee4sume.pdf> on 23 April 2018.

¹⁶ JGC No 22 *supra*, para 9.

¹⁷ JGC No 22 *supra*, para 8.

¹⁸ *Ibid.*

¹⁹ See, for instance, paras 34-39 on right to be heard, express his or her views and participation (art. 12 of the CRC).

measures of implementation (such as data); non-discrimination; best interests of the child; the right to be heard; the right to life, survival and development; non-refoulement; and prohibition of collective expulsion. Issues revolving around international cooperation as well as the dissemination and use of the JGCs are also covered.

JGC 23, which is focused on “...States parties’ obligations regarding the human rights of children in the context of international migration in countries of origin, transit, destination and return” covers age; right to liberty; due process guarantees and access to justice; right to a name, identity, and a nationality; family life; right to an adequate standard of living; right to health; and the right to education and professional training. In addition, while the criteria for categorization is not apparent in the JGC, issues related to violence against children feature under two separate headings: protection from all forms of violence and abuse, including exploitation, child labour and abduction, and sale of or trafficking in children; and the right to protection from economic exploitation, including, underage and hazardous work, employment conditions, and social security.

3 Analysis of Select Thematic Issues

A number of contentious or unclear issues in the JGCs need a close consideration. In particular, these issues are: the concept of a “joint” General Comment, age determination; best interests; firewalls; non-refoulement; right to family life; child marriage and migration; and immigration detention.

3.1 The Concept of A “Joint” General Comment

The first ever JGC - “Joint general recommendation No. 31 of the Committee on the Elimination of Discrimination against Women/general comment No. 18 of the Committee on the Rights of the Child on harmful practices”²⁰ [JGR/GC] was adopted by the CRC Committee and the Committee on the Elimination of Discrimination against Women (CEDAW Committee). Worthy of note in this respect is the fact that, while, strictly speaking, the overlapping personal

²⁰ (14 November 2014) (CEDAW/C/GC/31-CRC/C/GC/18).

scope that the two Committees have in common is the girl child, the JGC went beyond this narrow shared personal scope.²¹

Why then would the concept of a “joint” General Comment become a contentious issue, as expressed by a number of States during the consultation process as well as submissions, in relation to migration? This is so because of the relatively low number of ratifications that the Convention on the Protection of the Rights of Migrant Workers and Members of Their Families (ICRMW)²² enjoys: at the time of the adoption of the JGCs it stood at 51 State Parties.²³ Unfortunately, a closer look at the regions of the world from which the majority of the State Parties to the Convention come shows that the Convention mostly enjoys the support of countries in the “south”.²⁴ In fact, the ICRMW has the singular status of being the only UN core human rights instrument not yet signed or ratified by any of the 28 European Union (EU) Member States.²⁵ As a result, there was concern that the concept of a “joint” General Comment would impose obligations on non-State Parties to the ICRMW.

The CRC Committee addressed this concern by ensuring that the largest majority of obligations in the JGCs are based on the Convention on the Rights of the Child (CRC) provisions. On the few occasions that a specific obligation emanated from the ICRMW only, the JGCs explicitly acknowledged this fact.²⁶

3.2 Best Interests

²¹ *Ibid* para 4.

²² Adopted 18 December 1990 and came into force on 1 July 2003.

²³ Subsequent to the adoption of the JGC, three countries, namely, Benin, The Gambia and Guinea Bissau, have ratified the Convention, bringing the ratification number to a modest 54.

²⁴ Albania and Bosnia and Herzegovina are the only two European countries that have ratified the Convention. There are only three more countries from Europe that have signed but not ratified it – namely Armenia, Montenegro, and Serbia.

²⁵ A. Desmond “A vexed relationship: The ICRMW vis-à-vis the EU and its member states” 296 in A. Desmond [ed.] *Shining new light on the UN Migrant Workers Convention*, Pretoria University Law Publishing (2018).

²⁶ A good example in this respect is the obligation in respect of the prohibition of collective expulsion. In this regard para 45 of JGC 22 states that “[t]he Committees recall that article 22 (1) of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and other international and regional human rights instruments forbid collective expulsions...”.

Article 3 of the CRC, which is the umbrella provision on the best interests of the child, provides in part that “...the best interests of the child shall be a primary consideration”.²⁷ Therefore, the Convention does not say that children’s best interests should be *the primary* consideration. This was debated, and ultimately the drafters settled for *a primary consideration*.²⁸ Juxtaposing this with immigration law and policy would mean that best interests do not at all times override all other considerations, including migration management and border security. In the meantime, the right of the child to have his or her best interests regarded as a primary consideration means that the child’s interests is a *high priority* and not just one of several considerations.²⁹

Especially in respect of unaccompanied and separated children, the CRC Committee is of the view that:

A determination of what is in the best interests of the child requires a clear and comprehensive assessment of the child’s identity, including her or his nationality, upbringing, ethnic, cultural and linguistic background, particular vulnerabilities and protection needs. Consequently, allowing the child access to the territory is a prerequisite to this initial assessment process.³⁰

In addition, seemingly subsidiary matters, “such as the appointment of a competent guardian as expeditiously as possible”, are considered to serve “as a key procedural safeguard to ensure respect for the best interests of an unaccompanied or separated child”.³¹

The JGCs give best interests a prominent role³² as having a “high priority” and that “larger weight must be attached to what serves the child best” to ensure the full and effective enjoyment of rights.³³ Further, and, rightly so, best interests is not an issue that should occupy only child protection authorities, but is relevant for any

²⁷ Art. 3(1) of the CRC.

²⁸ *Ibid.*

²⁹ GC No 6 *supra*, para 14.

³⁰ *Ibid.*, para. 20.

³¹ *Ibid.* para. 21. The UNHCR has developed Guidelines on the best interests of the child in the context of unaccompanied and separated children.

³² JGC No 22 *supra*, paras 27 – 33.

³³ *Ibid.*, para 28

migration policies, immigration laws, planning, implementation and decision-making.³⁴

The best interests may, and perhaps should, inform the interpretation of a State's protection obligations under the Refugee Convention.³⁵ This does not mean that it would "change ...the refugee definition in determining substantive eligibility but it informs the interpretation of a particular element of the Refugee Convention definition".³⁶ It is also argued, and incorporated in the JGC, as well as evidenced in State practice that best interests can serve as an "independent basis for protection" outside the traditional refugee protection regime. Therefore, apart from circumstances that meet the high threshold of non-refoulement, there may be human rights protection reasons that require the non-return of a child. This is of particular importance for those who do not qualify for asylum seeker/refugee status, but still have serious protection needs. Arguably, it is a missed opportunity that the JGCs do not explicitly provide that the principle should be an independent source of protection status.³⁷

There is State practice that supports this approach. For example, Costa Rica's immigration law prohibits the return of an unaccompanied person whose age cannot be determined with certainty.³⁸ Peru offers similar protection through non-return if the migrant does not qualify for international protection, but still faces life-threatening or great vulnerability if they were to leave the country.³⁹ Italy, too, has a legislative framework that prohibits the return of pregnant women and those that care for an infant under the age of six months.⁴⁰

³⁴ JGC No 22 *supra*, para 29. See too R Brittle "International Migration: Shared Commitment to Children's Rights and Protection" (10 January 2018) EJIL Talk available <https://www.ejiltalk.org/international-migration-shared-commitment-to-childrens-rights-and-protection/>

³⁵ See generally J.M. Pobjoy 'The Best Interests of the Child Principle as an Independent Source of International Protection' *International and Comparative Law Quarterly* 2015 64(2) 327-363; J.M. Pobjoy 'A child rights framework for assessing the status of refugee children' in S. Juss and C. Harvey (eds) *Contemporary Issues in Refugee Law*, Cheltenham/Northampton: Edward Elgar Publishing, (2013); M. Kalverboer, *et al* 'The Best Interests of the Child in Cases of Migration: Assessing and Determining the Best Interests of the Child in Migration Procedures' 2017 25(1) *The International Journal of Children's Rights* 114-139.

³⁶ See Pobjoy 2015 *Ibid*.

³⁷ *Ibid*.

³⁸ See Migration Law No. 8764, art. 65.

³⁹ Legislative Decree No. 1350 of 2017.

⁴⁰ Italy, Legislative Decree 286/1998, art. 19(1).

3.3 Age Determination

The issue of age determination is central to child migration cases, as many migrants do not possess documentation that identifies their age. In many jurisdictions, the decision that a person is not a child can have significant implications for legal processes.⁴¹ It can affect the determination of issues that relate to: whether one can apply as part of a family; the capacity to submit an asylum application in one's own right; consent for age assessment procedures as an unaccompanied child; accommodation in non-specialized facilities along with adults; the age at which fingerprinting of children is allowed under asylum law; as well as the age when a child can be a sponsor or beneficiary of family reunification procedures.

Unfortunately, mechanisms for age determination are matters of contention,⁴² for instance, in Europe,⁴³ where medical tests to determine age are notoriously inaccurate.⁴⁴ As a result, the JGCs recommend a "comprehensive assessment of the child's physical and psychological development, conducted by specialist pediatricians or other professionals who are skilled in combining different aspects of development".⁴⁵ It is further recommended that "[s]uch assessments should be carried out in a prompt, child-friendly, gender sensitive and culturally appropriate manner, including interviews of children and,

⁴¹ For more details on the guidelines, policies and practice on age determination see Department of Immigration and Border Protection, available at: <https://www.homeaffairs.gov.au/AccessandAccountability/Documents/FOI/FA140800200.PDF>.

⁴² Reliance on hand/wrist, dental, and collarbone X-rays, as well as dental and sexual maturation observations have a large margin for error. Legal questions around best interests, informed consent, presumption of minority, the use of the least invasive method, availability of an appeal or judicial review of decisions on age determination, the availability of qualified professionals, appointment of guardians /representatives for unaccompanied minors, as well as regulations on exposure to ionization for non-medical purposes may arise. See discussion in Doctors of the World "Age assessment for unaccompanied minors" (2015) available at: <https://mdmeuroblog.files.wordpress.com/2014/01/age-determination-def.pdf> 10-11.

⁴³ The largest majority of cases under OPIC submitted to the CRC Committee are on age determination against European countries prominent among which is Spain.

⁴⁴ See Royal College of Pediatrics and Child Health "The health of refugee children- Guidelines for pediatricians" (1999). See discussion in Doctors of the World "Age assessment for unaccompanied minors" (2015) <available at <https://mdmeuroblog.files.wordpress.com/2014/01/age-determination-def.pdf>> 15-16. The difficulty is exacerbated because of differences in socio-demographic, health and ethnicity of the unaccompanied children.

⁴⁵ See JGC No 23 *supra*, para 4.

as appropriate, accompanying adults, in a language the child understands".⁴⁶

Despite this guidance, there is still uncertainty around many issues, such as, the basic qualifications required to become an Age Determination Officer, and how Age Determination Officers should always adhere to the benefit of doubt test. Furthermore, at which stage of the age determination process a person should be entitled to legal assistance is unclear.⁴⁷

3.4 Non-Refoulement

In a conscious departure from previous General Comments that only addressed the so-called general principles of the Convention,⁴⁸ the JGCs added an additional principle[s]- non-refoulement and prohibition of collective expulsion.⁴⁹ Non-refoulement is an obligation that originally emanated from international refugee law,⁵⁰ but has further been developed in international human rights law.⁵¹ It prohibits States, in the words of the JGC, "... from removing individuals, regardless of migration, nationality, asylum or other status, from their jurisdiction when they would be at risk of irreparable harm upon return...".⁵²

JGC No 22 attempts to clarify three critical issues in respect of non-refoulement. First, the adoption of a very narrow definition of the principle by some States⁵³ to the extent that the principle would not be applicable to a child if the authorities rejected the child at the border but before entering into the country, is dismissed.⁵⁴ Secondly, the substantial grounds for believing that a person is at a real risk of

⁴⁶ *Ibid.*

⁴⁷ An asylum seeker also often has very limited rights to review an adverse age determination- for instance in Australia.

⁴⁸ Namely arts. 2, 3, 6 and 12 of the CRC.

⁴⁹ It is to be noted that this addition is done under a heading titled "Fundamental principles of the Conventions with regard to the rights of children in the context of international migration". If the discussion under this heading only focused on the four general principles of the Convention, past practice suggests that the heading would have only been "General Principles".

⁵⁰ Art. 33 of the 1951 Convention relating to the Status of Refugees.

⁵¹ See, for example, Article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and Article 16 of the International Convention for the Protection of All Persons from Enforced Disappearance.

⁵² JGC No 22 *supra*, para 45.

⁵³ Some States express a very restricted view on the application of non-refoulement.

⁵⁴ JGC No 22 *supra*, para 46.

irreparable harm need not come from State authorities only, but can also emanate from non-State actors.⁵⁵

Thirdly, questions have been raised about the application of non-refoulement in respect of a real risk of a violation of socio-economic rights. The earlier draft of the JGCs circulated for public consultation had read "...in the case of migrant children the principle of non-refoulement, should be construed as including socio-economic conditions in countries of origin".⁵⁶ While this line is completely removed from the final draft of the JGCs, the Committees still seem to have left the possibility open, at least in exceptional circumstances, so that socio-economic conditions in countries of origin or transit could be sufficient to warrant the application of the non-refoulement principle. This argument seems to be supported by the wording used when describing examples of real risk of irreparable harm: "...those contemplated under articles 6 (1) (on the inherent right to life) and 37 (on the prohibition of torture, or other cruel, inhuman or degrading treatment or punishment) of the Convention on the Rights of the Child" which is preceded by the qualifier with the wording "such as, but by no means limited to..." (Insertions mine). The jurisprudence of the Human Rights Committee has underscored that, save for very strict exceptions, difficulty in accessing social services or poor living conditions do not suffice as grounds for protection against torture and the *non-refoulement*, which are absolute in nature. Such exceptions will need to render the plight of the individual concerned and the difficulty faced exceptionally harsh and irreparable in nature – such as in the *Jasin v Denmark* case where a single mother of three young children, who herself experienced health complication (asthma), extreme poverty, hardship and destitution and lack of medical care when she was in Italy as first country of asylum- and the Human Rights Committee indicated that the failure by Denmark:

...to devote sufficient analysis to the author's personal experience and to the foreseeable consequences of forcibly returning her to Italy.... also failed to seek proper assurance from the Italian authorities that the author and her three minor children would be received in conditions compatible with their status as asylum seekers ... and the

⁵⁵ *Ibid.*

⁵⁶ Para 43 of the April 2017 draft [before the draft JGC was split into two JGCs].

guarantees under article 7 of the Covenant.⁵⁷

3.5 Family Life

Neither the CRC nor the ICRMW contain an explicit “right to family life”. However, a long list of provisions of the CRC,⁵⁸ including its preamble, emphasize the importance of the family unit. At the center of the notion of “family life” is what constitutes a family, including, for the purposes of non-separation, family reunification, family tracing, etc in the context of migration. The JGCs attempt to provide guidance on how the term “parents” should be interpreted, by relying on an earlier General Comment of the CRC Committee,⁵⁹ and argue that it should be broad “to include biological, adoptive or foster parents, or, where applicable, the members of the extended family or community as provided for by local custom”.⁶⁰

Such a definition, while often important for children’s best interests, is likely to face resistance from a number of countries that are predominantly countries of destination. Within the EU, for instance, family reunification beyond the nuclear family⁶¹ is often left to the discretion of the Member State. This is so despite the evidence that the jurisprudence of the European Court of Human Rights supports a broad interpretation of “family” which goes beyond blood ties on a case-by-case basis. So, for instance, family reunification for first-degree

⁵⁷ *Jasin v Denmark* (Communication no. 2360/2014) at para 8.9. Other jurisprudence of the Human Rights Committee and of the European Court of Human Rights also seems to support this position. See UN Human Rights Committee (HRC), *Raziyeh Rezaifar v. Denmark*, 10 April 2017, CCPR/C/119/D/2512/2014, available at: <https://www.refworld.org/docid/592c0b134.html> accessed on 24 April 2019; *K.I. v. Russia*, 58182/14, Council of Europe: European Court of Human Rights, 7 November 2017, available at: <https://www.refworld.org/cases,ECHR,5a02db0b4.html> on 22 April 2019; *T.M. and Others v. Russia*, 31189/15 and 5 others, Council of Europe: European court of Human Rights, 7 November 2017, available at: <https://www.refworld.org/cases,ECHR,5a02d58a4.html> accessed 25 April 2019; The CRC Committee has also upheld the foregoing principles. See for instance *D.D. v. Spain*, CRC/C/80/D/4/2016 accessed on 26 April 2019.

⁵⁸ Arts. 9, 10, 11, 16, 18, 19, 20 and 27 (4) of the CRC.

⁵⁹ GC No 14 *supra*, para 6.

⁶⁰ JGC No 23 *supra*, para 27. Such as definition of “parents” may find some legislative basis, among others, in art. 5 of the CRC.

⁶¹ Understood as spouse and biological/adopted children of the couple below 18 and unmarried and if above 18 with prove that they are unmarried and dependent on the parents.

ascendants in the direct line is either not allowed by some EU Member States⁶² or allowed by a few in instances where the ascendants are without support in the country of origin.⁶³

One of the negative effects of highly restrictive family reunification processes is to contribute to the exposure of children to trafficking and other harms because of irregular entry with a view to reunite with family members,⁶⁴ an issue the JGCs acknowledge and attempt to address.⁶⁵ The JGCs also provide that “reasonable risk” should be assessed carefully before a child is reunited with his/her family in the country of origin;⁶⁶ attempt to restrict the time limits and discretionary powers of States in dealing with family reunification of unaccompanied migrant children;⁶⁷ and require that detailed information which is child friendly and age appropriate be provided to a child in the instances when a country of destination denies family reunification.⁶⁸

3.6 Child Marriage and Migration

Even though the CRC does not explicitly prohibit child marriage,⁶⁹ a number of its provisions have been interpreted as prohibiting the practice.⁷⁰ In the Joint General Recommendation No. 31 (2014) of the Committee on the Elimination of Discrimination against Women / General Comment No.18 of the Committee on the Rights of the Child

⁶² France and Belgium are examples.

⁶³ *Ibid.*

⁶⁴ CRC Committee, Report of the 2012 Day of General Discussion on the Rights of All Children in the Context of International Migration, 28 September 2012, available at <https://www.refworld.org/docid/51efb6a4.html> accessed on 27 April 2019.

⁶⁵ See, JGC No 23 *supra*, para 37.

⁶⁶ *Ibid* para 34.

⁶⁷ *Ibid* para 33.

⁶⁸ *Ibid* para 36.

⁶⁹ The CEDAW on the other hand explicitly prohibits the practice of early marriages under Article 16(2), though it does not provide the minimum age for marriage.

⁷⁰ These provisions include Article 24(3) which requires states to “take ... measures with a view to abolishing traditional practices ...” and Article 2(1) that prohibits discrimination on the basis of sex. Child marriage is also closely linked with the definition of a child. See S. Detrick, *A commentary on the United Convention of the Rights of the Child* (1999), 58-59; G. Van Bueren, *The international law on the rights of the child* (1995), 36-37.

(2014) on harmful practices (JGR/GC),⁷¹ the possibility is provided for children below 18 but above 16 years of age being allowed to marry based “on legitimate exceptional grounds defined by law and on the evidence of maturity, without deference to culture and tradition”.⁷²

Despite this exception, most, if not all, of the recommendations of the CRC Committee adopted after the adoption of the JGR/GC in 2014 do not allow for an exception.⁷³ Often, in relation to African countries, recommendations have been made to States to remove exceptions that allow marriages below the age of 18 not only on the basis of the CRC, but also based on the provisions of the African Children’s Charter.⁷⁴

The link between migration and child marriage is recognized by the JGCs. The notion of so-called “temporary” or “tourist marriages”⁷⁵ that often operate outside of the formal legal system, and at times in the context of migration, is one such example.⁷⁶ However, of more interest in respect of migration are a number of unsettled questions pertaining to child marriage. For instance: how should child brides who arrive in a country of transit or destination be treated when the new country’s laws prohibit marriage below the age of 18? Should the child bride be placed with child protection services? What if the child bride has an infant? Should the older partner [usually the husband] be investigated for sexual abuse? The story of a 14 year-old asylum seeker girl from Syria in Norway who had an 18-months-old child and was again pregnant, and the decision by the Norwegian authorities to investigate filing charges against her adult husband triggered

⁷¹ See CEDAW/C/GC/31-CRC/C/GC/18) adopted on 14 November 2014.

⁷² *Ibid*, para 20. The reason why such an exception is allowed appears to be for the purpose of “respecting the child’s evolving capacities and autonomy in making decisions that affect her or his life”.

⁷³ More recently, in the context of Bahrain, the Committee has raised serious concerns that “the sharia court may grant permission for girls under the age of 16 years to marry”. CRC Committee, COBs: Bahrain, (CRC/C/BHR/CO/4-6) (February 2019) para 15.

⁷⁴ In the context of Guinea, despite the prohibition of child marriages in its Penal Code (2016), the Committee asked the State Party “to expeditiously amend its legislation to remove all exceptions that allow marriage under the age of 18 years, in line with the Convention and the ... Charter ...”.CRC Committee, COBs: Guinea, (CRC/C/GIN/CO/3-6) (February 2019) para 16.

⁷⁵ See Joint GC/GR *supra*, para 24.

⁷⁶ In the context of Egypt, the Committee has expressed its deep concern “at ‘tourist’/‘temporary’ marriages ...”. CRC Committee, COBs: Egypt, (CRC/C/EGY/CO/3-4) (July 2011) para 70.

debate.⁷⁷ Calls have been made to develop guidelines on how to handle individual cases of migrant/asylum seeking brides and their adult husbands.⁷⁸

3.7 Firewalls

Firewalls, in the context of migration, by definition, are, “the separation of immigration enforcement activities from public service provision”.⁷⁹ At the centre of establishing firewalls is the need to uphold the rights of irregular migrants, and to put the enforcement of immigration rules subsidiary to the rights of migrants. The objections to firewalls by States seem to emphasize the underlying assumption of the importance of considering the enforcement of immigration rules - which could lead to the risk of being reported, detained and deported - as a priority.⁸⁰

In the JGCs the issue of firewalls is covered in five places- in respect of violence; economic exploitation; the right to an adequate standard of living; and the rights to health and education. States are requested to establish that “effective firewalls between child protection services and immigration enforcement should be ensured”⁸¹, and to ensure “access to justice in case of violation of their rights by public or private actors, including by ensuring effective complaints mechanisms and a firewall between labour rights and immigration enforcement”.⁸² Also, there is an emphasis on the obligation to “... establish firewalls between public or private service providers, including public or private housing providers, and immigration enforcement authorities”.⁸³ In respect of health, a similar call is made to provide

⁷⁷ See News in English Norway “Child brides pose new challenge in ongoing refugee crisis” (04 December 2015) available at: <https://www.newsinenglish.no/2015/12/04/child-brides-pose-new-challenge-in-ongoing-refugee-crisis/>

⁷⁸ See E. Batha ‘Norway to ban child marriages as it seeks to set a global example’ *Reuters*, 22 May 2018, <<https://www.reuters.com/article/us-norway-childmarriage-lawmaking/norway-to-ban-child-marriage-as-it-seeks-to-set-a-global-example-idUSKCN1IN29D>>.

⁷⁹ F. Crépeau and B. Hastie “The Case for ‘Firewall’ Protections for Irregular Migrants: Safeguarding Fundamental Rights” (2015) 17 *European Journal of Migration and Law* 182.

⁸⁰ *Ibid*, 157–183.

⁸¹ JGC No 23 *supra*, para 42.

⁸² *Ibid* para 46.

⁸³ *Ibid* para 52.

“[e]ffective firewalls ... in order to ensure ... right to health”.⁸⁴ If going to the doctor, which is often a necessity - could lead to personal data landing in the hands of immigration authorities, the question could reasonably be posed what the principle of best interests dictates in this respect.

The JGCs provide a more detailed guidance in respect of firewalls and education. Apart from establishing effective firewalls between education institutions and immigration authorities, States are prohibited from sharing of students’ data. Moreover, immigration enforcement operations in or around school premises are prohibited.⁸⁵

There are some good examples of State practices on the application of firewalls in respect of migrant children. For instance, in Spain, there was a policy and practice that allowed irregular migrants full access to education and health care.⁸⁶ The only requirement to access these services, at least until 2012, was to register at a local registry. Subsequently, however, with the passing of the Royal Decree Act 16/20129 (which amended the earlier Foreigners Act) restrictions were introduced that limited access to health care only in the case of emergencies, save for children and pregnant women.⁸⁷

3.8 Immigration Detention

Immigration detention of children is, if not most contentious, a highly disputed element of the JGCs. Compliance with Article 9 of the International Covenant on Civil and Political Rights (ICCPR), and Article 37 of the CRC, requires that, in general, before detention is resorted to, it should be shown through an individualized assessment that less invasive measures would be ineffective to achieve the same ends – such as to deter the child from absconding, or prevent self-harm, or ensure the prevention of family separation. A system that

⁸⁴ *Ibid* para 56.

⁸⁵ *Ibid* para 60.

⁸⁶ S. Carrera and J. Parkin (2011), *Protecting and Delivering Fundamental Rights of Irregular Migrants at Local and Regional Levels in the European Union*, Brussels: Centre for European Policy Studies, available online at <http://cor.europa.eu/>, at 20.

⁸⁷ See I. Benitez, ‘Health Care for Immigrants Crumbling in Spain’, *Inter Press Service News Agency* (24 May 2013), available online at <http://www.ipsnews.net/>; picum (2012), *Spain: A step backward in the right to health care for all*, available online at <http://picum.org/> as cited in Crépeau and Hastie *supra* 179

allows automatic detention upon arrival, including for unaccompanied or separated children, does indeed fall short of compliance. In other words, let alone for children, even for adults, a detention that includes elements of "inappropriateness, injustice, and lack of predictability"⁸⁸ has been defined as "arbitrary detention".

The JGCs adopted the position that "children should never be detained for reasons related to their or their parents' migration status...".⁸⁹ This position, and its definition can, for instance, be contrasted with the agreed text in the Global Compact for Safe, Orderly and Regular Migration where States pledge to work "to end the practice of child detention ..." [my emphasis].⁹⁰ In the past confusion had reigned on the legal position of the immigration detention of children. Questions as to whether it was at all permissible, or if it is permissible subject to the *ultima ratio* (last resort) principle remained unanswered.⁹¹

Some States have even held the view that immigration detention of children is a permissible practice in the perceived situation that it is the only means of maintaining family unity – thereby promoting children's best interests. However, as a result of the JGCs, immigration detention of children has categorically been declared to "conflict with the principle of the best interests of the child and the right to development".⁹² Hence, States Parties are required to develop law, policy and practice "that allow children to remain with their family members and/or guardians in non-custodial, community-based contexts while their immigration status is being resolved ... as well as before return",⁹³ and that "resources dedicated to detention should be diverted to non-custodial solutions".⁹⁴

⁸⁸ *Van Alphen v. Netherlands*, U.N. Doc. CCPR/C/39/D/305/1988 (Aug. 15, 1990). See also Goodwin-Gill Article 31 of the 1951 Convention Relating to the Status of Refugees: Non-penalization, detention, and protection 122 (2001), available at <http://www.unhcr.org/cgi-bin/texis/vtx/protect/opendoc.pdf?tbl=PROTECTION&id=3bcfdf> (affirming the principle that "arbitrary embraces not only what is illegal, but also what is unjust").

⁸⁹ JGC No 23 *supra*, para 5.

⁹⁰ Objective 13(h), of the Global Compact for Safe, Orderly and Regular Migration, adopted at an intergovernmental conference on 11 December 2018 (A/CONF.231/3).

⁹¹ For a closer scrutiny of the position of the JGC on immigration detention of children as well as the evolution of the position in human rights law, see C M Smyth "Towards a Complete Prohibition on the Immigration Detention of Children (2019) 19 *Human Rights Law Review* 1–36

⁹² JGC No 23 *supra* para 10.

⁹³ *Ibid* para 11.

⁹⁴ *Ibid* para 12.

4 Application of the JGCs By The CRC Committee

Since the adoption of the JGCs, the CRC Committee has held four sessions, and reviewed 23 CRC State Parties representing single or multiple status as countries of origin, transit, destination, and return.⁹⁵ The State Parties are: Guatemala, Marshal Islands, Palau, Panama, Seychelles, Solomon Islands, Spain, and Sri Lanka ⁹⁶ ; Angola, Argentina, Lesotho, Montenegro, and Norway;⁹⁷ El Salvador, Lao People's Democratic Republic, Mauritania, and Niger;⁹⁸ and Bahrain, Belgium, Guinea, Italy, Japan, and Syrian Arab Republic.⁹⁹ As a result, it is appropriate to assess the extent to which the issues covered by the JGCs are relevant to a diverse group of States under the Convention.¹⁰⁰

The CRC Committee has made reference to the JGCs in all of the COBs except in four instances namely Angola, Lesotho, Marshall Islands, and Seychelles. The fact that the three occasions where the JGCs are not mentioned are in respect of African countries could be a cause for concern, as it could also feed into the perception that the JGCs are drafted predominantly with countries of destination in the north in mind.¹⁰¹

One of the opportune occasions that coincided with the drafting of the JGCs is the process to adopt the Global Compact for Safe, Orderly and Regular Migration (Global Compact on Migration) by the United Nations (UN). A number of concerted efforts were undertaken to inform this process through the JGCs.¹⁰² Italy was one of the nine EU Member States that did not support the Global Compact during its adoption,¹⁰³ as it abstained. Therefore, in respect of Italy, the CRC

⁹⁵ Often as transit and destination countries.

⁹⁶ During the 77th Session in January/February 2018.

⁹⁷ During the 78th session in May/June 2018.

⁹⁸ During the 79th session in September/October 2018.

⁹⁹ During the 80th session in January/February 2019.

¹⁰⁰ The topics covered in respect of children in the context of international migration are wide. They include data collection; dissemination, training and awareness raising; civil society organizations; non-discrimination; best interests; family environment; standard of living; mental health; education; detention, and to a limited extent, violence against children.

¹⁰¹ However, the titles, and more importantly, the content of the JGCs is proof that this is not the case.

¹⁰² An initiative by child focused CSOs has been running for a little over two years now.

¹⁰³ A total of 152 countries voted in favour of the Global Compact a meeting in Morocco. Three voted against, five abstained, and one [namely Slovakia] did not vote. Nine EU members stay away

Committee recommended that the State Party “considers signing the Global Compact ...”¹⁰⁴ Notably, Belgium, whose government coalition collapsed dramatically over the signing of the Global Compact on Migration, leading to the resignation of the Prime Minister, did not get explicit credit in the COBs for signing it.¹⁰⁵

Discrimination, including xenophobia, is a serious child rights violation prevalent in all corners of the world. In respect of Belgium, for instance, concern was raised at “the ... hatred of children with a migrant background witnessed, particularly since the terrorist attacks in 2014 and 2016”.¹⁰⁶ In Italy, “[s]trengthening ... preventive activities against discrimination and, if necessary, taking affirmative action for the benefit of children and in particular children in marginalized and disadvantaged situations, such as asylum-seeking, refugee and migrant children” was recommended.¹⁰⁷ Japan was commended for passing the Act on the Promotion of Efforts to Eliminate Unfair Discriminatory Speech and Behaviour against Persons Originating from Outside Japan (2016).¹⁰⁸ But it still received a recommendation to reduce and prevent discrimination against, among others, “children of non-Japanese origin, such as Korean, children of migrant workers...”¹⁰⁹ Disparities in the provision of social services for those in disadvantaged situations have also been identified as having a discriminatory angle,¹¹⁰ and the need to strengthen awareness raising to address negative social attitudes towards migrants has also been highlighted.¹¹¹

The discrimination faced by children with an immigrant background especially in the school setting, and the lack of adequate training of teaching staff to adequately address these difficulties, have featured as

from UN migration pact By Georgi Gotev, EURACTIV.com with AFP 20 December 2018 available at: <https://www.euractiv.com/section/global-europe/news/nine-eu-members-stay-away-from-un-migration-pact/>

¹⁰⁴ CRC/C/ITA/CO/5-6 para 36(l).

¹⁰⁵ See DW News “Belgian government coalition collapses over migration” 10 December 2018 available at: <https://www.dw.com/en/belgian-government-coalition-collapses-over-migration/av-46661304>.

¹⁰⁶ CRC Committee, COBs: Belgium, (CRC/C/BEL/CO/5-6) (February 2019) para 16.

¹⁰⁷ CRC Committee, COBs: Italy, (CRC/C/ITA/CO/5-6) (February 2019) para 15.

¹⁰⁸ CRC Committee, COBs: Japan, (March 2019) para 17.

¹⁰⁹ *Ibid* para 18(c).

¹¹⁰ CRC Committee, COBs: Niger (CRC/C/NER/CO/3-5) (November 2018) para 11.

¹¹¹ CRC Committee, COBs: Argentina (CRC/C/ARG/CO/5-6) (October 2018) paras 14, and 14(a).

concerns.¹¹² In this respect, in an uncommon move for the CRC Committee, Norway has been requested to include in its next periodic report “the results of the ongoing survey on the living conditions of Norwegian-born children of immigrant parents”.¹¹³

In Guatemala, as a result of structural discrimination, including against migrant children, the need to make children’s rights issues an integral part of the training for the relevant public authorities has been noted.¹¹⁴ *De facto* discrimination against migrant children appears to be a serious concern in a number of State Parties. Spain,¹¹⁵ Norway, and Argentina are good examples of this category, and the need to enforce laws against discrimination, as well as strengthen public education campaigns to combat discrimination are emphasized. The need to adopt, among others, affirmative social actions to eliminate discrimination against children of migrant workers abroad, is a peculiar issue addressed in the context of Sri Lanka.¹¹⁶

In respect of best interests, in the context of Belgium, a recommendation was made to “[s]trengthen its efforts to ensure that the principle ... is consistently interpreted and applied in decisions concerning migrant and refugee children...”.¹¹⁷ In a subsequent comment, the Committee raised a concern that the principle is “not given due consideration in the context of asylum procedures and family reunification”.¹¹⁸ Arguably, the poor choice of wording which makes reference to “due consideration” is lamentable, as the CRC states that “the best interests of the child shall be a primary consideration”.¹¹⁹ Similar comments have been made in respect of Italy,¹²⁰ Spain,¹²¹ and Japan.¹²² In the context of El Salvador, the need to integrate best interests in all policies and programs, especially in

¹¹² CRC Committee, COBs: Norway (CRC/C/NOR/CO/5-6) (July 2018) para 11(b).

¹¹³ *Ibid*, para 12(b).

¹¹⁴ CRC Committee, COBs: Guatemala (February 2018) (CRC/C/GTM/CO/5-6) paras 10, and 13(c).

¹¹⁵ CRC Committee, COBs: Spain, (CRC/C/ESP/CO/5-6) (March 2018) paras 14 and 15.

¹¹⁶ CRC Committee, COBs: Sri Lanka, (CRC/C/LKA/CO/5-6) (March 2018) para 16(b).

¹¹⁷ COBs: Belgium *supra*, para 17(a).

¹¹⁸ *Ibid*, para 43(b).

¹¹⁹ However, it is notable that the recommendation part of the COBs, in para 44(b) states that “[t]o ensure that the best interests of the child are a primary consideration, including in matters relating to asylum and family reunification”. See COBs: Belgium *supra*.

¹²⁰ See COBs: Italy, *supra*, para 36(a).

¹²¹ See COBs: Spain, *supra*, para 45(a).

¹²² See COBs: Japan, *supra*, para 42(a).

“the areas of public security and migration”, which are the two areas that often attract the state sovereignty defense, is underscored. The importance of the involvement of child protection officers in best interests determination is also emphasized.¹²³ Given the fact that Niger is predominantly a country of transit and origin, and one of the focus countries in respect of agreements for returns with the EU, the importance of making sure that best interests forms part of “agreements in relation to the transfer of any asylum-seeking, refugee or migrant children” is indeed a fitting recommendation.

The link between birth registration, nationality, and migration status is well documented. The JGCs further consolidate this synergy,¹²⁴ including the importance of reviewing nationality laws “to ensure that all children living in the State party are duly registered, including children of irregular migrants, and protected from *de jure* statelessness”.¹²⁵

The need to collect and analyze disaggregated data, including on the basis of migration status, is a point often emphasized to almost all State Parties to the CRC.¹²⁶ On one occasion the recommendation related to the need to “improve the current data system for unaccompanied or separated children by harmonizing the currently existing databases and ensuring that all relevant information pertinent to each child is included”.¹²⁷

The COBs also underscore, *albeit* without going into detail, the obligation to uphold the principle of non-refoulement.¹²⁸ Where evidence of violation of the principle is present, as in the case of Norway, the CRC Committee has expressed its concern about “[c]hildren being sent back to countries where their rights are at high

¹²³ See COBs: Italy, *supra*, para 36(h).

¹²⁴ See COBs: Bahrain, *supra*, paras 21-22; CRC Committee, COBs: Mauritania, (CRC/C/MRT/CO/3-5) (November 2018) para 38(b); CRC Committee, CIBs: Angola (CRC/C/AGO/CO/5-7) (June 2018) para 18(d); CRC Committee, COBs: Palau (CRC/C/PLW/CO/2) (February 2018) paras 24(b) and 25(b); CRC Committee, COBs: Panama (CRC/C/PAN/CO/5-6) (February 2018) para 18; CRC Committee, COBs: Lesotho (CRC/C/LSO/CO/2) (June 2018) paras 24(c), and 25(d).

¹²⁵ COBs: Japan, *supra*, para 23(a).

¹²⁶ COBs: Guatemala, *supra*, paras 9(a) and 41(b)(c)(d); COBs: Belgium, *supra*, para 11(a).

¹²⁷ COBs: Italy, *supra*, para 34(h).

¹²⁸ COBs: Japan, *supra*, para 42(a); COBs: Argentina, *supra*, para 38(b); COBs: Panama, *supra*, para 35(b); COBs: Spain, *supra*, para 45(a).

risk of being violated, which contravenes the principle of non-refoulement".¹²⁹

In respect of education, the following are covered: weak learning outcomes for children with migrant backgrounds¹³⁰ compared to those of the general student population; the need to implement zero tolerance of discrimination in the school setting against children in the context of migration, including by ensuring recurrent training for staff;¹³¹ support measures to ensure that children with migrant backgrounds have adequate support to remain in school;¹³² the need to apply flexible education measures to accommodate children in the context of migration to facilitate continuation of their education with minimal disruption;¹³³ and to facilitate inclusion of migrant children and support for their aspirations through the implementation of a human rights based approach at all levels of the education system are covered.¹³⁴ In the context of Belgium, concern has been expressed about barriers to access quality education by migrant children, as well as their over-representation in vocational training, dropout rates, and expulsions.¹³⁵

The issue of mental health for migrant children is a subject often neglected. The JGCs provide that best interests determination in relation to expulsion should also include a child's mental health;¹³⁶ acknowledge that obstacles to access services can negatively affect the mental health of migrant children;¹³⁷ cover the negative mental health effect of immigration detention;¹³⁸ underscore the need to take children's vulnerabilities including their mental health, into account;¹³⁹ and state that migrant children's standard of living should be adequate for, among others, their mental development.¹⁴⁰

¹²⁹ COBs: Norway, *supra*, para 31(c).

¹³⁰ COBs: Spain, *supra*, para 39.

¹³¹ COBs: Norway, *supra*, para 29(a).

¹³² COBs: Argentina, *supra*, para 37(c).

¹³³ See CRC Committee, COBs: El Salvador (CRC/C/SLV/CO/5-6) (November 2018) para 43(e).

¹³⁴ COBs: Italy, *supra*, para 32(a).

¹³⁵ COBs: Belgium, *supra*, para 11(a) and para 38(a).

¹³⁶ JGC 22, *supra*, para 32(g).

¹³⁷ *Ibid* paras 40 and 43.

¹³⁸ JGC No 23 *supra*, para 9.

¹³⁹ *Ibid* para 13.

¹⁴⁰ *Ibid* para 49.

In El Salvador, the State Party has been urged to provide, among others, psychosocial support to families affected by migration;¹⁴¹ In Belgium, the scarcity of “psychological support and mental health care for refugee and migrant children”¹⁴² was followed through by a recommendation to “[e]nsure access to psychologists, psychiatrists ... interpreters and intercultural mediators, for refugee and migrant children, including in shelter settings”.¹⁴³ In recognition of the fact that some migrant children display suicidal tendencies,¹⁴⁴ Norway has been requested to investigate the causes of suicidal tendencies in children in reception centers with a view to prevent such tendencies.¹⁴⁵

5 The JGCs and Child Migrants in the Horn of Africa

Children have not been spared the effects of the complex history of conflicts, weak governance, general insecurity, food insecurity and a host of problems peculiar to their communities. Save the Children reports that in most of the countries of the Horn of Africa, children represent between 50 to 60 per cent of the forcibly displaced persons populations.¹⁴⁶ Of these, over 90,000 children are recorded as unaccompanied or separated across and within the Horn of Africa.¹⁴⁷

While Save the Children acknowledges that the specific patterns of children and youth movements within the broader patterns of mixed migration are unknown, children account for 31 per cent of overall migration in Africa.¹⁴⁸ Within the Horn of Africa, children made up 23 per cent of the immigration flows, to and from the region, in the

¹⁴¹ COBs: El Salvador, *supra*, para 30(c)

¹⁴² COBs: Belgium, *supra*, para 32(d)

¹⁴³ *Ibid*, para 33(d)

¹⁴⁴ COBs: Norway, *supra*, para 25(b)

¹⁴⁵ *Ibid*, para, 26(b)

¹⁴⁶ See Inter-Agency Working Group on Children on the Move cited in Save the Children ‘Young and on the Move: Children and Youth in Mixed Migration Flows’ Mixed Migration Research Series at 7.

¹⁴⁷ *Ibid*.

¹⁴⁸ See DIIS Policy Brief April ‘High Risk Migration in the Horn of Africa: South – South Child Migration’ available at: https://reliefweb.int/sites/reliefweb.int/files/resources/diis_pb_child_migration_2015-web.pdf accessed on 16 April 2019.

period between January to June 2018, with 4.7 per cent being under the age of five years.¹⁴⁹

The small country of Djibouti has gained notoriety as a nodal point for a migratory flux heading towards Yemen, Saudi Arabia and the Gulf countries.¹⁵⁰ It has been estimated that as many as 100,000 migrants a year, coming mainly from Ethiopia and Somalia, transit through the country.¹⁵¹ About 30 per cent of the migrants that cross through Djibouti on their way to the Middle East are children.¹⁵² Of the migrant profiles observed by the International Organization for Migration (IOM) in the Horn of Africa and Yemen, the two main nationalities recorded were Ethiopians followed by Somalis.¹⁵³ Historically, migrants in the Horn of Africa have mainly moved along four routes: the first is the Eastern Route through Yemen, and the rest of the Middle East; the second route is the “Sinai Route”, which goes from Sudan through Egypt into Israel.¹⁵⁴ This route has lost popularity to a point where it is almost inoperative; the main reason for this are the recent clamp down on migration policies, the building of a new fence along the Sinai-Israeli border and the building of a detention centre.¹⁵⁵ The third route is the Northern Route that goes through Sudan and either Libya and into Europe or through Egypt; and the fourth route is the Southern Route through Kenya, Tanzania and further towards to South Africa.¹⁵⁶

Factors influencing the choice of destination country were primarily: the availability of job opportunities; physical safety; access to humanitarian assistance; perceived access to asylum procedures; and

¹⁴⁹ See International Organisation for Migration ‘Mixed Migration in the Horn of Africa and the Arab Peninsula’ accessed at https://reliefweb.int/sites/reliefweb.int/files/resources/MixedMigration_EHoA_Yemen_Jan-Jan18.pdf on 16 April 2019.

¹⁵⁰ Notwithstanding the fact that Djibouti has a small migrant population, it has a number of laws, which regulate different types of migrants. For example, there is the Loi n° 201/AN/07/5ème, which regulates entry into, and residence in Djibouti, Ordinance n° 210/AN/07/5ème, which includes the rights of refugees, and Loi n° 210/AN/07/5ème, which deals with trafficking. See too Maastricht Graduate School of Governance ‘Djibouti Migration Profile’ (August 2017) 2.

¹⁵¹ See DIIS *supra*.

¹⁵² *Ibid.*

¹⁵³ *Ibid.*

¹⁵⁴ Maastricht Graduate School of Governance *supra* at 28.

¹⁵⁵ *Ibid.*

¹⁵⁶ See IOM *supra*.

the presence of family and friends in the destination country.¹⁵⁷ It has been argued that a number of children travelling from Eritrea and Ethiopia are influenced by family members who believe that they will find a better life, despite the risks.¹⁵⁸ Other factors include cultural and social bottlenecks, such as, gender discrimination, that have been recognized as specific factors influencing girls and young women to migrate. Gender based violence against women and girls is embedded in, and justified by, societal norms in several countries in the Horn of Africa.¹⁵⁹

Migrant children in the Horn of Africa are said to face many risks as a result of their irregular status, vulnerability, and negative local perception. Discrimination also remains a challenge. The CRC Committee, in its COBs to Djibouti, noted that there is still an issue, within the law, of discrimination against migrant children in Djibouti.¹⁶⁰ Their failure to possess identity documents disqualifies them from accessing basic public services, such as, healthcare and education.¹⁶¹ As a result, they are denied child protection in the country in which they reside on their journey,¹⁶² and many are caught in a web of prostitution rings or other exploitative and illegal networks, or endure life on the streets.¹⁶³ Police patrols that arrest irregular migrants are said not to distinguish especially vulnerable victims of migration, such as children.¹⁶⁴ In the course of detention, children are subject to the same arduous conditions as adult detainees,

¹⁵⁷ *Ibid.*

¹⁵⁸ See Save the Children *supra* at pg 32. In its Concluding Observations, the CRC Committee recommended that the Government of Ethiopia should implement strategies and policies which speak to the internal flows of human trafficking, with a particular focus on migrant, refugee, unaccompanied and separated minors. See UN Committee on the Rights of the Child Concluding Observations to the Ethiopia Fourth and Fifth Periodic Reports CRC/C/ETH/CO/4-5 paras 70(b), and 70(d).

¹⁵⁹ See Save the Children *supra* at 40. Political considerations are also hugely influential. For instance, forced migration from Eritrea has been an issue since the Eritrean war of independence that only ended in 1991 before a conflict with Ethiopia over boundaries broke out.

¹⁶⁰ CRC Committee, COBs: Djibouti (CRC/C/DJI/CO/2) (October 2008) para 26.

¹⁶¹ *Ibid.*

¹⁶² DIIS *supra*.

¹⁶³ 'Djibouti Works to Assist Street Children, Beginning with a Study on Their Needs: IOM Report' <https://www.iom.int/news/djibouti-works-assist-children-beginning-study-their-needs-iom-report> (accessed 3 April 2019).

¹⁶⁴ See DIIS *supra*.

with whom they have to share overcrowded cells and meals. They are then abandoned at the border of their country of origin.¹⁶⁵

The need to facilitate inter-State cooperation and provide a calibrated regional approach would prove to be critical to address the human rights of migrant children in the region. In this respect, the extent to which the African Union's (AU) 2018 draft revised framework policy integrates elements of the JGCs, could prove to be important. This approach is supported by the JGCs, which indicate "...a comprehensive interpretation of the Conventions should lead State parties to develop ... regional ... cooperation in order to ensure the rights of all children in ... migration..."¹⁶⁶

The extent to which the guidance provided in the JGCs is applicable in the context of resource-constrained environments too would probably also prove to be one litmus test. For instance, all the countries in the Horn of Africa are categorized as least developed countries - and as a result it is perhaps no surprise that there are no shelters specifically for trafficking victims in Djibouti;¹⁶⁷ or that while some of the laws have proposed the establishment of services for victims of trafficking or a victim's fund, these have not yet been materialized. The JGCs seem to acknowledge these limitations to a certain extent - for instance, the first footnote in JGC No 23 recites the message of Article 4 of the CRC about States' obligations to "undertake measures regarding economic, social and cultural rights..., to the maximum extent of their available resources...".¹⁶⁸ Furthermore, in respect of access to justice, the possibility for children to bring complaints is not only limited to courts and administrative tribunals, but also easily accessible platforms such as "... child protection and youth institutions, schools and national human rights institutions".¹⁶⁹ There is also an explicit recognition that "insufficient financial resources often hinder the exercise of the right to family reunification".¹⁷⁰

¹⁶⁵ *Ibid.*

¹⁶⁶ JGC No 22 *supra*, para 48.

¹⁶⁷ US Department of State, Trafficking in Persons Report (2018) 167 available at: <https://www.state.gov/documents/organization/282801.pdf> accessed on 22 April 2019.

¹⁶⁸ See too CRC Committee, General Comment No. 19 (2016) on public budgeting for the realization of children's rights, paras. 28-34.

¹⁶⁹ JGC No 23 *supra*, para 16.

¹⁷⁰ JGC No 23, *supra* para 38.

Even the development of the necessary legal frameworks, and their subsequent implementation, is still in its infancy in the countries in the region. Birth registration coverage, which is relatively low in countries in the region, is a good example of this. For example, Ethiopia's Proclamation No.760/2012 on "Registration of Vital Events and National Identity Card Proclamation", amended by Proclamation No 1049/2017,¹⁷¹ is only a few years old. As a result the guidance provided by the JGCs, including that "[d]ocuments that are available should be considered genuine unless there is proof to the contrary, ..." and that "[t]he benefit of the doubt should be given to the individual being assessed",¹⁷² resonate well.

In general, violence against children, especially against unaccompanied children, in the context of migration is pervasive. Reportedly, young migrants and refugees from sub-Saharan Africa are in general some of the most vulnerable persons on the move.¹⁷³ In the Horn of Africa, the risk of violation of the right to life, as well as of torture of child migrants, is real. The JGC contains a detailed section on the right to life, survival and development,¹⁷⁴ and also covers torture in respect of non-refoulement. Crimes reported by those affected in Ethiopia and Djibouti include kidnapping, ransom, torture, and rape.¹⁷⁵ With reports that confirmed the presence of an international criminal network dealing in human body parts, especially in Egypt, the practice of "brokers who were luring migrants to sell their organs to finance their onward journeys" is a real risk for migrants from the region.¹⁷⁶

¹⁷¹ Registration of Vital Events and National Identity Card (amendment) Proclamation.

¹⁷² JGC No 23 *supra*, para 4.

¹⁷³ As data shows, for instance, over 80 per cent of adolescents and young people from sub-Saharan Africa in the Central Mediterranean route reported exploitation – compared to around 55 per cent of those originating from elsewhere. UNICEF and IOM "Harrowing journeys: Children and youth on the move across the Mediterranean Sea, at risk of trafficking and exploitation" (September 2017) available at <https://www.refworld.org/pdfid/59b7fdd74.pdf> accessed on 16 April 2019.

¹⁷⁴ JGC No 22 *supra*, paras 40-44.

¹⁷⁵ UNHCR "Smuggling and trafficking from the east and Horn of Africa" (2016) available at: <https://www.refworld.org/pdfid/51d175314.pdf>.

¹⁷⁶ Danish Refugee Council "Regional mixed migration in the Horn of Africa and Yemen in 2016: 4th quarter trend summary and analysis" (2016) available at: <https://reliefweb.int/sites/reliefweb.int/files/resources/RMMS%20Mixed%20Migration%20Trends%20Q4%202016.pdf>.

In its COBs to Eritrea, the CRC Committee noted reports of children who return to Eritrea, including those who were unsuccessful with asylum seeking applications in other countries, facing torture and detention on their return.¹⁷⁷ Such returns could easily constitute a violation of the *non-refoulment* principle. Children who attempt to leave Eritrea are also sometimes detained or forced to undergo military training despite being younger than the minimum service age of 18.¹⁷⁸

Linked to the right to life is the fact that many migrants lose their lives in the Red Sea or the Gulf of Aden.¹⁷⁹ In the first months of 2018, a recorded 105 migrants died because of drowning.¹⁸⁰ In Djibouti, it has been reported that, given the prevalence of trafficking by sea, the coast guard has received separate training on the issue.¹⁸¹ There is only a brief reference in the JGCs to “refusal of vessels to rescue” in respect of the right to life, survival and development¹⁸² in the JGCs. As a result, arguably, a shortcoming of the JGCs is the dearth of guidance on the application of the provisions of the CRC in respect of search and rescue of migrants at sea.

The link between trafficking and/or smuggling with migration is visibly present in the Horn of Africa. Given this significant link, in Djibouti the main legislation dealing with the issue is entitled “2016 Law No. 133, On the Fight Against Trafficking in Persons and Illicit Smuggling of Migrants”. Most countries in the Horn of Africa are ranked as Tier 2 countries- meaning that they do not fully meet the minimum standards for the elimination of trafficking but are making efforts.¹⁸³ Eritrea is in fact a Tier 3- meaning that the Government does

¹⁷⁷ CRC Committee, COBs: Eritrea (CRC/C/ERI/CO/4) (June 2015) para 32(b).

¹⁷⁸ Trafficking in Persons Report, *supra*, 180.

¹⁷⁹ S Sengupta ‘At Least 50 Migrants Drown as Smuggler Throws Them Into Sea’ New York Times 9 August 2017 accessed at <https://www.nytimes.com/2017/08/09/world/africa/migrants-drown-yemen.html> accessed on 22 April 2019; UNHCR ‘Red Sea tragedy leaves 62 people dead in deadliest crossing of the year’ (06 June 2014) available at <https://www.unhcr.org/news/latest/2014/6/5391c1e56/red-sea-tragedy-leaves-62-people-dead-deadliest-crossing-year.html> accessed on 22 April 2019.

¹⁸⁰ IOM “A region on the move: Mid-year trends report- January to June, 2018” (2018) 31 available at https://reliefweb.int/sites/reliefweb.int/files/resources/IOM%20A%20REGION%20ON%20THE%20MOVE%20-%20MID%20YEAR%20TREND%20REPORT_2018%20.pdf .

¹⁸¹ Trafficking in Persons Report, *supra*, 168.

¹⁸² JGC No 22 *supra*, para 40.

¹⁸³ For instance, Djibouti is a Tier 2 country. See Trafficking In Persons Report, 166.

not fully meet the minimum standards for the elimination of trafficking and is not making significant efforts to do so. Smuggling networks, some of whose members are likely to be Djiboutian, sometimes charge exorbitantly high rates or kidnap and hold migrants, including children, for ransom in countries neighboring Djibouti.

The nexus between official corruption and migration is also present in the Horn of Africa. In Eritrea, there are credible reports of complicity by officials in trafficking, including of migrants.¹⁸⁴ Unfortunately the JGCs are silent on corruption in the context of migration.

In the context of international migration the issue of children that end up on the street is also a concern. For instance, while many Ethiopian migrants use Djibouti as a transit country to Yemen and the Arab Peninsula, a number of them are unaccompanied minors who never leave Djibouti and end up as street children in the capital, Djibouti City.¹⁸⁵ While there is some guidance on access to housing¹⁸⁶ as well as access to homeless shelters,¹⁸⁷ the JGCs are light on explicit guidance for child migrants who become children on the streets. The detailed guidance for this, however, can only be found in an earlier General Comment of the CRC Committee.¹⁸⁸

The importance of consular services to address a large number of issues pertaining to migrant children in the Horn of Africa is critical.¹⁸⁹ At a meeting between authorities from Ethiopia, Kenya and Tanzania in April 2019, and in recognition of the large number of migrants including children who use the “Southern Route” and violate immigration rules (and end up in prison), the need to facilitate “simplified consular assistance that in turn will enable easier access to irregular migrants in prisons” was underscored.¹⁹⁰ In this respect, the

¹⁸⁴ Trafficking in Persons Report, *supra*, 178.

¹⁸⁵ International Organisation for Migration “Djibouti Works to Assist Street Children, Beginning with a Study on Their Needs available at: <https://www.iom.int/news/djibouti-works-assist-children-beginning-study-their-needs-iom-report> accessed on 3 April 2019.

¹⁸⁶ JGC No 23, *supra* paras 49 and 52.

¹⁸⁷ See for instance JGC paras 50-51.

¹⁸⁸ See General Comment No. 21 (2017) on children in street situations (CRC/C/GC/21) (June 2017) para 63.

¹⁸⁹ Consular services are critical, for instance, for facilitating returns.

¹⁹⁰ IOM “Tanzania, Ethiopia, Kenya agree on a roadmap for addressing irregular migration” 05 April 2019 available at <https://www.iom.int/news/tanzania-ethiopia-kenya-agree-roadmap-addressing-irregular-migration>

advantage of having embassies [or consular services] in countries to ensure the best interests of migrant children can be gauged from the opening of the Ethiopian embassy in 2018 in Dar es Salaam and the subsequent return of more than 300 Ethiopian migrants.¹⁹¹ JGC No 22 underscores that the need to integrate and consistently interpret the best interests of the child applies in respect of “consular protection policies and services”.¹⁹² This guidance is important but limited, and it is hoped that the jurisprudence of the CRC Committee will develop it further in the future.

Detailed guidance on returns, with a view to ensure that it does not violate the provisions of the CRC, is critical in the Horn of Africa. After all, in Eritrea, those who recently left the country by illegal means, may only return once they have paid a “diaspora tax” and signed a “letter of apology” at an Eritrean embassy before their return home.¹⁹³ A considerable number of Somalis have returned home, and face issues of marginalization within their home country.¹⁹⁴ All Horn of Africa countries have large numbers of women aged 15-49 who have undergone Female Genital Mutilation (FGM), - Djibouti at 93%;¹⁹⁵ Somalia at 98%;¹⁹⁶ Eritrea at 83%;¹⁹⁷ and Ethiopia at 65%.¹⁹⁸ Given these high prevalence rates of FGM amongst all the countries, it is difficult to imagine how deportations in general to a country of origin or transit within the Horn of Africa could constitute a violation of the obligation not to deport persons from a territory where there are substantial grounds for believing that there is a real risk of irreparable harm.

Nonetheless, at this juncture, it would be useful to highlight the various rights that require consideration on return cases where risk of FGM is invoked, based on the first individual complaints case decided

¹⁹¹ *Ibid.*

¹⁹² JGC No 22 *supra* para 32(b).

¹⁹³ GSDRC ‘Rapid fragility and migration assessment for Eritrea (Rapid Literature Review)’ Birmingham: GSDRC, University of Birmingham at pg 15 accessed at www.gsdr.org/wp-content/uploads/2016/02/Fragility_Migration_Eritrea.pdf accessed on 22 April 2019.

¹⁹⁴ UN Refugee Agency ‘Somali Situation 2017 Supplementary Appeal January to December 2017’ (May 2017) 40 available at <https://www.unhcr.org/591ae0e17.pdf> accessed on 2 April 2019.

¹⁹⁵ UNICEF “Country Profile” available at: <https://data.unicef.org/country/dji/>.

¹⁹⁶ UNICEF “Country Profile” available at: <https://data.unicef.org/country/som/>.

¹⁹⁷ UNICEF “Country Profile” available at: <https://data.unicef.org/country/eri/>.

¹⁹⁸ UNICEF “Country Profile” available at: <https://data.unicef.org/country/eth/>.

by the CRC Committee on its merits. The *K.Y.M v Denmark* (No 3/2016) case concerned a complaint lodged by a mother [I.A.M], who is a Somali national, on behalf of her child [K.Y.M] who was born in Denmark on 05 January 2016.¹⁹⁹ At the heart of the complaint was the contention that if K.Y.M was to be deported to Puntland in Somalia, it would violate multiple rights under the CRC, namely, Articles 1 [definition of a child], 2 [non-discrimination], 3 [best interests], and 19 [violence against children]. In particular, it was argued that the return would subject K.Y.M to FGM. The Refugee Appeals Board of Denmark rejected the request by IAM and KYM for asylum in Denmark. In arriving at its decision, the Appeals Board took note of information that there was a possibility for a girl not to be circumcised in Somalia, if her mother objected to it.²⁰⁰ However, the complainant averred that the Appeals Board had ignored an element of the Immigration Service Report which also contained information that an objection by a mother would not be sustained “if the mother is not strong enough to stand against other women’s will”.²⁰¹ The mother further argued that, as a single mother, she would not be able to withstand the pressure.²⁰²

The CRC Committee therefore decided that the State Party had failed to consider the best interests of the child in assessing the risk of the author’s daughter being subjected to FGM if deported to Puntland, and to put in place proper safeguards to ensure the child’s wellbeing upon return, which constituted violations of Articles 3 and 19 of the CRC. This approach, adopted by the Committee, is in accordance with its position on the issue of non-refoulement as contained in the JGCs.²⁰³

6 Concluding Remarks

Issues surrounding migration have increasingly become controversial. The CRC Committee adopted the JGCs with a view to offer “...authoritative guidance ...as regards the rights of children in the context of international migration”.²⁰⁴ True to form, the CRC Committee has, through the JGCs, pronounced itself on critical issues

¹⁹⁹ Para 1.1 of the Views.

²⁰⁰ *Ibid* para 3.3.

²⁰¹ *Ibid* para 3.2.

²⁰² *Ibid*.

²⁰³ As discussed in section 3.4 above.

²⁰⁴ JGC No 22 *supra*, para 10.

such as, the place of best interests in immigration policy, law, and practice; immigration detention; firewalls; and non-refoulement, to name but a few. The CRC Committee's recent jurisprudence based on the JGCs has largely continued to refine and deepen its stand, and as demonstrated on the basis of the 23 COBs reviewed, the real leverage inherent in the JGCs to tailor their application to the specific needs of the States before the CRC Committee is significant.

No State Party in the Horn of Africa has been reviewed by the CRC Committee since the adoption of the JGCs. Nonetheless, the above assessment is testament to the fact that, – save for few thematic exceptions, such as, search and rescue at sea, corruption in migration, and the critical role of consular services, the JGCs are by and large fit for purpose also for children in the context of international migration in the sub-region. The assessment of state parties shows, among others, that making children's best interests a primary consideration in immigration policy and law is an obligation under the CRC that could not generally be overridden by considerations such as national security; age assessment processes should give the benefit of the doubt of being a child to young persons whose age has not been proven conclusively; the absence of firewalls risks undermining the possibility of getting access to social services including mental health services; the relatively less restrictive interpretation of non-refoulment which could apply for cases involving child migrants and that the development of alternatives to immigration detention of children is critical to end its use.

Finally, giving “authoritative guidance” to 196 State Parties would require a delicate balancing act, and expecting an every “i” dotted and every “t” crossed approach in this respect is neither necessary nor realistic. This is no exception to Africa, and its Horn region as progressive reforms to immigration policy are currently threatened by the powerful securitization agenda evident in many AU Member States,²⁰⁵ the test ahead for the JGCs will probably be in how they remain relevant in the decade[s] ahead.

²⁰⁵ A few examples illustrate this point. In South Africa, the Government has responded to attacks on non-nationals living in the country with calls for more restrictive border controls. Over the past few years, Kenya, has similarly reacted to perceived threats to its territory and citizens with increasingly restrictive responses to refugees and immigrants living in the country.

Managing Irregular Migration in Ethiopia: A Case for Policies Centering the Right to Development

Fana Gebresenbet and Firehiwot Sintayehu

Abstract

Recent years witnessed concerted bilateral and multilateral efforts to reduce irregular migration. Based on fieldwork conducted in Atsbi Wenberta, Tigray and *Wereda 7* Addis Ketema Sub-City, Addis Ababa, we argue that the existing policy measures are based on a deficient understanding of the migration process. Firstly, migrants from Ethiopia are considered as mechanically responding to 'greener pastures' elsewhere. This focus on structural explanations of migration ignores agency of individual migrants and the impact of established norms on decision making in some localities. Secondly and more importantly, we argue that extant policies are geared towards ensuring basic socio-economic needs- negative freedoms. Based on this framework, we argue towards a comprehensive understanding of determinants of migration and policy making, which puts the migrant and her/his agency at the center of the analysis. Accordingly, we propose the advancement of migration policies and interventions which are centered on the right to development.

Key words: Migration, Ethiopia, right to development

Introduction

Migration emerged to be among the leading global policy issues of the young 21st century. Indeed, economic and security concerns of mass immigration adds further momentum to the anti-immigrant authoritarian populist view in the West, with the conspicuously visible political consequences (Galston 2018; Scoones et al. 2018). There are persistent voices calling for a global solution to these global issues (see for example Lagarde 2015). Major international organizations seem to heed this call, which in Africa is expressed in the outfit of the Khartoum Process, the Valetta Action Plan and the European Union Emergency Trust Fund for Africa (EUTF for Africa). The EUTF aims to "address the root causes of destabilization, forced displacement and irregular migration by promoting resilience, economic opportunities, equal opportunities, security and development" (European Union 2016: 1). The most comprehensive and most recent of such an attempt resulted in the signing of the world's first Global Compact for Safe,

Orderly and Regular Migration which was adopted on 10 and 11 December 2018 in Marrakech, Morocco (UN 2018). Despite the non-binding nature of the Global Compact and the document's reaffirmation of the sovereign rights of signatory countries, populist groups took the opportunity to counter the initiative leading to withdrawals from the process (Ardittis 2018).

This resistance is not coincidental and is inherent to the politics of contemporary international development. Despite the discourse of globalization and integration in circulation of ideas and goods, recent decades have been characterized by an “unprecedented global ‘lockdown’ of the world’s poor... accompanied by the growing surveillance and policing of all forms of international circulation” (Duffield 2010: 62-63; see also Fasil 2017). The strategy is mainly premised on the “*containment* of the human manifestations of underdevelopment” (Duffield 2010: 63, *emphasis in original*), through the instrumental use of discourses of sovereignty.

The implication of this politics of international development is further magnified by increasing inequality, both within nations and between developing and developed nations, especially if China is not in the picture. Assuming zero international migration, from the perspective of global distribution of income the accident of where one is born determines her/his income level, with effort and skill making little difference (Milanovic 2015). What could be presented as a “hidden cost” of such a divide to the global economy is the lived experience of “los[ing] out on enormous economic gains in *lifetime* opportunity” for young men and women in developing countries (Clemens 2016, *emphasis in original*). Despite the immense ‘hidden cost’ to the global economy, estimated in trillions of dollars per year, different policy (and natural) barriers maintain the divide and the large international differences in labour prices (Clemens Montenegro and Pritchett 2016).

Migration then becomes one alternative to reduce world poverty, as it has also been in the past centuries (Ibid.). Politically charged resistance to migration reduces the chances of this happening. The alternative then becomes advancing development support (such as Valetta Action Plan, EUTF). These however will only serve the interest of the destination country, by “*reproduce[ing]* and *maintain[ing]* the generic biopolitical divide between development and underdevelopment” (Duffield 2010: 66). What Duffield (2010: 56) calls ‘life-chance divide’ – i.e., “the officially endorsed basic-needs approach to self-reliance in the

south” contrasted with “much higher levels of social protection and infrastructural support characteristic of mass consumer societies” –in effect is reified and unquestioned in the process. Then the mass migrations of the early 2010s, which triggered European (and the world’s) attention to the issue, will only constitute one expression of the “constant” and “monotonous” rediscovery of poverty as a threat to (European) security, and the interventions serve as technologies of security (Duffield 2010).

This ‘rooting’ of interventions aimed to stem irregular migration counter the now recognized, but still contested, right to development (see Mesenbet 2010). The UN Declaration on the Right to Development (UN 1986) states that “The right to development is an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized” (Article 1, Paragraph 1). From the very beginning developed countries’ were against such rights, and developing countries pushed the Declaration with full force (Mesenbet 2010). In the Declaration, development is conceptualized in the broader sense, not in the narrow materialistic sense. Moreover, the duty bearers are states, both individually and collectively.

A serious implementation of the Right to Development in the case of management of irregular migration would mean that potential migrants are fully supported and capacitated to lead the lives they see worthwhile. It will not mean giving enough support just to keep the ‘poor’ where they are. This deficiency in the latest rounds of migration policies, similar to that of past migration regulation policies (Castles 2004a; 2004b; Czaika, and. de Haas 2011), we argue will likely lead to missing the target: as it does not aim to address the root cause of migration in a more comprehensive manner. We propose that the solution lies in designing and implementing policies which center on broader understandings of development as a human right.

We advance this position by adopting a framework which puts the sending countries and the agency of migrants at the center of analysis of determinants (Castles 2004a; 2004b; Czaika and de Haas 2011; de Haas 2007; 2010; 2011; 2014). We build on recent developments in theorization of migration (the aspiration-capability model) which gives due emphasis to micro level actors and processes, while not ignoring meso- and macro- level determinants (de Haas 2011; 2014), and

understandings of the ‘future as a cultural fact’ (Appadurai 2013). The paper finally recommends that the right to development should be an integral part of the policy to manage irregular migration.ⁱ

Methodologically, this paper is based on fieldwork in Tigray regional state, particularly Atsbi Wenberta *Wereda* (district) of Eastern Zone, and Addis Ababa, particularly *Wereda* 07 of Addis Ketema Sub-City. These *Weredas* were selected for the study as they are among the migration hotspot areas in the regional state and city government, respectively.ⁱⁱ The fieldwork in Tigray lasted for a month (in January and October 2017), with two weeks being in Atsbi Wenberta, and the fieldwork in Addis Ketema (in January and October 2017). During this period, thirteen key regional officials were interviewed in Mekelle, nine key informants were interviewed from the Atsbi Wenberta *Wereda* administration, elders and religious leaders, and seven FGDs were conducted with various sections of the youth, including the unemployed (separately for men and women), returnees (separately for men and women), migrants’ parents, and University/College Graduates. In Addis Ketema sub-city, ten key informants from sector offices working to mitigate irregular migration were interviewed. Moreover, fourteen individual interviews and four FGDs were undertaken with returnees and potential migrants in the same sub-city of Addis Ababa. Available documents on efforts the respective *Wereda* administrations exerted to document the extent of, and reduce, irregular migration from their respective locations was also reviewed.

The remainder of this paper has four parts. The first reviews the literature on migration and development linkages and migration theories. The second reviews the literature on Ethiopian migration in broad strokes. The third section presents findings from our fieldwork, covering both migration decision making and strategies followed by the government to reduce irregular migration. The last section concludes the paper by highlighting the need to have a broader understanding of development as an inalienable human right in relevant migration policies and interventions.

Regulating International Migration: Theoretical Considerations

Mass migration to Europe has led to an increasing international cooperation to reduce irregular migration. These policy interventions are based on some theoretical considerations, human rights concerns of migrants and securitized discourses in destination countries. Theoretical considerations of migrants being pushed by poverty has led to increasing humanitarian and development aid flowing to major origin countries, among others in such forms as the EUTF. Reported cases of human rights violations and loss of life en route and in transit countries also made human rights an integral part of the negotiations leading to the Global Compact (see UN 2018). Combined with the rise of the extreme right in Europe, the view of the migrant as threatening the economic, political and social security of the European countries has led to adoption of strict border control policies, for example by the Europe's externalizing of its borders (Hyndman and Mountz 2008). This section presents the debate in the literature on various issues guiding/contributing to these policy interventions.

The academic debate on international migration has for the most part been limited to empirical explanations, with 'inert' theoretical debate hooked to the old 'push-pull' factors and gravity models (and subsequent structural explanations) (for a critique see Bakewell 2010; de Haas 2007; 2010; 2011; 2014). The bulk of this literature took potential migrants as mechanically responding to wage or pay differentials across a certain geographical divide, as if they are 'goods' lacking perceptible agency (de Haas 2011; 2014).

The rise in irregular migration to Europe and failure of available policy tools to respond to the perceived political and social challenges coming with hosting migrants triggered a systematic examination of the migration phenomenon. In this (re-)examination, agency of migrants is starting to hold a central position in analysis of determinants and policy study biases favoring recipient countries are being rectified (Castles 2004a; 2004b; Czaika and de Haas 2011; de Haas 2007; 2010; 2011; 2014). Following this line of inquiry and aiming to contribute to this debate, our conceptual framework builds on this emerging trend, particularly works based on extensive and systematic theoretical and empirical investigation coming out of University of Oxford's International Migration Institute (IMI), the aspiration-capability framework (see de Haas 2011; 2014). We complemented this framework with anthropological perspectives to future making (Appadurai 2013).

Migration in the areas we studied, as in other areas where there is dominance of irregular migration, is instrumental. It has no intrinsic value to the cohort of young Ethiopian men and women we are concerned about here. The instrumentality of migration is related to their future making project, as part of their transition into adulthood. Our analysis, thus, commences with the understanding that the future is a cultural fact, taking the analytical framework developed by Appadurai (2013: 285-300). This is based on the conception that (irregular) international migration is only one choice in the menu of alternatives the young have, and that the decision to migrate (or to stay) is context bound, most importantly the existing perversity of the 'culture of migration' (Cohen 2004) in the study districts. Adopting this understanding enables us to question the 'technicality' and 'superiority' advanced by development planners and practitioners. We argue that such interventions are deeply political and cultural, not value-free, and interventions are facilitated by backing of (administrative, financial, expertise, logistical...) power to determine the futures of the 'development subjects', in our case by attempting to inhibit the decision to migrate without giving a viable alternative future in return.

Future production will be understood following what Appadurai (2013: 286) called the "three notable human preoccupations that shape the future as a cultural fact ... imagination, anticipation, and aspiration."ⁱⁱⁱ Articulations and imaginations of a possible future constitute only the first step towards the desired future. These need to be backed by the 'capacity to aspire,' which is lacking in the groups we are interested in. Aspiration is generally about "how cultural systems, as combinations of norms, dispositions, practices, and histories, frame the good life as a landscape of discernible ends and of practical paths to the achievement of these ends" (ibid: 292). Therefore, taking the future as the domain of anthropology requires understanding that "cultural systems also shape specific images of the good life as a map of the journey from here to there and from now to then" (Ibid.). Appadurai (2013) states that the capacity to aspire^{iv} "is a sort of meta-capacity, and the relatively rich and powerful invariably have a more fully developed capacity to aspire. It means that the better off you are (in terms of power, dignity, and material resources), the more likely you are to be conscious of the links between the more and less immediate objects of aspiration" (: 188). As such the "skewed distribution" of the capacity to aspire "is a fundamental feature, not just a secondary

attribute, of extreme poverty" (: 289). It is in such constrained situations that irregular migration constitutes a valid and viable alternative to build ones 'aspirational capacity', not to be an end in itself. The aspiration to a future is not limited to migration, rather migration serves as a capability increasing detour to build the capacity to aspire to a better future in the home country.

Even this 'transit future' should be supported by imagination. Imagination plays a crucial role in what Appadurai calls the "quotidian social labor for the production of locality... an always incomplete project" (2013: 287-288), but is also crucial to "building a robust anthropology of the future" (Appadurai 2013: 288), particularly through archives. Unlike state archives' goal of enabling governmentality and supporting bureaucratized power, "personal, familial, and community archives—especially those of dislocated, vulnerable, and marginalized populations—are critical sites for negotiating paths to dignity, recognition, and politically feasible maps for the future" (Appadurai, 2013: 288). Therefore, archives, state as well as communal, are about the future as much as they are about the past. In our case, the archives of circulating information, ideas and images of the migration process and the destination country serve to further entice the young coming of age to consider irregular migration as one alternative to a future. This can be encapsulated by what one Ethiopian migrant told IRIN: "I have no future in Ethiopia... I've seen Europe on TV, and it's better."^v

Appadurai's (2013) work is focused on how to put anthropology at the center of 'future science' in competition, or on par, with economics. The concern here is more on what archives potential migrants draw in their imagination exercise and the constraints on their aspiration. As capacity to aspire is lower in poor and disempowered communities, it is to be expected that the capacity to aspire of the communities we targeted is very limited. Here, it is argued that irregular migration comes in as a possibility of expanding their capabilities to live the aspired good life. The 'imagined' good life is therefore to be lived only after a small detour into life in the Middle East as a form of enabling one's aspirational capacities. This will then call forth a '*transit future*' in migration, thus imagination and aspiration to migrate constituting the *immediate future* to make up the limitations in capacity to aspire for the longer-term future. This will then link us to the aspiration-capability framework of De Haas (2011; 2014).

The likelihood of developing of a theory which can sufficiently and comprehensively explain migration was seriously doubted and serious attempts on theorization were taken as a futile exercise (see for example Castles and Miller, 2009). Hein de Haas attempted to re-engage in such an exercise with the hope of coming up with “a more comprehensive and convincing ‘behavioural’ framework of migration” (2011: 16). This attempt led to creation of an ‘aspiration-capability framework’, which helps avoid the unnecessarily limiting administrative/legal categorization of migration (see for example Apostolova 2015) and put the (potential) migrant’s agency at the center of the analysis (de Haas 2011; 2014).

Recognizing the limitations of previous explanations of migration, de Haas (2011; 2014) argues that people migrate only if they aspire to do so and if they have the capability to do it, within the constraints placed, and opportunities offered, by structures. De Haas argues that

an improved theoretical model of migration should: conceive migration aspirations as a function of spatial opportunity (instead of only income or wage) differentials and people’s life aspirations; [and] conceive migration propensities as a function of their aspirations and capabilities to migrate (de Haas 2011: 17).

Taking migration as a function of aspirations, not just of gravitating towards where there is a better economic opportunity, will also enable us to consider other non-economic factors, including social, political and cultural, that shape people’s attitude towards mobility. While irregular migration by itself needs to be supported with the necessary capability, in the manner conceptualized by Amartya Sen (1999), it could also be a capability enhancing phenomenon. So, the concern is more on freedom and choice to move or to stay, not the act itself. Therefore, migration is an inherent part of development, not an expression of failure to develop (de Haas 2011; 2014).

Explanations of migration as predominantly expression of an individual’s agency within the limitations (and affordances) of structures placed by national, regional or international actors needs to accommodate meso-level explanations provided by migration networks. Given the ‘migration hotspot’ nature of our case study areas, considering these meso-level explanations helps us better understand how agency and behavior of potential migrants is mediated by the

presence of networks and the socio-economic impact of migration in the sending areas (see Castles and Miller 2009; de Haas 2010; 2011; Massey et al. 1998).

Amartya Sen's understanding of capability gives sufficient room to examine people's agency in relation to inhibiting/enabling structures, by passing or taking advantages of the same. As such migration "itself can be conceptualized as a form, or expression of, agency, and not only a 'functionalist' response to spatial differentials in economic opportunity" (de Haas 2011: 18). This focus on agency does not mean ignoring or downplaying the limits imposed and opportunities presented by structures, rather the intention is to look into how different actors respond differently within the same structure. The aim is to recognize agency of the young, not to deny the influence of economic and political structures on their decisions (see O'Reilly 2012).

The understanding of capability by de Haas (2011; 2014) encompasses negative and positive liberties, in Isaiah Berlin's (1969) conceptualization. Negative liberties are about absence of limitations, constraints and barriers, while positive liberties focus more on the agency of individual actors and having the ability to make good on one's desires. Having negative liberties as such might not mean much, if an individual does not have the positive liberty to control her/his future (see Berlin 1969; de Haas 2011; 2014). This is also reflected in Amartya Sen's (1999) conception of 'development as freedom' and policy focus on empowerment. The UN Declaration on the Right to Development of 1986 and the Agenda 2030 for Sustainable Development Goals made the right to development part of International Law.

Over the past decade, in response to the increasing risks migrants faced and serious human rights violations and loss of life en route,^{vi} increasing attention is being paid to ensure the rights (liberties) of migrants. Ensuring the rights of migrants along the route, in transit and in destination countries is streamlined in many documents by now (see for example AU and IGAD contributions to UN 2018). Although these efforts should be condoned by themselves, one limitation arises from an exclusive focus on negative liberties. Moreover, there is no consideration of the rights of potential migrants in their areas of origin. The concern is more after the onset of migration, covering its different stages. Our argument is that this focus on rights should be expanded

conceptually to highlight the right to development of migrants and the communities they originate from.

Ethiopians on the Move: Policy Responses to Reduce Irregular Migration

Migration of Ethiopians crossing international borders is a relatively recent phenomenon, less than five decades (Fasil 2017), if we are to discount migrations to evade violent state repressions of local resistance and religious pilgrimage to across the Red Sea in earlier years (Bahru, Gebre and Kassahun 2010). The number of Ethiopians who left the country was very small in the pre-1974 period, with Donald Levine (1965) estimating them to be only 35 between 1876 and 1922 and about 20,000 between 1941 and 1974. Fasil Demissie (2017) attributes the increase in the last four decades of imperial Ethiopia to insertion of Ethiopia to global imperial projects and the dictates of having the young men and women with the right training for the bureaucracy and military. Although the numbers are debatable, all sources agree that an Ethiopian asylum seeker was a very rare thing at the time. Based on US immigration statistics, Terrazas (2007) states that only 61 Ethiopians were granted asylum in the US in the 1950s and only two in the following decade. This changed with the 1974 Revolution and the ensuing years of turmoil, civil war and political repression.

This mass outmigration of Ethiopians is not dissuaded by the relative peace and the reported high economic growth rates of the past two decades. Indeed the period with high economic growth is also matched by high regular labor migration to the Gulf (Asnake and Zerihun 2015) and other forms of irregular migration (Martini 2015). While the 'jobless growth' is one factor, increasing rural youth landlessness (Dessalegn 2018) and authoritarian leadership further contribute to hopelessness into making international (irregular) migration a valid coping strategy (Fasil 2017; Martini 2015). Migration also constitutes part of a household economic coping strategy and an indicator of social status at local levels (International Centre for Migration Policy Development 2008).

While there is disagreement on the size of Ethiopian migrants, there appears to be a general agreement that they are pushed by a host of economic and political factors (see for example Anbesse et al. 2009; Asnake and Zerihun 2013; Fasil 2017; Martini 2015; Solomon G. 2016).

While the migration itself is described as trafficking and smuggling, abuses and human rights violations en route and at destination countries are also recorded in the literature (see for example Anbesse et al. 2009; Asnake and Zerihun 2015; Jamie and Anwar 2017; Zack and Yordanos 2016). Increasing feminization of Ethiopian international migration especially to the Gulf is also visible (Jamie and Anwar 2017).

The Ethiopian government also became aware of the economic potential and political implications of the sizeable Diaspora population and started formal state-Diaspora relations over the past decade and half (Solomon H. 2016; Solomon G. 2016). While there are active, concerted efforts to formalize and get a greater share of the remittances, which already contributes significantly to the national economy, outperforms export earnings and foreign direct investment flows to Ethiopia, through formal channels (Asnake and Zerihun 2018), the establishment of the Ethiopian Diaspora Trust Fund is the latest strategy to mobilize resources from the diaspora.^{vii} Skilled diaspora have also played key roles in the establishment and running of crucial institutions, such as the Agricultural Transformation Agency and the Ethiopian Commodity Exchange Market, and through skill transfer (primarily in the health sector) (Solomon H. 2016).

Despite the obvious gains at household and macro-economic levels, the political implications of such a huge migrant population of Ethiopian origin is seen as a challenge. The first stark warning was during the hotly contested 2005 elections, a time when the diaspora supported the local opposition parties financially, diplomatically and through ideas (Lyons 2007). Fast reaching and circulation of news/images of various human rights abuses, including the executions by ISIS in April 2015 in Libya and xenophobic attacks in South Africa, have had their fair share to push for state interventions. Furthermore, the harsh treatment of and mass-deportation of about a hundred sixty thousand Ethiopians from Saudi Arabia in late 2013/early 2014 was a main push to ban all labor migration to the Gulf states (Asnake and Zerihun 2015).

The adopted policy interventions could broadly be put in four categories: (1) awareness raising of the youth, (2) securitizing and criminalizing the 'facilitation' role by individuals who are conventionally called 'brokers' but known as 'traffickers' by the government (Proclamation No. 909/2015); (3) job creation for the youth through the extension of various technical, financial and other supports to micro- and small-enterprises (MSEs) (see for example Ministry of

Urban Development and Housing, 2016); (4) bilateral and multilateral engagements to reduce barriers to regular migration and ensure the rights of Ethiopian migrants.

These efforts have failed to effectively deal with the challenge of irregular migration in Ethiopia, which could be attributed to a range of misconceptions. For example, although the rationale for awareness creation works is the assumption that the young do not have information on the risks and dangers of irregular migration, potential migrants have detailed and *real-time* information on risks along different routes.^{viii} In dealing with ‘brokers’, it should be acknowledged that most of these men are locally respected and wanted, and as such it is the community itself which shields them from the law.^{ix} The MSE scheme has largely failed to reduce youth unemployment, let alone contributing to the structural transformation of the economy, for a range of structural and procedural bottlenecks (Di Nunzio 2015). The multilateral engagements form part of the sub-regional, continental and global migration compact. Bilateral engagements mainly relate to outlining the operational procedure in training and sending and ensuring the rights of Ethiopian labour migrants to the respective countries, and the duties of the sending and receiving countries and the employment agency in ensuring the migrants’ rights (see Asnake and Zerihun 2015).

As we will demonstrate below, the failure of policies dealing with irregular migration is attributable to the exclusive attention to structural macro factors (thus ignoring the interests and agency of potential migrants) as drivers of migration, and the focus on ensuring negative freedoms, a low standard for the aspiring youth. Based on fieldwork in Atsbi Wenberta, Tigray and Addis Ketema, Addis Ababa, we make a case for a more comprehensive understanding and policy of migration, following the conceptual framework provided in the previous section.

Extent and Drivers of Migration and Policy Responses in Ethiopia

The case study areas selected are migration hotspot *Weredas*, located in Addis Ketema Sub-City in Addis Ababa and Eastern Zone in Tigray regional state. *Wereda* 07 of Addis Ketema sub-city, is home to numerous poor urban dwellers mostly engaged in the informal economy. Atsbi Wenberta *Wereda* located on the eastern escarpment of Tigray’s mountains cascading to the Rift Valley, is selected as the

second research area. Atsbi Wenberta is home to old churches, which serve as tourist attractions now, but serve as indications of the fact that the area has been settled and farmed for millennia. With this comes the obvious consequence of land degradation, fragmentation of holding, very small land holdings and low productivity. Moreover, as the last comprehensive land redistribution in Tigray was decades ago the majority of the youth could only access land through inheritance. As such, there is a severe youth landlessness in the study area. This general agrarian situation makes agriculture less of an option to any young man raised in the area.^x In both areas migration is aspired by the youth as a life path and hence is normative.

The government of Ethiopia is working on expanding access to education around the country. The federal and regional governments have also worked successfully to increase the coverage of primary and secondary schools over the past two decades in both *Wereda* 7 of Addis Ketema sub-city and Atsbi Wenberta *Wereda*. This has been followed by a commensurate increase in the number of new students entering higher institutions of education and the number of public universities over the past decade nationally (for general performance of the education system see Ministry of Education, 2010; 2015). Thus, for the youth 'finishing school' or 'joining/completing college' is much easier than their counterparts a generation ago.

This however did not bring some 'brightness' to the futures of the youth in the two study areas, as it is increasingly difficult to follow the 'conventional path' of 'finish college and get employed'.^{xi} The education system itself cannot absorb every student into higher education, nor is that desirable. According to Head of Tigray's TVET Office, the great majority of students, some 80 % according to plan, are expected to join TVETs, rather than a University.^{xii} In practice close to 88 % of 10th grade students from Tigray region do not make it to joining a University.^{xiii} The next best alternative they have is joining a Technical and Vocational Education Training (TVET) Center, where intake capacity is still limited.^{xiv} Graduating from either a University or a TVET institution does not necessarily guarantee gainful employment, however. The Ethiopian economy could not cope and create job opportunities to the young men and women joining the labour market every year.

The government is attempting to solve this through the promotion of establishment and operation of MSEs, particularly after the

identification of youth unemployment as a major challenge after the 2005 elections (Eyob 2017). What became apparent over the past decade is that doing a successful business as an MSE operator is a challenge, and that many fail to graduate to the next capital ladder. This is even the case in Addis Ababa where there is a higher effective demand (Di Nunzio 2015), let alone in Atsbi Wenberta and other rural parts of Tigray (see also Fana and Beyene 2017; Firehiwot and Kiya 2017). This leads the youth to indefinite periods of 'stillness' dominated by feelings of being 'stuck'; where life does not change. This is in line with what Mains, Hadley and Tessema say about unemployed young men in Jimma. They argue that the young men have "overabundant amounts of unstructured time in the present, and they have difficulty constructing narratives in which they are progressing toward a desirable future. They want their lives to improve with the passage of time, but they have little faith that this will occur" (2013: 113). If they are to stay closer to home, the youth do not have hope for a good future. They have lost hope in making the transition into adulthood with all its economic and emotional expectations and implications.^{xv} As Mains' (2012) book title captures the repeated phrase, to the youth, 'hope is cut'. In the words of one young man from Atsbi Wenberta,

At my age (17), dreaming about the future is the norm. But we have no future here. What will I become if I stay? Will I go back to my parents' village and be a farmer? I do not want to do that. I know that I cannot make a good living in town, because there are no good jobs, I do not have (employable/demanded) skills and I do not have family/relatives in good places to help me. So, how can I expect tomorrow to be better than today? Each day I live is the same as the previous, and with that comes anger and hopelessness.

Frustration and losing hope for the future also characterize the life of the youth in *Wereda 7* of Addis Ketema sub-city. They have decided that Addis Ababa cannot offer their basic needs even if they are willing to let go the 'good life'. University graduates that fail to get jobs have made young people to be wary of education as a way out of poverty. Very low wages discourage them from getting employed as the money earned is far lower than necessary to cover the ever increasing cost of life in the city.

Migration becomes part of the youth's future-making project as they perceive that their dreams are unachievable within the realms of opportunities available for them in Ethiopia. This is mediated by how societies evolve. Key informants consulted in most migration prone area of Addis Ababa – Addis Ketema sub-city, *Wereda 7* – maintain that achieving the good life is bounded by one's success to migrate and finding a job that pays in the Middle East. They expect these migrants to pursue ambitious goals after their return. Nonetheless, many are aware that at least in the short term they will only be able to sustain the needs of their family, as the following quote from a key informant tells:^{xvi}

At the moment, the life I am living is deprived of the basic needs that one needs for survival. I live in a very small house along with my parents, my brother and my three children. Our house is very much congested making us live a poor quality life. I would like to travel to one of the Arab countries [the Middle East] to earn better income to enable my family afford better housing, to feed them as well as to pay for my children's school fee.

The same is true for the youth in Atsbi Wenberta. The general agreement of informants is that 'there is no future' for them in the *wereda*. The futures of the youth are 'frustrated'. It is in this general sense of 'frustration' at staying back that irregularly migrating to Saudi Arabia becomes a capability increasing move. If the future is a cultural fact, it will be constructed through collective imaginations and archives and aspirations (Appadurai 2013). This leads us to the dominant communal archives and aspirations, as these relate to migration.

The imagination which drives the youth in migration hot-spot areas towards migration is the urge to flee poverty, and leading a risky subsistent life. Migrants to the Middle East do not start-off their journey with the assumption that once they reach their destination they will prosper. Such an imagination might be true among migrants who opt to travel to Europe. The journey of those migrating to the Middle East rather commences with the plan of enabling families remaining behind live a reasonably fulfilling life. Hence, the way the good life is perceived is very much in line with fulfilling basic needs such as food and shelter. It is also about appearing successful among community members, which is associated with migration in the research area.

Findings from Atsbi Wenberta and *Wereda* 7 indicate that the imagination of an individual is context specific and depends on the dominant narratives on life, and on migration, in the particular community she/he belongs to. This links to what is explained as 'culture of migration'^{xvii} and migration network by scholars (Cohen 2004; Timmerman, Hemmereichs & De Clerck 2014). In such an area affected by migration, "international movement becomes so deeply rooted that the prospect of transnational movement becomes normative, and young people 'expect' to live and work in a particular foreign country at some point in their lives" (Jonsson 2008: 9). This happens, in the case of our field experience, through the manifestations, usually overt, and archives built through the experience of previous migrants.

This could happen in the form of better housing structures and consumption by family with child(ren)/relatives abroad, owning vehicles and 'big' buildings and an entire neighbourhood (dubbed Jeddah locality in Atsbi Wenberta) built with money from Saudi Arabia. Many returnees also tell stories of bravado and adventure. All this builds a very strong communal archive to draw from when a young man/woman contemplates about her/his future. As an informant in Atsbi Wenberta stressed, "what will you dream when your teacher goes to Saudi? Priests, icons in our community, also do go there, eat the Muslim meat. Therefore, we all dream to go there."^{xviii} As such, in areas highly affected by longer history of international irregular migration, the imagination of a future for the young includes migrating at some point in their life. The imagination is not purely individual, rather is highly mediated by culturally accepted norms and practices. The structure of the imagined future is 'stratified' or 'sedimented': one has to make a de tour and spend a few years abroad before living the desired life.

The migration alternative is added to the menu of options to living the good life at some point in the future through meso-factors. These factors create improved access for migrants to map and facilitate their journey. Returnees consulted emphasize the role of 'brokers' in determining their destination country. 'Brokers' have networks in the origin and destination areas. These networks of migration 'brokers' or at times termed as smugglers sustain irregular migration, potentially competing with legal ways of migration. The 'brokers' in Addis Ababa are well-linked to employment agencies in the Middle East countries.

The two counterparts negotiate terms of employment and once agreed the visa issuing process will be underway. For migrants taking the land route, a strong network of brokers exist from Addis Ababa to Sudan through Metema Yohannes. The 'brokers' are the major source of information for migrants in terms of what to expect on their route and how to get by. In many instances, the brokers inflate what will be achieved once migrants reach their destination. This is to woo migrants and increase the brokers' earning. The other meso-factor offering migration as a viable option as a mechanism to live the good life is the existence of high number of migrants from the study areas in the destination country/region.

With the above in mind, it is no wonder that the 'aspiration to migrate' is high in the study areas. One can even go to the extent of stating that the 'capacity to aspire' for a well-meaning and desired future, which generally is lacking in poor communities (Appadurai 2013), is directly linked to the 'aspiration to migrate' in the study areas. Migration has the instrumental value of increasing the capacity of the youth to aspire towards a better future. Migration thus makes part of the development process, if we define development following Sen (1999) as the broadening of capabilities (see also De Haas, 2014), not a sign of victimhood.

The same factors which lead to the pervasively high 'aspiration to migrate' do also contribute to increasing the capability to migrate. Most parents encourage their children to migrate, and could even finance it. Friends, siblings, and relatives in Saudi Arabia also contribute to increasing the flow of information, ideas, and reducing the risks of reaching and working after reaching Saudi Arabia, in addition to financing migration. A very unlucky young man/woman will have to work and save for some time. There are cases also of men who joined MSEs to only access loan from a micro-finance institution as a way of financing their irregular migration.^{xix} Low capability in effect does not limit oneself from migrating; the potential migrant will only has to work towards increasing her/his capability to the aspired migration.

As a way of stemming ever growing irregular migration, three major strategies are employed in the study areas (and broadly in Ethiopia too): creation of jobs through MSEs, regularising labour migration, and preventing irregular migration. Policies which intend to deal with out-migration in Ethiopia are Proclamation on Overseas Employment (Proclamation 923/2016); Micro and Small Enterprises Strategy of 2011;

National Technical and Vocational Education and Training (TVET) strategy of 2008; and Proclamation to provide for prevention and suppression of trafficking in person and smuggling of migrants (909/2015). In this regard, promotion of Micro and Small Enterprises (MSEs) is upheld through the provision of trainings, credit, work premises and Business Development Support. It has been over a decade since the government adopted the MSE scheme to augment employment opportunities. The scheme was further emphasized after the MSE strategy was designed, and reports allege that hundreds of thousands of jobs have been created. For example, over a five year period (2010-2015), the total number of jobs (per sector) created were 114,455 in the manufacturing sector, 392,708 in the construction sector, 115,515 in the service sector, 62,635 in urban agriculture sector and 45,589 in trade in Addis Ababa. In addition, returnees formed 291 enterprises creating jobs for 1,272 people (Addis Ababa Micro and Small Enterprises Development Bureau 2016).

The achievement of MSEs in reducing the accelerating flow of migrants from different parts of Ethiopia is very much restrained by a number of factors. In Addis Ketema, most unemployed youth are interested to start businesses within the sub-city as the location is well-suited for trade. It is a very busy area and small businesses can easily thrive. Nevertheless, there are no work premises in the sub-city. An informant from Addis Ketema sub-city mentioned that the assumption was that MSEs will be able to graduate into medium level enterprises and invest in building work premises within five years and hence hand over sheds initially provided to them to new entrants. Moreover, the finding of an ethnographic research conducted by Di Nunzio (2015) shows the income earned by successful enterprises is not better than what the informal labor market offers which is 30-40 USD per month. A 32 years old female returnee from Saudi Arabia had the following to say about government support:

I recently returned from Saudi Arabia following the country's warning that all illegal migrant workers will be deported. Despite the warning I was not willing to return as I was well-aware of the labour market situation in Ethiopia. I knew that I will not be able to find a job which enables me to cover my family's needs. However, the Ethiopian government promised us that we will get better job

opportunities through the Micro and Small Enterprises scheme. This is what influenced my decision to return to Ethiopia. Now, I have found out that it was all deception. We were even unable to obtain our preferred training opportunities. For example, I wanted to get training opportunity in either cooking or trade. But, the government is saying we should be trained in poultry because there are not work premises in Addis Ketema sub-city.

One can argue that structural failure to provide the youth with decent income to sustain their day to day lives denies them off their capacity to aspire. Many of the informants consulted prefer to live within their own locality. They say one can freely move around when she/he is in her/his own country. Living in the Middle East comes with a lot of hustle. The prospective migrants have heard of unfriendly employers who force migrant labourers to flee, leaving behind their passports and are forced to live and work illegally. Being able to live with family is also a motivating factor to stay in Ethiopia. However, the lack of plausible livelihood/economic alternatives at home pushes them to the unwanted but seemingly necessary path of migration.

Policies aiming at deterring irregular out migration from Ethiopia focus on (i) awareness raising, (ii) anti-trafficking/ traffickers initiatives, (iii) employment creation, and (iv) promotion of regular migration. The government of Ethiopia is enforcing such a policy through the passing of various proclamations and establishing institutions. The MSE and TVET strategies can be cited as initiatives aiming at creation of employment opportunities in-country aiming at reduction of irregular out migration from Ethiopia. The prevention and suppression of trafficking in persons and smuggling of migrants proclamation (Proclamation No. 909/2015) is launched with the objective of controlling the acts of smugglers. The government promotes regular migration to deter the irregular one through the Provision of Overseas Employment Proclamation (Proclamation Number 923/2016).

Establishing an MSE and becoming successful in Ethiopia is toilsome because of insufficient access to capital, work premises and technical support. Even when MSEs are successful, very few graduate with in the set time-frame since the scheme is only enough to sustain livelihoods rather than thriving to achieve increased quality of life.

Numerous enterprises are forced to cease operation as the support provided by the government is a pretention than a genuine effort to improve lives. Informants in *Wereda* 7 of Addis Ketema sub-city talk of a shop provided for MSEs which was off-road and hence deprived of feasible market opportunities. When loans are provided for some enterprises, it is without any control and support mechanism which leads to miss-use and at times end up funding irregular migration.

The government's effort to regularize outmigration is not fully operational because of various reasons including the low capacity of institutions to enforce the proclamation and employment agencies continuing to send-off migrants using the irregular path.^{xx} Even after using the regular path, migrants are forced to become irregular after reaching their destination as the regular work pays less.^{xxi} Furthermore, there are no regular paths for labour migrants to travel to European countries leaving the irregular as the only option.

The government's intervention—as well as projects funded by international donor agencies—are focused on ensuring the 'negative rights' (Berlin 1969) of individuals that are likely to migrate. These interventions are fixated on how basic needs can be ensured as well as on protecting migrants from harms they may face as a result of irregular migration. Such interventions ignore the fact that migrants not only require to fulfil their basic needs rather they aim at living improved life by getting decent access to housing, health, education, etc. Hence, policies should rather aim for achieving better outcomes to the youth (and communities) prone to migration. The solution should be to empower such communities to live the lives they feel are worthy, and avoid the ghettoization of their desires to only economic subsistence. They should also be consulted as to what is missing in their life and what can be made of support from international donor agencies rather than following the "one size fits all" approach (MSE development in Ethiopia's case), which is top-down in nature.

Conclusion

The international, regional and national policies and strategies aimed to curb irregular migration are mainly meant to 'ghettoize' poverty and the poor in the world regions they originate from. These policies and strategies are not meant to promote wellbeing and improvement in the general life conditions of migrants and sending areas, rather aim to support the basic subsistence needs of potential migrants. This runs

counter to the essential desires of migrants, or any other social group, and as such most recent attempts to cut irregular migration from Ethiopia to the Middle East, Europe and South Africa are futile.

The failure mainly emanates from the deficient understanding of migration the policy interventions are based on. In this paper, we argued that the understanding of the migration decision making process should not be limited to structural, macro factors only. It should also consider the agency of the potential migrants, and the network of relationships with prior migrants in the destination countries. In cases of young men and women in migration hotspot areas, we found out that migration constitutes one of the most preferred viable pathways to a decent future.

Current attempts focus on avoiding possible transgressions on their rights. Job creation, through (mainly) MSE development scheme, is arguably designed to enable the youth lead a fulfilling life. In practice, these schemes only enable the youth to somehow subsist economically. The other interventions aim to reduce the possibilities of human rights violations en route and in destination countries. If the policy interventions are to succeed, alternatives to a 'full' future should be brought to the imaginations of the youth. This calls for the re-affirmation of commitment to the right to development, and implies that interventions should be constituted as part of commitments of states (sending, transit, destination, and others) to protecting and promoting these rights.

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Notes

ⁱ We use IOM's definition of irregular definition: "Movement of persons that takes place outside the laws, regulations, or international agreements governing the entry into or exit from the State of origin, transit or destination" (see <https://www.iom.int/key-migration-terms>).

ⁱⁱ The extent of migration varies significantly across the different *Weredas* of Tigray. For example, in 2015/16 alone a total of 10,155 (F=2,772) individuals migrated from Tigray: of these are from Central Zone (1,503 (F= 350), of whom 1,437 (F= 324) were from Ahferom *Wereda*), Eastern Zone (4,875 (F=1,361), of whom 1,216 (F=335) and 2,320 (F=691) were from Kelete Awlalo and Atsbi Wenberta *Weredas*, respectively); South

Eastern Zone (1,376 (F=371), of whom 1,428 (F= 377) were from Hintalo Wajirat *Wereda*) and Southern Zone (1,907 (F= 570), of whom 810 (F=294) and 831 (F= 202) were from Raya Alamata and Raya Azebo *Weredas*). These *Weredas* are among the top origin areas for irregular migrants from the region, and Atsbi Wenberta is among the leading migration hotspots in the region (see Fana and Beyene 2017). Similarly in *Wereda* 07 of Addis Ketema sub-city the number of migrants is said to be very high though exact figures were not accessible from the Bureau of Labour and Social Affairs at the city, sub-city and *Wereda* levels. This emanates from the irregularity of migration which leaves those on the route and at destination countries unrecorded. Moreover, relevant offices are not exerting extra-effort to undertake a survey of migrants because of paucity of capacity and being busy with other assignments. Regardless, interviews conducted with returnees and potential migrants show that a significant proportion of the youth residing in the sub-city aspire to migrate or have migrated (Firehiwot and Kiya 2017).

ⁱⁱⁱ In this paper, we did not pay significant attention to the third factor, anticipation. Anticipation is mainly about risks and dangers, unknown or known, and ways/thinking/practices of managing these and increasing “the horizons of hope, that expand the field of imagination, that produce greater equity in ... the capacity to aspire” (Appadurai, 2013: 295). This of course is relevant as it relates to perceptions and evaluations of risks by different actors in the migration process (see for example, Müller-Mahn and Everts, 2013). This is outside the scope of this paper.

^{iv} It is a “cultural capacity, in the sense that it takes its force within local systems of value, meaning, communication, and dissent. Its form is recognizably universal, but its form is distinctly local and cannot be separated from language, social values, histories, and institutional norm, which tend to be highly specific” (Appadurai, 2013: 290).

^v <http://www.irinnews.org/report/94279/ethiopia-cautionary-migration-tales-are-no-deterrent>

^{vi} See, for example, data on missing migrants and ...over the past few years at the following link missingmigrants.iom.int

^{vii} <https://www.ethiopiastrustfund.org/>

^{viii} KII: *Wereda* 07, Addis Ketema Sub-City, Addis Ababa

^{ix} Oral Presentation, Fekadu Adugna, 5 October 2018, 20th ICES, Mekelle, Ethiopia.

^x Interview: Elders and young men, Atsbi Wenberta *Wereda*.

^{xi} Interview: young men and women, Atsbi Wenberta *Wereda*.

^{xii} Interview: Head, TVET Bureau, Mekelle.

^{xiii} Ibid. W7

^{xiv} Ibid. W7

^{xv} Interview: young men, Atsbi Wenberta *Wereda*; KII: *Wereda* 07, Addis Ketema Sub-City, Addis Ababa.

^{xvi} KII: *Wereda* 07, Addis Ketema Sub-City, Addis Ababa.

^{xvii} This strongly relates to what Cohen (2004: 5) states in reference to ‘culture of migration’: first, that migration is pervasive—it occurs throughout the region and has a historical presence Second, the decision to migrate is one that people make as part of their everyday experiences. Third and finally, the decision to migrate is accepted by most (locals) as one path toward economic well-being.”

^{xviii} Interview: young returnee, Atsbi-Wenberta *Wereda*.

^{xix} Interview: experts and officials Bureau of Labour and Social Affairs and Bureau of Youth and Sports, Atsbi Wenberta *Wereda*.

^{xx} KII: *Wereda* 07, Addis Ketema Sub-City, Addis Ababa

^{xxi} Interview: young men, Atsbi Wenberta *Wereda*

“Girls and Boys Have Become the Toys of Everyone”: Interrogating the Drivers and Experiences of Adolescent Migration in Ethiopia.

Nicola Jones, Elizabeth Presler-Marshall, Kiya Gezahegne, and
Workneh Yadete

Abstract

The recently adopted Global Compact for Migration (GCM) has a strong focus on the rights of migrants. While the GCM is non-legally binding and its adoption has been heatedly contested, this is an important historical moment to reflect on the status of some of the most vulnerable migrants – adolescent girls and boys – and the efforts that will be needed to fast-track social change and ensure that they benefit from the ambitious targets of the GCM and the 2030 Sustainable Development Agenda. This article explores these issues through a case study on Ethiopia, where migration—especially of young people—is already accelerating and is poised for explosive growth in the coming years.

Drawing on qualitative data collected by the Gender and Adolescence: Global Evidence (GAGE) international research programme, this article focuses on the ways in which adolescent girls’ and boys’ multi-dimensional capabilities drive and are shaped by migration. Our findings highlight that in many cases Ethiopian adolescents are “choosing” to migrate because they perceive no other viable options. Simultaneously pushed and pulled into undertaking risky endeavours with limited information, they often find themselves vulnerable to a range of risks with very little support. To help mitigate those risks, and help adolescents use migration to improve, rather than restrict, their access to their human rights, our conclusions discuss a number of key policy and programming entry points.

Introduction

In December 2018, the Global Compact for Migration (GCM), having been agreed at the United Nations General Assembly in July 2018, was formally adopted at an intergovernmental conference in Marrakesh. This Compact marks a milestone in international co-operation on migration. The GCM has a strong focus on the rights of all migrants and aims through 23 key objectives to “facilitate safe, orderly and regular migration, while reducing the incidence and negative impact of irregular migration.” It also agrees “to reduce the risks and vulnerabilities migrants face at different stages of migration by respecting, protecting and fulfilling their human rights and providing them with care and assistance” (quoted in Fella 2018, 1). While the GCM is non-legally binding and its adoption has been heatedly contested, this is an important historical moment to reflect on the status of some of the most vulnerable migrants – adolescent girls and boys – and the efforts that will be needed to fast-track social change and ensure that they benefit from the ambitious targets of the GCM and the 2030 Sustainable Development Agenda.

In the Global South, and especially in the poorest regions and countries, independent adolescent migration is a common phenomenon. Burrone et al. (2018) report that intent to migrate peaks at age 17, with rates as high as 58% in Sierra Leone and generally higher in low income countries and in communities where young people’s welfare is not prioritised. In 2010, it was estimated that nearly one quarter (24%) of all migrants in Africa were under the age of 20 (UNICEF et al. 2010). Historically speaking, the dominant narratives surrounding adolescent migration focused on the risks of exploitative child labour, trafficking and modern slavery (Black 2002; Whitehead and Hashim 2005; ILO 2012). Temin et al.’s (2013) *Girls on the Move* report sought to elucidate the other side of the coin and look

beyond the risks of migration and girls as “victims” to the potential opportunities that migration offers in terms of education, economic empowerment and exercising independence, voice, and agency. While an important contribution to the debate, over the last five years it has become increasingly apparent that what is critical is balancing narratives and capturing the heterogeneity of drivers and circumstances of adolescent migration. That is, although migration can facilitate adolescents’ desire not to “suffer in the mud” (Boyden 2013), we must not lose sight of the fact that much still needs to be done to mitigate the serious and multidimensional risks that young migrants – especially the most disadvantaged (e.g. domestic workers) face in terms of accessing their human rights (Presler-Marshall and Jones 2018; Jones et al. 2018; Jones et al. 2017; Population Council Ethiopia 2018; de Regt 2016).

Ethiopia is an interesting case study for exploring adolescent migration and the types of evidence, services, and programmes that can begin to offset adolescent migrants’ age- and gender-related vulnerabilities and help young migrants access their rights. First, there is evidence that the country as a whole is set for a rapid increase in migration. Not only does it remain more rural than most of its neighbours (80% in 2017 according to the World Bank 2018b)¹, meaning that there is more room for urban growth, but it is highly vulnerable to climate change (Irish Aid 2018). Moreover, although the government for years worked to slow migration (Atnafu et al 2014, Carter and Rohwerder 2016), and migration remains under prioritised, the policy priorities of the national Growth and Transformation Plan II (2015–2020) are likely to increase migration. In an effort to reduce youth unemployment, accelerate poverty reduction, and catapult the country to middle-income status by 2025, the GTP II is committed to developing new urban factories and industrial parks² (Dehry 2017; Giannecchini and Taylor 2018). In addition, while the economic benefits of internal migration are the subject of debate in some countries, in Ethiopia there is clear evidence that it very

¹ Compared to 66% in Sudan, for example (World Bank, 2018b).

² Some 17 industrial parks across the country are under construction as of 2018 (Derhy 2017).

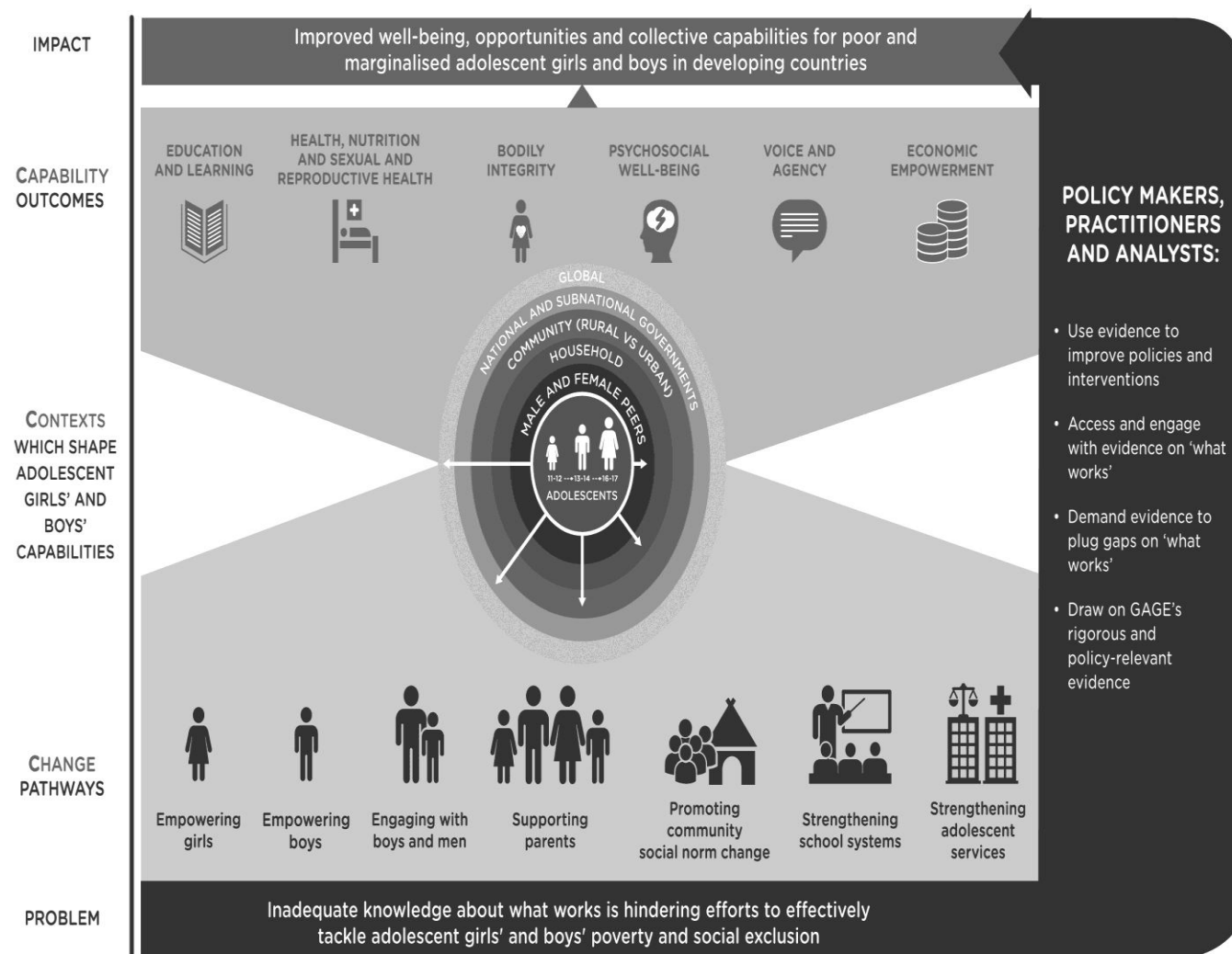
significantly improves both food and non-food consumption (de Brauw et al. 2017).

Second, there is reason to believe that adolescents and young adults will represent the bulk of Ethiopian migrants in the coming years. Not only is the country very young, with 24% of the population between the ages of 10 and 19 and 71% under the age of 30 (ILO 2018), but recent research suggests that improved access to education has shifted adolescent occupational aspirations considerably and that among the current generation, over two-thirds aspire to migrate, preferably to an urban area inside of the country (Schewel and Fransen, 2018). While there has been increasing discussion of adolescent and youth migration regarding the need to better understand the factors driving young people's international migration from Africa to Europe (World Bank 2018a; Pew Research Center 2018; Ahmed and Gough 2018), and there growing evidence of adolescent girls' involvement in domestic work in Ethiopia and internationally (de Regt 2016; Jones et al. 2018; Jones et al. 2017; Population Council 2018), overall there are still major lacunae in understanding the context-specific drivers and implications of migration for Ethiopian adolescent girls and boys. In particular, the evidence base on the ways in which migration shapes and is shaped by gendered adolescent trajectories—especially vis-a-vis gender-specific work opportunities and the risk of various type of violence—is weak. This article aims to contribute to closing those evidence gaps. Drawing on data collected by the Gender and Adolescence: Global Evidence (GAGE) international research programme, in which Ethiopia is one of six focal countries, this article focuses on the similarities and differences between adolescent girls and boys involved in migration. Beginning with our conceptual framing and research methods, this paper then turns to the patterning of adolescent migration and its drivers—both push and pull. We then discuss adolescents' experiences of migration through a multidimensional capabilities lens before reflecting on policy and programming implications.

Conceptual Framing

This article draws on the conceptual framing of the GAGE programme, which focuses on the interconnectedness of “the 3 Cs” - Capabilities, Contexts, and Change strategies - to understand what works to support adolescent girls’ and boys’ development and empowerment in the second decade of life and as they transition into early adulthood (see Figure 1).

Figure 1: GAGE Conceptual framework



Source:

GAGE Consortium, 2018.

The first building block of our conceptual framework refers to capability outcomes. Championed originally by Amartya Sen (2004), the capabilities approach has evolved as a broad normative framework exploring the kinds of assets (economic, human, political, emotional, and social) that expand the capacity of individuals to achieve valued ways of “doing and being” and access their human rights. Importantly, the approach can encompass relevant investments in adolescent girls and boys with diverse trajectories, including the most marginalised and “hardest to reach,” such as migrant adolescents and internally displaced persons (IDPs).

The second building block is context dependency, with an emphasis on the ways in which adolescent girls’ and boys’ capability outcomes are highly dependent on family or household, community, state, and global context factors. For example, adolescents may be pushed (e.g. escaping from forced child marriage) or pulled (e.g. to earn remittances to support household economics) by family pressures to migrate domestically or internationally. At the same time, community awareness-raising about the potential pitfalls of migration and state-level policy frameworks can help to reduce exploitative and support positive adolescent migration trajectories.

The third and final building block of our conceptual framework acknowledges that girls’ and boys’ contextual realities can be mediated by a range of programme and policy change strategies. These include: empowering individual adolescents, supporting parents, engaging with men and boys to reduce discriminatory social norms and practices against adolescent girls and young women, sensitising community leaders, enhancing adolescent-responsive services, and addressing system-level deficits.

Research Questions Stemming from our conceptual framing this article seeks to answer four main questions:

What is the patterning of Ethiopian adolescent girls’ and boys’ migration?

What are the drivers – both push and pull factors – shaping adolescent migration?

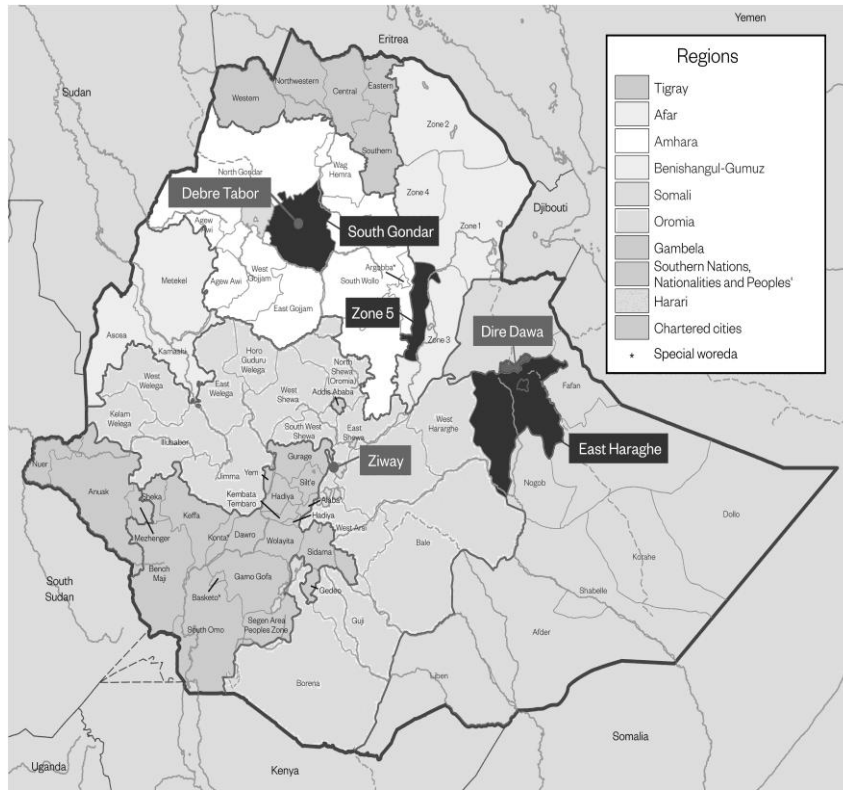
How does migration affect adolescents’ multidimensional capabilities?

What entry-points exist for tackling and mitigating adolescent migrants’ risks in low-income contexts like Ethiopia?

Methodology, Research Sites and Research Sample

To explore these questions, we draw on data collected as part of the broader GAGE baseline, which was carried out in late 2017 and early 2018 involving qualitative data collection with 250 adolescents – and their caregivers and siblings – in rural and urban sites in three regions in Ethiopia (see Figure 2). For our rural research sites, we sought to combine economic and social vulnerability criteria and selected geographical areas that are economically disadvantaged and/or food insecure as well as being child marriage “hot spots” (as a proxy for conservative gender norms) (see Jones et al. 2016). In total, the qualitative research is taking place in five *kebeles* in Ebenat district, South Gondar, Amhara, five *kebeles* in Fedis district, East Hararghe, Oromia and two *kebeles* in Zone 5, Afar. Research is also taking place in three urban settings which are geographically proximate to our rural sites: Batu in East Shewa (Oromia), Debre Tabor in South Gondar (Amhara), and Dire Dawa City Administration. These three urban sites not only allow us to better understand rural-urban comparisons, they also allow us to explore adolescent transitions from education into work, given the diversity of employment options available.

Figure 2: GAGE Ethiopia urban and rural research sites



Source: Originally created from File: Ethiopia adm location map.svg by User: Nord West and modified to show GAGE research sites.

Our primary sample, with whom we undertook individual interviews, included two age cohorts, the younger aged 10–12 years and the older aged 15–17 years. Adolescent girls and boys were purposefully selected from a quantitative sample that had been randomly selected from 220 communities in the districts discussed above, to include adolescents in and out of school, working adolescents and married adolescent girls. In addition, we carried out a range of group interviews³ with adolescents (age 10–19) and adults, some of whom were purposively selected because they were current migrants or returnees, to explore the drivers of and experiences with adolescent migration. Tools, including community and body mappings, individual and community timelines, a “favourite things” exercise, and vignettes aimed at exploring social norms, were highly participatory. We also interviewed key informants—with expertise in adolescence, gender, and migration—at the local through national levels. In all interviews, we paid special attention to gender similarities and differences. See Tables 1 and 2 for an overview of our qualitative sample. Regarding research ethics, we secured approval from the Overseas Development Institute Research Ethics Committee – as well as from the relevant regional research ethics boards in Ethiopia. We also secured informed assent from adolescents aged 17 and under, and informed consent from their parents⁴ and from adolescents 18 and 19 years of age.

³ Where adolescents were interviewed in groups, we report their ages by cohort. Where they were interviewed individually, we report their exact ages.

⁴ Informed consent from parents of adolescents under the age of 18 was not obtained when those younger adolescents were living in adolescent-headed households in urban areas. This was the case for 15 young people in our sample.

Table 1: Sample overview

Individual interviews with girls	Individual interviews with boys	Individual interviews with parents	Individual interviews with key informants	Group interviews with adolescents	Group interviews with adults
143	105	200	160	68	45

Table 2: Disaggregated adolescent sample by vulnerability characteristic

Early adolescents				Older adolescents			
Girls (unmarried)	99	Boys	76	Girls (unmarried)	23	Boys	29
Girls married	10			Girls married	11		
Out of school / working adolescent girls	25	Out of school / working adolescent boys	19	Out of school adolescent girls	9	Out of school / working adolescent boys	9
Girls with disabilities	10	Boys with disabilities	9	Girls with disabilities	9	Boys with disabilities	9

The data analysis process followed multiple steps. Preliminary analysis took place during both daily and site-wise debriefings with the team – during which we explored emerging findings in order to probe more deeply in future interviews. Following data collection, all interviews were transcribed and translated by native speakers of the local language and then coded using the qualitative software analysis package MaxQDA. Our code book was primarily shaped around the GAGE 3 Cs Conceptual Framework, but was

also informed by the emerging findings from debriefings in order to ensure that local specificities were well captured.

Our Findings

Trends and Patterning of Adolescent Migration

Our respondents overwhelmingly agreed that “the trend of migration has increased from time to time” and that those in middle adolescence (aged 14–16) are most likely to migrate. They also agreed that internal migration is more common than international migration, especially since the government tightened restrictions on the migration of children under the age of 18 following the 2017 mass expulsion of Ethiopian migrants from Saudi Arabia (though they added that the primary impact of those restrictions has been to increase illegal migration rather than to discourage migration). Rural-to-urban migration is particularly common, given urban job opportunities. “With regard to internal migration, there is huge influx of rural out-migration to urban centres by adolescents,” explained a key informant from the Bureau of Women, Children and Youth Affairs (BOWCYA) in Dire Dawa. Rural-to-rural migration is also growing, most often on a seasonal basis, with the expansion of commercial agriculture. Adolescents are in “high demand as daily labourer workers for sesame weeding and harvesting” explained a Youth League key informant from Debre Tabor.

Regional variations in migration patterns are notable, although hardly uniform. In Zone 5, our respondents were largely pastoralists, whereby seasonal migration is a longstanding practice. The majority of respondents reported that parents tend to migrate together, taking with them their younger children and leaving behind adolescents, who are responsible for watching the home and looking after the animals that do not migrate. “Small children travel with their parents when older children stay behind to look after goats and the household,” explained a 12 year old adolescent boy who saw himself as one of those older children. Our findings show that it is quite common for young adolescent boys (aged 10–12) in Zone 5 to spend weeks and even months living away from their families while they look after camels and cattle. Adolescent girls, on the other hand, tend not to migrate except under duress, as will be discussed in more detail below.

In South Gondar, there is a great deal of rural-to-rural migration by adolescent boys seeking seasonal agricultural work. Rural-to-urban migration, for both girls and boys, is also extremely common. A 10-year-old boy noted that in his village (Community G, South Gondar), migration is so common, “there are no male children in our locality.” A community key informant in Debre Tabor reported that while people would not migrate *out* of that town “even if they were pulled out with rope,” migration into town is so significant that over the last decade the town has doubled in size. It appears less common for families in South Gondar to move as units, though migrating adolescents often travel with siblings or cousins and to aunts and uncles – for work as well as for secondary education.

In East Hararghe, parts of which are experiencing extreme drought, migration patterns are both varied and variable as families respond to current local conditions. Where drought is severe and longstanding in East Hararghe zone, whole families have tended to migrate, often to the Somali region until last year’s violent unrest and mass displacement.⁵ “The family engage as daily labourers and children too,” explained a key informant in a rural *kebele* (Community L, East Hararghe). Where drought is less extreme, adolescents migrate on their own. The majority of adult respondents in East Hararghe reported that unlike girls “boys do not migrate . . . they work in the house of their neighbour or village by payment” (mother) if necessary. Indeed, our interviews in urban Batu, East Shewa found that the majority of migrant boys in that location are not from rural East Hararghe but are instead from poverty-stricken zones in neighbouring Southern Nations, Nationalities and Peoples Region (SNNPR).

The city of Dire Dawa is unique amongst our research sites. Because of its size and its location, it is both a destination for rural-to-urban migration, and a transit corridor for legal and illegal international migration. “Migrants often came to Dire Dawa town either seeking a temporary job or to stay here for a while to arrange a further trip to move to abroad, especially to the Middle East,” reported a justice sector key informant. A 16 year old adolescent girl in secondary school noted that many would-be international migrants get marooned in the city by brokers, who

⁵ The Internal Displacement Monitoring Centre (2018) estimates that more than 500,000 people were displaced in the last quarter of 2017 from Somali Regional State to East Hararghe zone, with thousands more exiting Somali region in the first quarter of 2018.

“promise to transit them on a boat to Djibouti but at the end decline their promises.”

Adolescent Migrant Occupations

Although there is some overlap between the types of employment undertaken by adolescent girls and boys, such as daily labouring and work in the hotel sector, migrants’ jobs tend to be gender specific. Boys who migrate seasonally typically engage in agriculture – cultivating, weeding, and harvesting for sesame, *khat*, and other cash crops. Boys who migrate to urban areas tend to get involved in construction work, daily labour, work as shoe shiners, or operate *bajah* (local three-wheel taxis).

Girls, on the other hand, usually work as domestic workers (see also Jones et al. 2018; Population Council 2018; de Regt 2016; Atnafu et al. 2014). “[G]irls of 10 years old clean dishes, look after children,” explained an NGO worker in rural East Hararghe. They are also “engaged in petty trading . . . they sell tomatoes, potatoes, and other foods on the street,” added a religious leader in Dire Dawa. In addition, a significant number of young female migrants work in the hospitality industry – in hotels, and as café, bar, or shisha house waitresses. “Girls are very fast for hotel work and they are also familiar with the hotel work,” explained a 17-year-old boy in Debre Tabor.

A sizeable number⁶ of girls first employed as domestic workers or in hospitality also end up in commercial sex work, as “they get hired in a hotel for 200 or 300 birr only and this is very small to bring a change in their life” (returned male migrant, 18 years, South Gondar). Girls also enter sex work because they are duped by brokers and because newly arrived girls face “language barriers and... don’t have any choice for survival” explained a community key informant from Batu. In Dire Dawa, a 15 year old girl enrolled in secondary school observed that the youngest girls can be the most at risk: “Most of the Oromo girls starting age 13 engage in the work because they do not have better knowledge.”

⁶ The Population Council (2018) found that between 7–17 percent of migrant girls transitioned into sex work between their first and second jobs.

In larger urban areas such as Batu and Dire Dawa, increasing numbers of adolescents are also involved in the factory work that the government is working to attract. In Batu, which is located in East Shewa District in the centre of Ethiopia in the Oromia region approximately 150km from Addis Ababa, large numbers of migrant girls are involved in the floriculture sector (see map above). They are often trucked in by brokers, lured from impoverished neighbouring districts in Southern Nations, Nationalities, and Peoples' Region (known for high rates of migration due to over-crowding and limited agricultural productivity) by promises of high pay. A 16-year-old boy in Batu, explained that his friends at Sher Flower Farm (located next to Lake Ziway in Batu) are "from Southern Ethiopia and are mostly those who lost their family and . . . left their home because of poverty."

Drivers of Adolescent Migration

Adolescents migrate due to a wide variety of push and pull factors – with economics being the central reason for most (see also Cossor 2016). Although there is significant variation, the majority of respondents reported that adolescents migrate because they are simultaneously pushed by poverty and pulled by hopes for a better life.

Push Factors

Poverty, drought and limited employment opportunities all constitute significant push factors in adolescent migration. "It is only destitution that makes children migrate," noted a father from rural South Gondar. "Food, they don't have something to eat," added a key informant from the Women's Association in rural East Hararghe. "When there is a drought in our area . . . I may stay [in a neighbouring zone] for a year," reported an 18-year-old boy from Zone 5. Adults in all areas observed that agricultural yields were declining over time. In South Gondar, land fragmentation and soil degradation were identified as key. "The fertility of the soil has been highly depleted because of the over-cultivation and peoples are starved every year," explained a community key informant from Debre Tabor. In East Hararghe, many areas have seen no harvest at all for several years, "because of the shortage of rain"

(father). “The climate condition of the area has changed from previous times” (mother, Zone 5).

Rural areas have few other employment options to offset agricultural losses. “A lack of job opportunities in the *woreda* is at its severe stage,” noted a justice sector key informant in East Hararghe. “In my home village there were no jobs,” explained a 17 year old adolescent boy in Dire Dawa. Indeed, driven by Ethiopia’s “youth bulge,” UN- and under I employment of even relatively well-educated young people is now commonplace – and driving migration. “My daughter completed grade 10. However, she could not get a job. So, she went to Addis Ababa and was employed as housemaid,” reported a mother in rural South Gondar. “They finish school but since they don’t find job opportunities, they seek to go to other countries,” added a father from Debre Tabor. Employment options in rural areas are especially bleak for girls. “Women don’t have options here; they want to go and try to start some small business in the city or strive in any way possible,” offered an 18-year-old girl, former migrant in rural South Gondar.

Educational failure is another key push factor. In Ethiopia, students take a national exam at the end of 10th grade. Scores determine whether an adolescent will be granted a spot at a preparatory school or at a government-sponsored technical school. Most rural students, who have been taught in poorly resourced, over-crowded classrooms – often with poor attendance records due to demands on their time for agricultural and domestic labour – are not prepared to pass. When they fail, doors to continued education swing shut and young people who lack access to career guidance (at schools or in the community), funds to re-sit for national exams or go to private colleges are left scrambling to find an alternative pathway. “I came here because I couldn’t get a pass mark in my 10th grade exam,” explained a 17 year old adolescent boy from Dire Dawa. In some cases, exam failure drives adolescents to leave. “I’ll be a burden for my family. Therefore, the only option is to migrate to another place,” explained an 18-year-old girl from rural South Gondar. In other cases, family members push failed students out of the house. “It creates a huge frustration on the part of the parents,” noted a community key informant in Batu.

Although doors to technical and vocational training (TVET) do not shut in the same way as doors to continued academic education, comparatively fewer adolescents are interested in TVET, because professional careers (e.g. doctor, engineer, teacher) are valued far more than occupations (e.g. electrician, bricklayer, manufacturer) in part due to historical discrimination against indigenous crafts such as pottery and blacksmithing (Geleto, 2018). GAGE findings highlight that adolescent future aspirations primarily require a university degree. As a father from South Gondar explained: “Let them live in Addis Ababa or Gondar, or any other town. The most important thing is that they attend and become successful in their education.” In addition, private TVET colleges can be expensive for poor households—especially given that most are located in urban areas and thus necessitate boarding fees as well. An 18 year old adolescent boy from rural South Gondar explained: “I didn’t want to join TVET originally as it costs 90 birr per month.”

Family dynamics also drive adolescent migration. In some cases, young people run away from home to get away from domestic violence between parents. “I left my home town because of the serious and frequent conflict between my parents. I was tired of observing their conflict and left even without having any information about this town and having no money in my pocket,” explained a 17 year old boy from Batu. In other cases, adolescents reported being driven off by tensions with parents and especially step-parents. “I came to Dire Dawa because of my stepfather . . . he does not want me to live with them,” reported an 18 year old girl from Dire Dawa.

Adolescents are also pushed into migration by families who want remittances and who hold up the example of neighboring children who have migrated and are successfully supporting their families. In Debre Tabor, a 15-year-old girl noted that a friend of hers, only 14, was made to migrate to the Middle East by her parents. “The families arranged the migration expecting remittance money in the future.”

Gender norms also play a role in migration drivers, with some migration push factors being specific to girls (Jones et al. 2018; de Regt 2016; Cossor 2016). An 18 year old adolescent mother in rural

East Hararghe noted that she had left home because of her heavy workload: “Because of workload I run away from home and came to Community I.” Other respondents observed that when girls’ reputations were sullied by sexual slander, successful migration offers a path through which they can rehabilitate their family’s – if not their own – reputation.

Child marriage, however, is perhaps the most important factor pushing adolescent girls into migration. In South Gondar and Zone 5, where arranged marriages remain the norm, migration is often seen by girls as the only way out. An 11 year old adolescent girl from the former reported, “There was a girl that ran away while they were preparing her wedding; she then went to Ebenat as a maid. They want to marry her because she owns a land. But she refused and ran away.” A 15-year-old girl from Zone 5 added that migration not only offers an escape from immediate marriage – it could also prevent a lifetime of physical violence: “I want to go to Djibouti, a husband can’t come there and force you to get married and also he can’t beat you there.” In East Hararghe, where child marriage is increasingly “chosen” by girls themselves, desperate to prove that they are worthy of marriage but too young to fully understand all that marriage entails, migration often follows divorce – now increasingly common. “Whenever girls divorce their husbands, they move to Harar town to lead their [own] livelihood,” explained a community key informant. In other cases, girls are moving because they are unable to withstand community pressures to marry. The mother of an adolescent girl in rural East Hararghe added that her daughter had migrated to Dubai because “there were boys who proposed to her” – and when her daughter refused “they threatened her that they would turn to witchcraft.”

Pull Factors

Our respondents were clear that pull factors – including opportunities for higher education, the demonstration effect of successful migrants, and the interventions of brokers – can be so strong that parents are unable to prevent their children from migrating. Even when their parents explain the risks, some adolescents “prefer to die while migrating” explained an agricultural extension officer in East Hararghe. A Bureau of Women and Children’s Affairs (BOWCA) key informant in East

Hararghe reported that while his agency sometimes tries to reunite young migrants with their families, efforts are rarely successful, because “children who started earning income are not willing to return home.”

A key pull factor for adolescent migration, most strongly for girls given their more limited opportunities in rural areas (Cossor 2016), concerns opportunities to pursue higher education. Young people in rural areas often move to attend secondary schools since education after eighth grade is primarily available in towns. A 15 year old adolescent boy living in Dire Dawa reported that he lived and worked with five other boys in a mechanic’s garage, attending school after work. “I sleep in the garage compound and I pursue my education during my spare time.” Other adolescents migrate in order to support their own education when their parents are unable to pay fees. An 18 year old adolescent boy living in Debre Tabor but recently returned from Sudan explained, “It is a must for me to go there because I have to get money for my education.” Furthermore, given that special needs education is only available at a limited number of schools in urban areas, adolescents with disabilities have to migrate—which they often do by themselves as the government issues them a small stipend to offset boarding and subsistence costs—if they wish to attend school. A teacher in Debre Tabor told us that “students flood to our school,” coming from “far distant areas.”

Role models also play an important role in attracting adolescents to migrate. As summarised by a 16 year old former migrant in rural South Gondar, “people migrate to improve their life.” Some adolescents plan to migrate only long enough to make the money they need to “get back to their locality to create their own business” (community key informant, East Hararghe) or build a house. Others would like to live in town permanently, as “everything is available in the town” (12-year-old girl, Zone 5). Central to understanding the many young migrants who undertake migration in order to “fulfil their dreams” (16-year-old girl in preparatory school, Debre Tabor) is the degree to which many are pulled into this risky endeavour by their own developmentally constrained ability to evaluate costs and benefits when presented with examples of others who have succeeded. As noted by a BOWCYA key informant in Dire Dawa, “potential migrants are motivated by looking at those successful returnee migrants.” Girls are attracted when they see “domestic servants

who came from Addis Ababa wearing better clothes” (BOWCYA key informant, South Gondar). Boys observe that former migrants are able to “buy animals and take them to town to sell” (father, East Hararghe). Successful returnees from the Middle East are even more powerful role models. The few that have sent enough money for their families to “build a house . . . buy a *bajaj* [taxi] and a piece of land for themselves” (father, Debre Tabor) are considered “as a lucky person who got a lottery” (local government official, South Gondar).

A handful of older adolescents reflected on how little they had really understood when they first migrated. Several admitted naively following friends. “The only option I had was following her [his girlfriend]. If she hadn’t come to Batu town, I wouldn’t have come either. I would have continued my education there in the countryside,” explained an 18 year old boy living in Batu. “I never thought I would have to work this hard in the town,” admitted an 18 year old girl, also from Batu.

Peer pressure and demonstration effects are increasingly intertwined with brokers’ deliberate efforts to oversell young people on migration benefits, despite government efforts to “follow and bring to court illegal brokers” (BOLSA key informant, East Hararghe). Although brokers are particularly implicated in international migration, where they often blur the line between migration and human trafficking, in Ethiopia, many brokers specialise in procuring rural-to-urban migrants, often relying on family connections to recruit adolescents. Respondents in South Gondar explained that girls are recruited from rural villages to work as domestic workers in regional towns: “When you want a worker you tell the broker and give him money and then he will bring you who you need” (18-year-old girl).

Adolescent Migrant Experiences

The dominant discourse about adolescent migration in recent years has centred on future-seeking and agency (Temin et al. 2013). For some young migrants in our research, this discourse has played out in reality. A 19 year old adolescent boy recently returned to rural South Gondar reported, “I saved 15,000 birr. I bought a plot of land here and also started my business with it in the market place. I have started saving to build a house.” The younger sister of

two migrant adolescent girls in rural East Hararghe explained that her sisters' work in the Somali region had transformed her own life. "We have bought a solar lamp with the money. I have been sick from eye illness and now I am ok. We used to eat sorghum and now we eat, rice, macaroni, and pasta." However, although most adolescent migrants agree that urban areas are more "modern and civilised" (13-year-old girl, Batu), some adolescent migrants achieve their educational and economic goals, and a few make "good friends who . . . encouraged me not to fear anything" (16 year old adolescent girl, Dire Dawa), the majority "usually face different challenges and problems" (father, Batu) with very limited support. "Girls and boys have become the toys of everyone," summarised a community key informant in Dire Dawa.

Economic Risks

Adolescent migrants face several forms of economic exploitation – including very low wages, withheld salaries, and extortionate rent. "Since they are not skilled, they are paid 20 or 40 or 50 birr day . . . which covers only their food," reported a community key informant in East Hararghe. Wages for young rural-urban migrants remain low – and may in some cases be dropping – due to the over-supply of workers. "These days, the available job opportunities in the town do not match the numbers of job seekers," reported a government social worker in Dire Dawa. This not only drives up unemployment rates, and creates tensions between local and migrant youths, but also allows employers a degree of impunity – as any adolescent who quits can be easily replaced. There is also a gender pay gap. As a Youth League⁷ key informant in Debre Tabor noted: "The male will be paid 70 birr and the female will get 60 or 50."

It is also not uncommon for employers not to pay their monthly salary. In some cases, young migrants "get money for daily consumption only" and are promised that "they'll be paid when they have finished an agreed amount [of work]" but that "agreed amount" does not always materialise (17 year old adolescent girl now returned to rural South Gondar). Girls again appear to be at

⁷ The Youth League is a government-affiliated association for youth focused on support youth employment and community engagement.

elevated risk, in part because of the types of employment they hold. Those who work in hotels, for example, can see their wages docked for mistakes, for their own meals or for a customer's refusal to pay. "If she breaks something that will be deducted from her salary" observed an 18 year old adolescent girl in South Gondar who had formerly migrated to a local town. Domestic workers can fare even worse, some work "only for food and clothes" (community key informant, rural East Hararghe). A 17-year-old girl living in Dire Dawa explained, "I used to prepare food, clean the house, and wash clothes. They did not even pay me for what I worked for." In the case of young adolescent girls involved in domestic work, a number of them reported not even knowing their salary as the money is often paid directly to their families, who may use the money for general household costs, rather than for the girl herself.

Although the Ethiopian government is working to attract foreign direct investment to expand employment options (EIC 2017; Derhy 2017), and many commercial employers offer higher salaries and even benefits such as health insurance and maternity leave, our research suggests that economic exploitation remains a concern, in part because of the lack of an official minimum wage. Respondents in Batu reported working at a wine factory, flour mill, and commercial flower factory, sometimes while they "simultaneously process their travel to Arab countries" (16 year old adolescent girl). They were especially scathing about the latter, which they saw as more exploitative, more dangerous, and more tightly linked to brokers. "If you break a single head of the flower, they deduct from your salary. If you have not accomplished work for what you have targeted to do in a month, they also will deduct your salary," explained a 17-year-old girl working at Sher Company. Indeed, noted a community key informant living in Batu, "the local youths are not willing to work at Sher . . . because of unfairness in the payment allocated for employees."

Another form of economic exploitation faced by adolescent migrants is extortionate rent. Rents in urban areas are climbing so quickly that adolescent migrants are financially stressed and often backed into unsafe living conditions. An 18 year old girl living in Debre Tabor observed that rent "price increased to 150 and 300 birr" in recent years. Young migrants in urban areas reported living and sleeping in a variety of insecure places, including "with many daily labourers . . . for 2 birr a night" (15 year old adolescent

boy, Batu), a “garage compound” and a “bakery warehouse” (16 year old boy, Dire Dawa), and under a bridge (17-year-old boy, Dire Dawa).

Violence Risks

Our research found that adolescent migrants are at extremely high risk of violence. Some risks, such as being attacked by robbers, who “know we have money because we have been working” (17 year old boy, Debre Tabor), or being abused by brokers, who “punish them in a harsh manner” (12 year old boy, Batu), are age-related. Other risks are gender -related .

Migrant boys are at risk of age-, intra-regional and ethnic-based violence. In urban areas, respondents reported that ethnic violence is often ignited by “conflict over females” (justice key informant, South Gondar) and fuelled by alcohol consumption. “We are all Ethiopians but when you reach there everyone takes sides . . . it looks like a war zone,” explained a 17 year old boy in secondary school in Debre Tabor.

In rural areas, those migrating to lowland agricultural plantations, especially in Humera and Metema, which are located in Amhara near the border with Sudan and have a weak rule of law, face “fighting with knives. . . to get the jobs and plowing land in the area,” reported a community key informant in rural South Gondar. Security on sesame plantations is very limited and provided primarily by private security guards aimed at protecting profits and violence is accordingly high, with reports of adolescent boys and young men returning home in “coffins” on an annual basis. The violence occurs along ethnic but primarily intra-regional lines, with adolescent boys from different zones being targeted for the perceived misdeeds of others from their place of origin even from past work seasons (e.g. undercutting the price for daily labouring, engaging in sex work with girls from a rival group’s place of origin).

Adolescent girls face gender-specific risks of their own, starting with near-constant sexual harassment, from factory supervisors and customers. “If she sells tea, it is assumed that she also does another business with her body,” explained an 18-year-old girl now returned to rural South Gondar. “The men were . . . nagging me always,” added an 18 year old girl living in Dire Dawa. Adolescent girls are also at risk of rape, from the brokers who sometimes keep “them as a sex partner” (community key

informant, East Hararghe), the fathers of the children for whom they babysit, the men and boys in the families from whom they rent rooms, “men who drink alcohol” in the community” (19-year old girl, Dire Dawa), and “gangsters” who attack them at night in their own homes (17 year old girl, Debre Tabor).

Adolescent girls are also vulnerable to being tricked into sexual relationships. An 18 year old boy in Debre Tabor reported because it is hard for men who migrate to take their wives with them, a local “tradition” is to look for a local girl who can cook for them. “Her task will not be just cooking, it may change in the night”. An 18 year old girl living in Dire Dawa admitted that she had been fooled by a man who professed love. “I got married to a man who was telling me he had fallen in love with me. We started living together and suddenly I got pregnant. I came to know that he has a wife already.”

While girls in commercial sex work earn more than girls in many other professions, with a young sex worker in Batu observing that she makes in a single day what she used to make in a month as a domestic worker, threats to migrant girls’ bodily integrity grow exponentially when they are engaged in sex work. Young sex workers reported that they are exposed on a daily basis to verbal, physical and sexual violence. Girls reported that even young adolescent boys in Batu throw stones at their homes and hurl insults. “And there is beating. Beating was like our meal. They beat us because they are drunk. They displace their anger and worries on us,” explained an 18 year old girl living in Dire Dawa. Another 17 year old girl in that city observed that the constant threat of rape when she was younger and first entering the profession had left her terrified. “We used to sleep near the police station when we were young. We do not sleep well, since we sleep on street. We were afraid whenever we heard a sound.” The police, added a 17 year old girl, are all too often not a source of protection. “Sometimes we are also beaten by police. This is because they (customers) report to police that we have taken something from them. There are some who want to take back the money after sex.”

Migrant adolescents have also been impacted by the outbreak of ethnic violence and forced displacement in 2017/2018, which saw up to 1 million Oromos displaced from their homes in the Somali region (GoE and UN 2018). Our respondents in rural East

Hararghe included several dozen ethnic Oromos who had been living and working in Somali due to better job opportunities, but had been evacuated by the Oromia regional government in 2017 due to an explosion of violence that degenerated into widespread targeting of ethnic Oromo migrants.⁸ A 10-year-old girl tearfully explained that “the neighbours with whom we ate and lived together for many years took our clothes and our money.” An 18 year old adolescent boy reported, “They sent adolescent males like us in order to take Oromo people. These adolescents had metal sticks and they took us from house by hitting us. There were individuals who were severely harmed.” A 13-year-old boy added, “the Somali young adolescents threw young boys on the street and jumped on their heads. I also observed that in some places the villages where the Oromos lived were burned and some people were burned together with their houses.”

Migrant girls affected by the recent Oromo-Somali conflict were subject not only to physical violence, but also sexual violence. Several respondents reported that they had seen girls’ and women’s breasts badly cut – and knew of victims who had died after being sexually tortured. As an NGO key informant from Community I, East Hararghe noted: “We did an assessment among displaced [persons] that live in [neighboring districts]. We observed a lot of abuses there against females that have been raped by many males. An 11-year-old girl was raped by many males, after the rape they cut her breast and sex organ with a sharp object. She has been getting treatment at the hospital.”

Health Risks

Adolescent migrants also face a variety of health risks. Some, especially the young adolescent boys in Zone 5 who migrate on their own with livestock, are poorly nourished. “We have no food with us. We have only cattle,” explained an 11-year-old boy. “We are living in a forest, so we couldn’t get another choice except to drink milk,” added a 12-year-old boy. Food insecurity was also

⁸ Note that the inter-ethnic violence that resulted in mass displacement of ethnic Oromos from the Somali region is complex and here we are reporting adolescents’ testimonies from East Hararghe only given our research sample. More detail on the displacement context can be found here: GoE and UN 2018.

reported by a handful of urban migrants. While domestic workers are most likely to be “denied access to food” (12 year old boy, Batu), other adolescents are at risk because extortionate rents have broken their budgets. “I simply go without food,” explained an 18-year-old boy living in Batu when asked how he made ends meet.

Injuries and illnesses are also common. For example, a 19-year-old returnee boy in rural South Gondar reported that boys “fall from buildings . . . and die during construction work” in Addis. In Batu, adolescents who worked in the floriculture industry reported chemical exposure. “I fear that the chemical may affect my health. Sometimes the chemical from the flowers is sprinkled on my hand when I use my hands. Even if they see you staggering between death and life, there is no one to support you at the workplace,” reported a 17-year-old girl. Malaria and typhus are also increasingly common according to our respondents – the former among adolescents who migrate to lowland areas such as Humera and Metema and the latter in urban destinations where some areas are “now used as a toilet” due to population pressures (community key informant, Dire Dawa). That same population growth has created a large “burden on social services and infrastructural facilities” (Bureau of Labour and Social Affairs (BOLSA) key informant, Dire Dawa) that means that prevention and treatment are often out of reach. “The parents are forced to expend money to take back their children,” explained a father in rural South Gondar.

Substance use was also identified as a significant threat to the health of young migrants, particularly for boys for whom use is a way of demonstrating social status. Alcohol, cigarettes, hashish, and *khat* were almost universally presented as a problem, with a 16 year old secondary school girl from Dire Dawa observing that they are often intertwined. “After you chew *khat* during the day, it is a must to go out in the evening for something to drink.” A father in Zone 5 (Afar) noted that secondary students in that region now consider substance use “as a sign of sophistication.” In Dire Dawa, young migrants agreed that substance use is a problem. They reported glue sniffing is common amongst street-connected children, who often become violent “and fight with any one that passes by that area” and admit that they often cannot save money because “we are addicted to substances” (19-year-old girl).

While health centres in some urban areas work closely with NGOs such as Care-Ethiopia to provide services to young migrants (Maternal and Child Health key informant, Debre Tabor), the risks to young migrants' sexual and reproductive health remain significant and their access to services is extremely limited. They are "highly vulnerable to reproductive health problems including unwanted pregnancy, abortion and HIV/AIDs," explained a health extension worker in Debre Tabor. Commercial sex workers, "temporary wives"⁹, and mistresses are the most at risk – of both pregnancy and HIV – due to the nature of their relationships. In Dire Dawa, a nurse reported that sex workers are entitled to a free abortion, but only one. "This is done to prevent her coming again with the same case." A migrant girl attending secondary school in Dire Dawa observed that because "there is difference in payment when the commercial sex workers use condom and have sex without condom," HIV is rampant amongst sex workers¹⁰. Boys are also at risk, because so many "develop adulterous behaviour" when they migrate (justice sector key informant, South Gondar). Even if they are aware of the risks, added a 16-year-old boy in Batu, "I don't know whether they are taking care of themselves [using condoms] when they get drunk."

Psychosocial Risks

"Everything becomes scary when you live outside your homeland," observed a 17 year old adolescent girl living in Batu. In addition to worries about violence, worries about costs loomed large for many of the adolescent migrants in our sample. "Here there is a different thing that makes us worry such as house rent payment, what I will eat and drink in the future," explained an 18 year old adolescent girl in Debre Tabor. "There is not enough budget (for them to meet expenses)," added a Youth and Sports Bureau key informant in Zone 5 (Afar) when asked what stresses adolescents face when they move town to study.

Social isolation is also a threat to many adolescent migrants. Several noted that their host "community didn't have a positive

⁹ Our research has found that girls often agree (or are forced by their parents to agree) to becoming the "wives" of migrants on a time-limited basis, to satisfy migrant men's sexual needs and keep house for them (see e.g. Jones et al., 2018).

¹⁰ PEPFAR (2017) reports that 24% of commercial sex workers in Ethiopia are HIV+- compared to 1.2% of the general population.

attitude to migrants” (17 year old adolescent girl, Debre Tabor), in part due to wage suppression, and others observed that it can be difficult to form friendships even with other migrants. A 15 year old adolescent boy living in Dire Dawa reported that he lived with six other boys but knows nothing about them, other than that they too are migrants. “I am not asking their whereabouts and we don’t have discussions.” Other young migrants choose to live alone, because they cannot “live in peace . . . due to status differences” such as family wealth or ethnic and religious differences (17-year-old boy, Debre Tabor). Given the cost of transportation and the time it takes to travel to rural areas, adolescent migrants are also commonly cut off from parental support for extended periods of time. “There is no transportation to the area. That is why it is too hard to go there and meet my parents,” explained a 17-year-old girl living in Debre Tabor.

In addition to facing social isolation while they are migrating, adolescent girls can face considerable stigma when they return home. “The community isolates her,” reported a 17-year-old boy studying in Debre Tabor. “If I went some time away from this area and changed my clothing style, everybody assumes I changed my life because I was having a relationship with a man. They don’t like women who go and stay in the city,” explained a 12-year-old girl from rural South Gondar. Girls who become pregnant can find that they have no home to return to. “My neighbour’s daughter was rejected by her family. She had nowhere to go,” reported a mother living in Debre Tabor.

Migrant girls also tend to feel more responsibility towards their families than migrant boys. A community key informant in Batu explained, “It is uncommon for males to change the livelihood of their parents. But the females . . . for instance, they improve the housing condition of their household from a thatched roof to a tin roof residence or help their family members to start their own mini-income-generating activities.” A 15-year-old girl in Batu added that because girls only “get satisfied when they see their parents become happy,” they are willing to tolerate considerable risk – including engaging in commercial sex work.

Educational Risks

Although migration allows some young migrants to pursue education by funding the cost of supplies or facilitating access to secondary school (or special needs education in the case of adolescents with disabilities), for most migration marks the end of schooling. Some drop out in order to migrate. A 15-year-old girl living in Batu reported that she had been enrolled for the next term and had already purchased supplies – but ran away over her parents’ protestations because at the time money seemed more important than education. She very much regrets her actions now. “I just dropped out of school. I was prepared to start a class even before I bought exercise books. My friend told me that if I go to Batu, I can get 1,000 birr per month. My family was urging me that I should go home in order to continue my education. But I didn’t listen. . . . I am regretful for that.”

Even for adolescent migrants planning to combine work and education, reality often intervenes. Some are refused permission to enrol, or are forced to start again in first grade, because they “lost the grade report” needed for proper placement (18 year old adolescent boy, Batu). Others find that the city is so expensive, they must work more than they anticipated, leaving them no time for education. A 15 year old adolescent boy in Batu, who is working in road construction, explained that while he had tried to combine work and school, he “couldn’t get time to attend my education . . . I dropped out of my education from grade four.” An 11-year-old girl in Debre Tabor noted that her older sister had faced an analogous problem: “She dropped out of school in grade six, when she was not able to combine schooling with work.” Migrant girls are further disadvantaged in terms of combining work and education by sexual harassment – as night school is not “convenient because of the boys” (18-year-old formerly migrating girl, South Gondar). A BOLSA key informant in Dire Dawa admitted that efforts to help young migrants pursue education are nearly non-existent. “So far, there was no any attempt in this regard . . . It actually needs strong attention by stakeholders.”

Voice and Agency Risks

Migration can represent independent decision-making in its own right when adolescents choose to migrate of their own volition. However, adolescent migrants typically face a variety of risks to their voice and agency. While the majority of those risks are driven more by poverty, age, and gender than by migration, in some cases threats are directly linked to the types of employment that young migrants undertake. Domestic workers, for example, have limited labour rights: the 2003 Labour Law (as amended) excludes domestic workers from its sphere of application other than promising that a special regulation will be issued at some point in the future (Gebremedhin, 2016). In addition, while employees in the floriculture industry reported that in some ways their rights are protected – with one 17-year-old girl in Batu observing “My supervisor cannot fire me from my work because she has no such right” – in other ways factory work is silencing young migrants. Toilet breaks, for example, are timed and silence on the factory floor is strictly enforced. Young migrants also reported that although health clinics are available at some factories, workers are not given information when they seek care. As 17-year-old migrant girl in Batu explained: “If you have problems on your body from the chemical and go to seek medical examination, they do not tell you the illness and just give you expired pills and syrup”.

Conclusions

Our research findings highlight that in many cases Ethiopian adolescent girls and boys are “choosing” to migrate because they perceive no other viable options. Simultaneously pushed and pulled into undertaking risky endeavours with limited, and often false, information, they often find themselves vulnerable to a range of risks with very little support. To help mitigate those risks, and help adolescents use migration to improve, rather than restrict, their access to their human rights as outlined in the Global Compact on Migration, our research suggests a number of key policy and programming entry points.

First, greater efforts need to be made to promote safe migration at scale. In sending communities, the government and development partners should work through schools, youth associations, and government-organised ‘1:5 group’ community structures (which while politicised have the advantage of near universal penetration) to ensure that young people and their caregivers know their rights,

understand the risks that migration entails, and are aware of how and from whom to seek help should they need it.

Second, in destination communities, youth centres and BOLSA offices could usefully become one-stop information and referral centres for young migrants at risk. This could include provision of information about migrant labour rights to ensure that they recognise violations and know how to report them, and also include links to the services that can help reduce age- and gender-related vulnerabilities, such as healthcare, non-formal education, TVET, legal aid and social work and counselling services.

Third, the federal government should revise labour legislation in line with UN Convention 189 on Decent Work for Domestic Workers to grant domestic workers equal labour rights, and all levels of government should work to eradicate broker chains and ensure that newly established industrial parks respect national labour law in regard to age limits and working conditions.

Finally, there is an urgent need for better data to inform programming. Migrant flows need to be better tracked, with data disaggregated by age and sex, in order to understand where services are needed to realise the rights for all migrants, including adolescent girls and boys.

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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.¹ 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

¹ 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"², 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 got me. After working for four months, I

² 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 Proclamation³ 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

³ “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 processes⁴ 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

⁴ 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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Ethiopia's Refugee Policy Overhaul: Implications on the out of Camp Policy Regime and Rights to Residence, Movement and Engagement in Gainful Employment

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1. Introduction

Ethiopia became the second largest refugee hosting country in Africa – with the count of registered refugees and asylum seekers reaching 905,831 as of 31 August 2018.¹ Displaced from twenty-six countries worldwide and variedly affected by different circumstances,² most refugees fled from protracted crisis, famine, instability, forced military conscription and repression in South Sudan, Somalia and Eritrea.³

Although Ethiopia acceded to the 1951 Refugee Convention and its 1967 Protocol Relating to the Status of Refugees (hereafter called the Refugee Convention)⁴ and has furthermore ratified the Convention Governing the Specific Aspects of Refugee Problems in Africa (hereinafter called the African Refugee Convention),⁵ it has, for the

¹ This figure does not include the over 150,000 Somali refugees who live in Addis Ababa and eastern Ethiopia without going through formal registration by the Administration for Refugees and Returnee Affairs (ARRA).

Available at: <https://data2.unhcr.org/en/documents/details/68014>

² Federal Democratic Republic of Ethiopia/ Administration for Refugees and Returnee Affairs. May 2018. *National Comprehensive Refugee Response Strategy (2018-2027)*. P.8. Addis Ababa, Ethiopia.

³ UNHCR. Ethiopian Factsheet. 30 November 2017.

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⁴ United Nations Treaty Collection. Refugees and Stateless Persons.

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https://treaties.un.org/pages/ShowMTDSGDetails.aspx?src=UNTSOnline&tabid=2&mtsg_no=V-5&chapter=5&lang=en ; Ethiopia ratified the 1951 Refugee Convention and its 1967 Protocol on 10 Nov. 1969.

⁵ African Commission on Human and People's Rights. Ratification Table: AU Convention Governing Specific Aspects of Refugee Problems in Africa (10 Sep. 1969). available at:

<http://www.achpr.org/instruments/refugee-convention/ratification/>

most part, pursued a strict encampment policy and adopted restricted service provision approaches in the administration of refugees' affairs. Compared to a range of international legal obligations it has assumed, some limitations involving the implementation of socio-economic, civil and political rights continued to feature nationally – hampering the effective protection refugee rights.

Since 2016, Ethiopia's policy drive in relation to refugees started to gravitate from the current 'camp-based basic services provision' approach to a more 'progressive and rights-centered' model that also considers alternatives to the encampment of refugees. A landmark expression of nine intertwined pledges – proposed on the occasion of the 71st UN Summit on Refugees and Migrants held in New York, kindled a new glimmer of hope for the refugee community and furthermore provided a solid political basis and direction for enhanced protection and provision of civil, political and socio-economic services to refugees. At the Summit, Ethiopia rolled a comprehensive approach – committing, in global solidarity, to provide refugees shelter, rights and improved livelihood opportunities.

To carry out the commitments, Ethiopia embarked on the design of a fairly broader policy frame, legislative actions and strategic response mechanisms fostering the peaceful coexistence, greater inclusion and entitlement of refugees. As such, one policy regime that assists refugees to receive enhanced protection and attain quality livelihood is related to interventions focusing on the regulation of practice relating to the Out of Camp Policy (OCP), legal residency, freedom of movement and engagement in gainful employment.

It would be noted in the subsequent sections that over the years, positive advances have been recorded in Ethiopia's policy orientation on refugees.

Yet, in many areas including residency, freedom of movement and engagement in gainful employment, refugees' legal entitlements and experience remained challenged by regulatory gaps and uncertainties.

This entailed that the evolving legal frameworks, institutional response mechanisms, challenges and opportunities need to be

analyzed in the contemporary context in order to understand the full spectrum of their contents and implications on the rights of refugees and recommend informed interventions.

The main objective of this empirical study is to review normative developments, institutional arrangements and experiences in Ethiopia – particularly focusing on the rights of refugees to legal residency, freedom of movement and engagement in gainful employment – both within and outside of the OCP setting. More specifically, the study scrutinizes key features of international and national legal frameworks that are pertinent in the context of the rights of refugees in Ethiopia, new changes in policy and regulatory approaches, and the projected effect of the application of such approaches. Furthermore, the contours of Ethiopia’s OCP regime – including the processes, eligibility requirements, and rights and obligations of refugees granted such status will be examined.

2. Methodology and Data Gathering Tools

In gathering pertinent data for the study and in pursuing the inquiries, reviews and analyses, the researchers have employed qualitative method and deployed a mix of data gathering tools that help capture, understand and interpret the state of refugees in Ethiopia in real life settings. Such empirical approach has been complemented by desk reviews and textual analyses of normative standards and secondary resources that addressed issues of rights and welfare of refugees.

For purposes of gathering data, semi-standardized interviews had been conducted with key informants – involving informed officials and experts at the Agency for Refugees and Returnees Affair, re-established under Proclamation No.1097/2018, and select non-governmental organizations working on aspects of refugees’ causes. This empirical approach was imperative – considering that most of the themes identified in the study constitute parts of a rapidly evolving policy and practice regime – and often, state documents informing such developments have not been readily available in public domain. Structured focus group discussions were also held with fourteen refugees of Eritrean, Somali, South Sudanese and

Yemeni origins living in Addis Ababa – who held different viewpoints regarding realities and interpretation of experiences that affect them personally – and reflecting on such information which had not been found in records or were not fully captured in contemporary studies. The data was carefully collated and utilized to present the analyses, identify the gaps and understand the contemporary state of implementation of policies and legal frameworks on residency, freedom of movement, employment and the practical application of the OCP regime in Ethiopia.

3. Overview of International and Regional Instruments on Refugees

The global need to protect persons fleeing persecution and searching for refuge dictated that the 1951 Convention should be extended to all refugee problems irrespective of time and place; this was made possible through its 1967 Protocol relating to the Status of Refugees.⁶

For any person to qualify as refugee under the Refugee Convention, certain conditions would need to be fulfilled. Hence, the status of a refugee is determined if it could be shown that he is a person who ‘owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it’.⁷

The rights and protections arising from the Refugee Convention are predicated on fulfilling all such requirements embedded in the definition. Further, with regard to civil rights, freedoms and socio-economic entitlements, the Convention anchors the principle of non-discrimination – which shapes the interpretation and application of

⁶ United Nations Protocol Relating to the Status of Refugees. 31 January 1967. Article 1.

⁷ Refugee Convention. Article 1 (a) (2); Protocol Relating to the Status of Refugees, Article 1.

its provisions both in relation to refugees, between refugees and foreign nationals, and in some cases, between refugees and nationals of the hosting state.⁸

In Africa, the continental legal regime introduces additional *grounds* for acquiring refugee status – beside the basic criteria provided under the 1951 Refugee Convention. Hence, the African Refugee Convention applies ‘...to every person who, owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either a part or the whole of his country of origin or nationality, is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality’.⁹ The African Refugee Convention is a regional supplement of the 1951 Refugee Convention; all international rights, privileges and protection regimes are applicable.¹⁰

The 1951 Refugee Convention does not *merely* provide for ‘status determination’ standards and the non-discrimination principle; it also incorporates other fundamental principles such as non-refoulement and the prohibition of criminalization of refugees because of their movements and possible breaches of immigration laws.¹¹ The Convention’s provisions only establish *minimum standards* of treatment of refugees; states are therefore encouraged to adopt more favorable conditions for refugees.¹²

4. National legal Frameworks in Ethiopia Governing Refugees’ rights

Ethiopia acceded to the 1951 Refugee Convention and has furthermore ratified the African Refugee Convention.¹³ According to

⁸ Refugee Convention, Article 3, 12-16, 17-30.

⁹ African Refugee Convention. Article I (2).

¹⁰ African Refugee Convention. Article VII (2).

¹¹ Refugee Convention. Article 3, 31 and 33.

¹² The 1951 Refugee Convention and 1967 Protocol Relating to the Status of Refugees with Introductory Note by UNHCR. P.3. Available at: <http://www.unhcr.org/3b66c2aa10.pdf>

¹³ Ethiopia acceded to the 1951 Refugee Convention and its 1969 Protocol on 10

Article 9 (4) of the Ethiopian Constitution, international and regional conventions to which Ethiopia is a party are considered part of the domestic laws of the land. Moreover, the Constitution provides any interpretation of the fundamental human and democratic rights under the Constitution shall be guided by international standards.¹⁴ This entails that the drafting, enactment and implementation of any policy action having impact on refugees in Ethiopia must take into account the standards established under international conventions.

For long, the key national legislation regulating the rights of refugees and the administration of refugee affairs had been the Refugee Proclamation No.409/2004.¹⁵ Principally focusing on status determination procedures, this law had not clearly articulated nor adequately extended several rights to which refugees are eligible under the Refugee Convention. Article 21 of the repealed statute only made a 'general reference' to international instruments – without spelling the substantive framework that informs content or facilitates their understanding and enforcement in specific national settings.

On the other hand, until the recent adoption of the 'Roadmap for Implementation of the Ethiopian Government Pledges' (hereinafter referred to as the Roadmap),¹⁶ there was hardly any comprehensive 'policy-like' instrument that informs the strategic direction of the government or addresses the multi-layered issues that surface in implementation of recognized refugee rights.

Again, in spite of UNHCR's proactive promotion of the 'Alternative to Camps' (ACP) policy which advocated that refugees should be afforded opportunity to live outside of camps, Ethiopia's 'Out-of-

November 1969. Available at: <http://www.unhcr.org/uk/3b73b0d63.pdf>

Ethiopia signed and ratified the African Refugee Convention on 10 September 1969 and 15 October 1973, respectively. Available at: <http://www.achpr.org/instruments/refugee-convention/ratification/>

¹⁴ Constitution of the Federal Democratic Republic of Ethiopia. Federal Negarit Gazeta. 1st Year No.1. August 21, 1995 (hereinafter the FDRE Constitution) Article 13 (2).

¹⁵ Refugee Proclamation No.409/2004. 10th Year No.54. Addis Ababa, 19th July 2004 (hereafter called as the Repealed Refugee Proclamation No.409/2004).

¹⁶ Administration for Refugees and Returnee Affairs (ARRA). 17 February 2017. *Roadmap for the Implementation of the Ethiopian Government Pledges*. Addis Ababa, Ethiopia.

Camp policy' (OCP) has been applied only in a limited context in respect of Eritrean refugees – discriminating against refugees of other nationals. Concrete political commitment to fairly *expand* the OCP regime was secured only recently.

Against this background, a new Refugee Proclamation (hereinafter the Refugee Proclamation) was adopted by the House of Peoples Representatives in February 2019; in its preamble, the Proclamation stated one of the most fundamental objectives for adopting the new refugee law regime is to effectively implement the international and regional obligations to which Ethiopia has committed – in this case referring to the 1951 Refugee Convention and its Protocol and the African Refugee Convention.¹⁷

It would be shown in the subsequent discussions that in a nutshell, the protective regime of the Refugee Proclamation fundamentally diverges from the preceding legislation. While both have covered, in greater detail, the substantive and procedural dimensions of 'status determination' processes, the new regulatory framework managed to outline a comprehensive set of 'rights and obligations'.

5. Evolution, Drivers and Overhaul of Ethiopia's 'new' Policy Orientation on Refugees

Until very recently, the practice in Ethiopia in the provision of refugees' rights had featured a fragmented approach – mainly focusing on basic protection and care services to refugees living in designated camps – without assuring their meaningful inclusion in the socio-economic lives of host communities. As stated above, Ethiopia shelters one of the largest refugee populations in Africa – currently standing close to one million. Most refugees remain in camps conforming to the national encampment policy's general requirement – while a small fraction is formally extended the right to reside outside refugee camps, and many others continue to live, informally, outside of designated camps.

¹⁷ Refugee Proclamation No.1110/2019. February 27, 2019. 25th Year No.38, Para.3. Addis Ababa.

Despite Ethiopia's vast humanitarian experience and the adoption of open-door policy in accommodating refugees over the decades, no comprehensive framework had been designed which discerns – with sufficient forethought – that very often, refugees flowing into the country would reside for a longer period of time. Nor had the country adopted a clear strategy which acknowledges that the traditional humanitarian response mechanism cannot, in the long term, proffer viable solutions that advance refugees' livelihood opportunities or strengthen the host communities' resilience. This is particularly evident in the formulation of the pertinent legal instruments.

Since 2007, Ethiopia's new 'policy' drive started to gravitate towards the accommodation of 'select' refugees outside of camps and the enhancement of self-reliance schemes beyond the provision of life-saving assistance. The new national policy and legal architecture appears to respond to several components of refugees' civil, political and socio-economic rights provided under international instruments – and contemplates to design specific mechanisms for managing longer-term displacement of refugees.

Broadly, three intertwined factors and developments contributed in tandem in pushing forward a new policy move that seeks to address refugees' multifaceted challenges on the basis of international law and in tune with the principles of equitable sharing of responsibility which, among others, requires the international community to promote economic opportunities in host countries.

The first is the protracted nature of the refugee situation in the country, which, evidently, made it impossible to satisfy their long-term requirements through humanitarian interventions and the implementation of camping schemes alone. As it is itself an origin, transit and destination to international migrants, Ethiopia has more than enough national interest and moral pressure emanating from this factual setting to extend broad protection to refugees transiting through or arriving in its territory.

The second factor is related to the growing number of refugees crossing into the country as the result of unresolved crises and newly emerging conflicts in neighboring countries. Often, such occurrences are attended by weariness and repeated failure on the

part of the international community to sufficiently provide for financial provisions needed to run basic refugee programs; in fact, such programs have been exposed to inherent risks of re-prioritization and re-allocation as new refugee crises emerge in many parts of the world.¹⁸

The third rational underpinning, at least in the context of early formulation of the OCP scheme in relation to Eritrean refugees, is the ‘predominantly urban background’ of refugees’ demography. This made their accommodation in remote camps exceptionally challenging – not infrequently prompting onward movements to cities and other countries mainly through irregular migration.¹⁹

The pinnacle in Ethiopia’s initiatives in designing a new policy framework is attended by the adoption of concrete measures involving three interconnected interventions that are also relevant in the context of refugees’ rights to residence, movement and engagement in gainful employment. These are the drafting of new legal instrument providing for expanded framework of rights and entitlements; the adoption of a roadmap that features a structured approach for implementation of rights and opportunities in longer term context; and the launching of a national strategy (and institutional platform) on Comprehensive Refugee Response Framework which intends to apply international standards to large-scale influx and protracted refugee situations.

6. The immediate drive: the United Nations General Assembly on Refugees and Migrants

Evidently, a scheme for reforming the national refugee response mechanism had already been high on the agenda of the Ethiopian government for some time – even before 2016.²⁰ However, the real

¹⁸ UNHCR. Ethiopia Fact Sheet. November 2017: of the total funding requirement of USD 335.4 M for UNHCR’s program in Ethiopia as of November 2017, only 27% was secured.

¹⁹ Key Informant Interview with Mr. Haileselassie Gebremariam. Head of Legal Services and Refugee Status Determination Unit, ARRA. 26 December 2017 (hereafter KII with Mr. Haileselassie Gebremariam)

²⁰ Although the amending proclamation was actually adopted in August 2017, the task

drive in embracing actionable measures was occasioned against the background of Ethiopia's participation and pledges announced at the United Nations General Assembly on Refugees and Migrants congregated with objective of improving ways in which the international community responds to refugee situations.²¹ In profound expression of solidarity and support for refugees, the assembly adopted the New York Declaration for Refugees and Migrants in which many countries, including Ethiopia, resolved to take successive and tangible measures so as to minimize the challenges faced by refugees – taking into account different national realities, capacities and levels of development and respecting national policies and priorities.²² Countries also committed to take specific measures to realize programs for humanitarian financing that are adequate, flexible, predictable and consistent – and which would also enable host countries to respond both to the immediate humanitarian needs and their longer-term development needs.²³

In this context, it was agreed under Annex I of the New York Summit Declaration to implement a Comprehensive Refugee Response Framework (CRRF). The CRRF outlines the steps to be taken towards the achievement of a global compact on refugees – providing for a more equitable and predictable arrangement among countries of origin, transit and destination in addressing large movements of refugees – based on principles of 'international cooperation' and 'burden sharing'.²⁴ The CRRF also tasked host states – in cooperation with UNHCR, global financial institutions and other relevant partners – to take specific actions to foster refugees' *self-reliance*. This entails expanding opportunities for

of revising Ethiopia's law on registration of vital events offering refugees access to documentation-related services predates initiatives under the Roadmap; in a similar tune, the government had already been considering the expansion of the out of camp policy long before a specific commitment was tabled in the context of the Leaders' Summit in New York.

²¹ New York Declaration for Refugees and Migrants. 19 September 2016. Seventy-first Session Agenda Items 13 and 117. Resolution adopted by the General Assembly (hereafter New York Declaration for Refugees and Migrants).

²² New York Declaration for Refugees and Migrants. Para.21.

²³ New York Declaration for Refugees and Migrants. Para.21; Annex I: Comprehensive Refugee Response Framework.

²⁴ Annex I: Comprehensive Refugee Response Framework. Para.7 and 13; New York Declaration for Refugees and Migrants. Para.68.

refugees to access education, health care, livelihood opportunities and labour markets in a manner which *also* supports host communities, and to invest in human capital, self-sufficiency and skills as essential steps towards enabling long-term solutions.²⁵

In responding to the global call, Ethiopia co-hosted, on September 20, 2016, a high-level meeting on refugees in New York. On the occasion of the Leaders' Summit on Refugees, Ethiopia committed to deliver on *nine sets of pledges* that anticipate substantially expanding the protection, socio-economic services and opportunities provided to refugees living within its jurisdiction.²⁶ Rights related to residency, movement and engagement in gainful employment are specifically stated and variedly accommodated.

Given that the 'political commitment' under the pledges has been announced before the adoption of the new proclamation, it was evident that the implementation of the pledges would entail taking specific legislative measures in this regard. Today, the Refugee Proclamation has already been adopted by the House of Peoples Representatives, while work on drafting of implementing instruments has also commenced by ARRA; in tandem, a draft Ten Years Strategic Document and connected to the Roadmap has been developed to guide the implementation of Ethiopia's pledges at the national level.²⁷ Most importantly, the national chapter of the CRRF was formally launched in November 2017, paving the way for synchronized institutional leadership and response in implementation of the pledges – particularly in relation to the rights of refugees to residence, movement and gainful engagement.

7. Ethiopia's Pledges and the Roadmap: Residency, Movement and Gainful Employment

Ethiopia's commitments under the compact on refugees – offered within the framework of the New York Declaration and Leaders'

²⁵ New York Declaration for Refugees and Migrants. Para.38.

²⁶ ARRA. *Roadmap for the Implementation of the Ethiopian Government Pledges*.

Note 16.

²⁷ ARRA. *National Comprehensive Refugee Response Strategy (2018-2027)*. Note 2.

Summit – entails two undertakings: clarification of the promises and establishment of an implementation roadmap directing the programme of actions required in the particular setting of each of the interventions – which, in time, are expected to be subsumed under the CRRF.

The Roadmap was adopted by the government's focal arm – the Administration for Refugees and Returnee Affairs (ARRA) – in collaboration with several stake-holding institutions. It depicts particulars of the commitments undertaken, estimate of timeline for implementation, potential sources of funding for program components – and governmental agencies, relief organizations and donor partners responsible for carrying out the programs.

Under the pledge on the '*expansion of the out of camp policy*', Ethiopia undertook to further enlarge the scheme (which had hitherto applied 'only to Eritreans') to all refugee nationalities hosted in the country by up to 10% of the current refugee population. This is mainly intended to enhance refugees' movement, self-reliance and livelihood opportunities, increase access to training, education and services, and thereby discourage their perilous movement onward to Europe.

Ethiopia's second pledge permits refugees, both inside and outside camps, '*access to employment*' within the bounds of domestic laws and the issuance of '*work permits to refugee graduates*' in areas permitted for foreign workers. Mainly, this pillar entails taking measures that focus on legal and administrative reforms so as to allow such refugees the right to work and to use refugee IDs as residence permits for purposes of issuing work permits.²⁸

Under the pledge on '*self-reliance*' and '*land access*', Ethiopia undertook to further expand its previous experience in providing 1,000 ha of irrigable land allocated to refugees and host communities, and now make available 10,000 ha of irrigable land. This would allow their engagement in crop production and benefit 20,000 households or 100,000 persons – within the bounds of national laws and subject to legal frameworks outlining the terms and conditions.

²⁸ ARRA. *Roadmap for the Implementation of the Ethiopian Government Pledges*. Note 16. pp.3-4.

The commitment on ‘*job creation*’ intertwines Ethiopia’s national industrialization agenda with the humanitarian provision of employment opportunities to refugees within newly developed industrial parks. This requires the building of new industrial park infrastructure in collaboration with international development partners to generate job opportunities that could employ up to 100,000 persons, of which 30,000 would be dedicated to refugees granted work permits. It offers such refugees the chance to live a normal life in a county closer to their home, integrate their livelihoods with host communities and avoid taking the risk of dangerous paths in onward movements.²⁹

Nearly *all* the assurances rolled by Ethiopia require a careful legislative overhaul – centering on the old refugee law and policy regime which had served as the basis for the provision of limited rights and opportunities. The whole architecture of commitments presumes that a clear and comprehensive legal direction would be offered informing content on each of the deliverables.

For the most part, this is addressed through adoption of the Refugee Proclamation No.1110/2019 and endorsement of the national strategy on CRRF. Nevertheless, while such measures represent fundamental treads in the protection and implementation of refugees’ rights, uncertainties remain in terms of whether the new legal regime fully corresponds with the rights of refugees under international instruments and how far it goes in facilitating smooth implementation of the objectives defined under the roadmap itself.

This justifies a thorough examination of the relevant provisions of the new Proclamation having impact on refugees’ rights to residence, movement and engagement in gainful activities, and analyses of shortcomings of the Proclamation in relation to the pledges.

8. The Out of Camp Policy and Residence and Movement Rights

²⁹ ARRA. *Roadmap for the Implementation of the Ethiopian Government Pledges*. Note 16. pp.10-11.

8.1 International Standards

While the experiences vary across jurisdictions, many national laws require stricter compliance with encampment of refugees in designated geographical locations (i.e. in camps or settlements). However, it is broadly recognized that the provision of humanitarian assistance in refugee camps is the exception, and not a long-term platform for accommodating the socio-economic needs and protection requirements of refugees. A very common feature, living in camps entails 'some degree of limitation on the rights and freedoms of refugees and their ability to make meaningful choices about their lives'.³⁰ Consequently, the approach adopted by a spectrum of international actors has mainly gravitated towards the adoption of alternative solutions.

The right to freedom of movement and freely choose residence is one of the fundamental rights provided under the Refugee Convention.³¹ The Convention organizes both sets of rights as they are intrinsically intertwined; residency cannot be exercised effectively without having freedom of movement in the territory of the host country.

Under the Convention, states are required to extend similar protection and restriction as applying to foreigners in the same circumstances. This implies that while host countries may choose to restrict refugees' right to freely move and choose residence, such measures must be applied in the same way as is the case with foreigners in similar situations. Host states could not restrict the right to freedom of movement or residency by targeting refugees only, nor can they discriminate against refugees based on race, religion or country of origin.³² However, this provision has often been interpreted as furnishing a leeway to implement encampment policies that particularly affect refugees – as well as for justifying

³⁰ UN High Commissioner for Refugees (UNHCR). 22 July 2014. *UNHCR Policy on Alternatives to Camps*. UNHCR/HCP/2014/9. P.3. Available at: <http://www.refworld.org/docid/5423ded84.html>

³¹ Refugee Convention. Article 26.

³² A., Grahl-Madsen. 1997. *Commentary on the Refugee Convention 1951, Articles 2-11, 13-37. Article 26, Freedom of Movement*. Published by Division of International Protection of UNHCR, Geneva. Available at: <http://www.unhcr.org/3d4ab5fb9.pdf>

discriminatory treatments among refugees – both of which are against the objectives and spirit of the Refugee Convention.

As beneficial as this right is to refugees, its implementation has been affected across jurisdictions – primarily because of restrictive policies adopted by states that oblige the encampment of refugees in designated areas.

For years, the United Nations High Commissioner for Refugees (UNHCR), the lead global institution dedicated to saving and protecting refugees, has promoted the Alternative to Camps Policy (ACP) whenever possible – while also ensuring that refugees are protected and assisted effectively.³³ The basic premise of this policy stresses that the ACP would ‘remove restrictions’ against refugees and enhance their opportunity to ‘live with greater dignity, independence and normality as members of the community, either from the beginning of displacement or as soon as possible thereafter’.³⁴

For UNHCR, while camps still represent important tools in facilitating ‘the rapid provision of protection and life-saving assistance in the event of large-scale refugee influx, they are nevertheless a *compromise* that limit the rights and freedoms of refugees, and too often, remain after the emergency phase and the essential reasons for their existence have passed.’³⁵ The ACP affords refugees a wider opening for self-reliance measures and represents a more sustainable approach in ensuring their lives in communities.

Quite recently, the significance of this approach was reiterated under the New York Declaration for Refugees and Migrants. Under the Declaration, it was agreed between states, including Ethiopia, that ‘refugee camps should be the exception, and to the extent possible, temporary measures in response to emergency’, and therefore the international community should ensure ‘the delivery of assistance to refugees and host communities is adapted to the relevant context’.³⁶

³³ UNHCR. *Policy on Alternatives to Camps*. Note 30. p.6.

³⁴ Ibid. p.4.

³⁵ Ibid.

³⁶ New York Declaration for Refugees and Migrants. Note 21. Para.73.

8.2 Ethiopia's Policy and Practice

The pertinent laws that regulate residency rights of foreigners in Ethiopia are the Immigration Proclamation No.354/2002 and Immigration Council of Ministries Regulation No.114/2002. Under the laws, all foreigners are required to be registered and receive temporary or permanent residence permit;³⁷ however, 'refugees' are precluded from such process as they are considered a special category, and if anything, their affairs would be regulated *solely* based on the Refugee Proclamation.³⁸ Hence, there shall be no extension of rights to refugees as provided to other foreigners under the immigration laws – to the extent that such regime proffers better rights.

Under Article 28 (1), the new Refugee Proclamation recognizes the right of every refugee or asylum-seeker to movement and freedom to choose residence subject to laws applicable to foreign nationals generally in the same circumstances. On the other hand, sub-article 2 gives ARRA the mandate to 'designate places and areas in Ethiopia within which refugees and asylum seekers may live'. A cumulative reading of the two provisions provides that the right of refugees to freely move is the rule and the designation of restricted areas (and hence limitation on freedom movement) is the exception.

In practice, though, the Head of the National Intelligence and Security Services (NISS) under whom ARRA had operated under the repealed law, had routinely designated refugee camps across the country, a measure which has had the effect of curtailing freedom of movement and residency of refugees. In this light, it could be submitted that the general encampment policy practiced in Ethiopia is inconsistent with the 1951 Refugee Convention; it also runs counter to the objective and spirit of the Convention which prohibits 'refugee-specific' restrictions on freedom of movement and residency. It also follows, based on analyses of the Refugee Proclamation and practical application of residency rights of refugees, that in Ethiopia, the grant of a refugee status does not automatically entitle a person the *right to move freely or choose a place*

³⁷ Immigration Proclamation No.354/2002. 3 July 2003. 9th Year, No.75. Addis Ababa (hereafter Immigration Proclamation). Articles 13 and 15.

³⁸ Immigration Proclamation. Article 14 (1) (b).

of residence in much the same way as *other foreigners* having legal residency status. This is a fundamental deviation.

A consolation is, however, provided under Article 28 (3) of the new Refugee Proclamation which explicitly provided that ARRA *may* facilitate *enabling conditions* for recognized refugees and asylum-seekers to use their right of movement.³⁹ This anticipates an exercise of discretionary system for permitting refugees living in designated camps to move from place to place or reside outside of camps.

Clearly, the legislative design under Article 28 (3) is a reaction to the contemporary practice on the ground – where ARRA’s administration of a permit system has been applied for years now – allowing refugees to *temporarily and permanently leave* camps under various schemes.⁴⁰ However, it should be clear that for the larger population of refugees, the right to freedom of movement and residency is *still* conceived in the context of pursuit of the encampment policy and its restrictive impacts. Only time will show if, as per the broader objectives framed under the National Comprehensive Refugee Response Strategy, Ethiopia can actually *transition* from the camp-based approach to a more integrated system which works on the provision of protection and assistance services in off-camp settings. In the meantime, Ethiopia’s practice generally falls short of the international standards.

As far as analysis of current practices is concerned, a refugee living in camp can apply for temporary leave at any time; temporary passes could be sought in connection with case processing (in Addis Ababa), for medical reasons, to visit family, or when a refugee has to leave camp on considerations of security, or to live in OCP setting.

Generally, in relation to refugees’ right to movement and choose own residence, Ethiopia’s exercise is informed by broader and

³⁹ Note here that under a draft regulation circulated before, the right to freedom of movement of refugees was coined as a ‘right’ exercised subject to the acquisition of permit from authorities (not an entitlement facilitated by the government); on the other hand, an additional sub-provision which does not have parallel under the Refugee Proclamation was also included providing a clear legal basis for the Administration to pursue the OCP regime and issue permits to refugees whether individually or as a group.

⁴⁰ So far, ARRA’s provision of *temporary and permanent leaves* to refugees had not been based on clear legislation.

pragmatic considerations. It is conceived, and this was clearly reiterated during the interviews with ARRA official, that in the longer-term, the pursuit of 'encampment policy' engenders negative implications on resources, national security setting and the environment, and may well foster a mind-set of dependency and lack of perseverance, not to mention *also* that for many refugees (mainly from Eritrea), voluntary repatriation has not been an option.

Ethiopia's national discernment in this regard notwithstanding, the encampment policy has been the subject of reviews and criticism by the UN Human Rights Committee and the UNHCR itself. Of course, both had praised the limited opening Ethiopia offers to refugees under the OCP and 'urban refugee' regimes for certain nationalities and vulnerable refugees. However, they also expressed concern that the difficulties encountered by others – which still preclude long term solutions – warrant the promotion of integration of refugees through all mechanisms, facilitating their freedom of movement from camps to urban centers when needed, and the expansion of OCP scheme to include refugees of all nationalities equally.⁴¹

As indicated above, Ethiopia has pursued the OCP scheme for years with regard to certain group of refugees as alternative to encampment policy; this constitutes exception to the discretionary power and practice of NISS/ARRA in relation to the encampment of refugees. In fact, in the past, Ethiopia has largely tolerated a *de facto* OCP state with respect to refugees from Somalia, informal (not legally permitted) stays of South Sudanese refugees outside camps, is considering extending OCP status to Yemeni refugees, and has *formally* allowed thousands of Eritrean refugees to live in OCP settings – subject to certain requirements. In effect, the OCP has facilitated greater enjoyment of the right to freedom of movement and residency of a fraction of the refugee community in Ethiopia.

Still, it is important to note that the placement of refugees in the cities – which incidentally facilitates freedom of movement – is *also* attended by a few restrictions imposed on movement *outside* of the designated cities (indicated in a refugee's ID) – and is enjoyed *only* in

⁴¹ Human Rights Committee. 19 August 2011. *CCPR/C/ETH/CO/1*, 102nd Session. *Submission by the United Nations High Commissioner for Refugees for the Office of the High Commissioner for Human Rights' Compilation Report – Universal Periodic Review: Ethiopia*. P.4.

compliance with prior written authorization request submitted by a refugee and issued by ARRA. In the current context, a challenge remains since regulations would yet provide details of how the right to freedom of movement is actually facilitated, whether the existing practice continues as is, and what the government's discretion would be like.

So far, though, OCP refugees interviewed during this study concurred that securing a permit (cooperation letter) to travel outside a refugee's designated city is rarely a problem. Generally, the permit is issued by ARRA on the same day as the request – although there are variations from camp to camp. While authorities tolerate some deviations, a refugee who is caught moving further and outside residency city – without holding a letter from ARRA – risks detention.⁴²

8.3. The Management of OCP and Freedom of Residence and Movement

In principle, Ethiopia has accepted that the OCP regime should be extended to all nationalities and has expressed commitment in this regard. Yet, a major break in this regard only came with the adoption of the Roadmap in 2017.

Over the years, Ethiopia has experimented on procedures – steadily relaxing the encampment of refugees and allowing greater exercise of the right to freedom of movement. With regard to Eritrean refugees, the OCP intends to foster three intertwined objectives, namely, family reunification, improved livelihood opportunities and strengthening of people to people relationship which forms part of Ethiopia's broader agenda on normalization of state-to-state relationship.⁴³

The earliest thesis of Ethiopia's policy shift in relation to 'strict encampment rule' could be traced to the adoption of the 'open-

⁴² Focus Group Discussion with six Eritrean refugees living in Addis Ababa. 8 December 2017. Refugees Resource Center. Addis Ababa (hereafter FGD with Eritrean refugees).

⁴³ KII with Mr. Haileselassie Gebremariam. Note 19.

accommodation' approach in the post-1991 period – hosting more than 160,000 Somali refugees who fled civil war, sectarianism and persecution following the fall of the Said Barre regime in Somalia. The refugees 'settled' in camps and across urban centers in Ethiopia – mainly in Addis Ababa and Jigjiga areas without registration or support by ARRA. In 2008, limited efforts by ARRA to regularize the 'OCP-like' *de facto* regime involving Somali refugees and to issue residence permits was discontinued after a cluster of refugees were accommodated.⁴⁴ In November 2004, the Shimelba Refugee Camp in Tigray, the first of its kind hosting Eritrean refugees in northern Ethiopia, was opened – bringing refugees who had been in the collection centers from as early as 2000.⁴⁵

In the early phases, the 'exclusive focus' on Eritrean refugees was prompted by several factors including their strong historical and cultural ties with Ethiopia – making relationships with the host community easier, the existence of networks such refugees could use to sustain themselves in cities, and the potential security risks that could come with opening the scheme to others, especially Somalis.⁴⁶ According to ARRA, though, the most significant driver was that *only* Eritrean refugees had persistently demanded for the opening of such opportunity (between 2004-2007) which swayed the institution to assess the situation and seek governmental endorsement; no similar appeal was submitted by any other refugee nationality, except the Yemenis who recently pleaded for similar treatment.⁴⁷

Contrary to many narratives – including the Roadmap itself, it was disclosed during the interviews with ARRA that the OCP program has actually been implemented in relation to Eritrean refugees since as early as 2007; while proper record may be in short-stock on exact numbers, tens of thousands of Eritreans have benefitted from the OCP regime.⁴⁸ This represents a fundamental departure from the enforcement of strict encampment policy in relation to all other refugees – except those who were extended special leave on account of medical, protection and humanitarian grounds.

⁴⁴ Ibid.

⁴⁵ Ibid.

⁴⁶ Samuel Hall Consulting. 2014. *Living out of Camp: Alternatives to Camp-based Assistance for Eritrean Refugees in Ethiopia*. P.17.

⁴⁷ KII with Mr. Haileselassie Gebremariam. Note 19.

⁴⁸ Ibid.

In 2017, the ‘relative success’ of the OCP experience with Eritrean refugees and its alleged impact in ‘enhancing self-reliance’ was recognized that Ethiopia resolved to steadily expand the scheme to refugees of other nationalities. The ‘new’ OCP scheme – now being re-considered within the framework of the Roadmap and the newly adopted Refugee Proclamation – took this process to new heights.

Designed by the government in tune with the UNHCR’s ACP approach,⁴⁹ the policy symbolizes a praiseworthy achievement in the country’s ‘liberal’ approach in hosting refugees and in extending enhanced opportunities to *a fraction of refugees* – especially in relation to the exercise of freedom of movement, and possibly, in ensuring sustainable livelihood. This national measure is conceived as a key mechanism for carrying out Ethiopia’s undertaking under international instruments and as important device in its gradual shift to the ACP model.

Still, it would be noted that apart from the Roadmap and the National Comprehensive Refugee Response Strategy documents, there is hardly any specific legal framework on which implementation of the OCP regime is predicated. Its future implementation would, therefore, be based on the programmatic and strategy-focused documents – a critical challenge from the point of instituting a legally predicable scheme.

8.3.1 Conditions for the Grant of OCP Status

The Roadmap only indicates that the eligibility requirements for the grant of OCP status will be detailed in the future in relation to refugees moving from *other countries*. However, in a passing note on the historical account of the OCP, the Roadmap narrated three basic conditions which ought to be fulfilled by any *recognized Eritrean refugee* to receive OCP permit: having the necessary means to financially support oneself; ability to submit relatives or friends who can commit to support the refugee (as guarantor); and having no criminal record whilst being sheltered in camp. Other standards

⁴⁹ ARRA, *Roadmap for the Implementation of the Ethiopian Government Pledges*. Note 16. P.2

have also been applied, namely that one must have lived in camp for at least forty-five days.

Over the years, a modest experience is already garnered in the administration of the OCP regime on Eritrean refugees to comprehend its actual workings, evaluate the preconditions and converse on the scheme's purposes in incidentally serving the recognized right of refugees to movement and choice of residence.

Departing from its stated objectives and the practice, the OCP could be viewed as 'partial local integration' – potentially leading towards full integration – short of durable solutions. Hence, it is commonsensical that the eligibility standards had started with requirement of recognition of a *refugee status* and living in camp for at least 45 days (trimmed from the original 6 months – which was subsequently reduced to 3 months). Exceptionally, though, vulnerable persons such as women at risk, elderly, handicapped, and 'high profile' individuals have been permitted to apply for OCP right away – after registration is completed.⁵⁰

Participation in OCP program is based on a refugee's voluntary decision – which is expressed by presenting oneself at ARRA's local functionary and by filling out and signing required forms *in person*; communication or expression of consent through intermediary is not permitted.⁵¹

When originally launched in 2007, the concept of 'guarantor' was narrowly construed to apply only in the context of 'nuclear family'. Hence, a refugee would be allowed to benefit from the scheme only when he could present as guarantor a husband, wife, father, mother or a child living in Ethiopia; however, as the demand increased, this was expanded to include grandparents and proximate relatives, and eventually, friends, acquaintances and even self-guarantee procedures.⁵²

If a third party guarantor is preferred by a refugee, such person could be an Ethiopian national or a foreigner lawfully residing in Ethiopia; the sponsor must be willing to sign a form prepared by ARRA (in Addis Ababa) – in theory expressing consent to

⁵⁰ KII with Mr. Haileselassie Gebremariam. Note 19.

⁵¹ Ibid.

⁵² Ibid.

undertake such responsibility for the upkeep of the refugee. A copy of his/her ID and a photograph must also be submitted. Only then can the refugee be granted leave from camp and relocate in a city of own choice. The refugee can also choose to be one's own guarantor.⁵³

The sponsor can always request ARRA to be relieved of her/his obligation; the refugee would then be asked if he could proffer another guarantor – and if not, he needs to get back to camp – unless he signs a form as own-guarantor. In practice, ARRA rarely presses refugees to go back to camp unless s/he wants to – in which case a travel pass would be issued.

A refugee must be able to sustain himself/herself economically and s/he/the sponsor is required to sign undertaking to this effect; but, there is no defined minimum threshold of financial capability, or evidentiary requirement that s/he needs to demonstrate. Besides, ARRA does not indulge on checking whether or not the refugee or his sponsor would actually be able to provide sustenance or other support. There is no requirement of living together.⁵⁴

When the scheme started, only Debreworkos was availed in the 'basket of choices' for purposes of resettling OCP beneficiaries – although this was subsequently expanded to other towns; according to ARRA, the proposal to restrict the choices was predicated on certain ground-facts that had to be taken into consideration. This mainly involved service provision capacity of the cities/towns to which refugees wish to move – the main concern being that if too many refugees decide to settle in the same area, this would not only strain local service infrastructure, it might also generate indigenous resentment. Yet, this consideration was substantially relaxed by the government since most of the demand put forward by refugees had focused on Addis Ababa.⁵⁵

Today, virtually no restriction exists in terms of where an Eritrean refugee wishes to settle within the framework of the OCP – although, in practice, peripheral locations which have traditionally

⁵³ KII with Mr. Haileselassie Gebremariam. Note 19; FGD with Eritrean refugees. Note 42.

⁵⁴ Ibid.

⁵⁵ KII with Mr. Haileselassie Gebremariam. Note 19.

been used as ‘gateways’ for illegal immigration remain outside the scheme’s scope.⁵⁶ Change of OCP residence is possible if, for whatever reason, a refugee wishes to be transferred from one city to another; however, compliance with the same procedures is required.

A refugee applying for OCP should not have a criminal record whilst living in camp. While what constitutes a criminal record is not difficult to conceptually describe, generally, the commission of minor crimes has not been regarded as ground warranting the exclusion of refugees from the scheme.⁵⁷

There is no clear and predictable procedure outlining a timeframe within which an application for OCP permit would be handled. Qualitative data congregated from OCP refugees in Addis Ababa had shown diverse experience.

OCP refugees don’t have reporting obligation to any government institution – including ARRA, except in the context of visits required to renew/replace a Refugee ID. However, UNHCR’s system requires refugees to update their status every two months.⁵⁸

8.3.2 Rights and Obligations of Refugees in OCP State

Participation in OCP does not entail ‘change’ in a refugee’s protection status. In fact, the refugee will continue to have the same standing and enjoy all rights as before. Yet, in practical terms, it was observed during the study that for many refugees, involvement in the OCP has not added a great deal of value – apart from the reconnect in cultural and political contexts. Given the nature of the practice, therefore, it is now evident that most positive testaments in contemporary literature about ‘enhanced livelihood opportunities’ OCP refugees acquire are disputed on facts.

As OCP beneficiaries, refugees commit to sustain themselves financially, and therefore, no amenities, monetary or in-kind, are provided to support their life in cities – as would have been the case

⁵⁶ FGD with Eritrean refugees. Note 42. During the FGD with Eritrean refugees, it was disclosed that exceptions apply in relation to such places like Gambella, Moyale and Zala Ambessa.

⁵⁷ KII with Mr. Haileselassie Gebremariam. Note 19.

⁵⁸ FGD with Eritrean refugees. Note 42.

in refugee camps or with *Urban Refugees* supported by UNHCR. By moving out of camps, refugees forfeit their 'entitlement' to food rations, free medical and educational services, and other facilities offered in camps. Refugees are also expected to hand over their 'ration card' – which would be replaced by standard Refugee ID that is valid for three years and indicates a holder's OCP status.

A very important consideration from refugees' point of view is also that once a refugee chooses to settle outside a camp, the personal file would be transferred to UNHCR's office in the cities. This way, any potential window for resettlement to third countries remains active. Hence, it would be conjecturing – as noted during the interviews with refugees in Addis Ababa – to assume that 'OCP' and 'third country resettlement' options are incompatible or OCP refugees are unevenly treated. Many refugees take the view that living in camps offers faster resettlement opportunities just because refugees live on UNHCR's continued assistance – which compels the organization to prioritize. As Hall rightly noted, refugee cases would still be communicated to the city and handled by UNHCR's sub-office, and therefore, beneficiaries from OCP could apply for resettlement where all cases would be handled similarly.⁵⁹

While OCP status is only deemed a type of 'semi-durable' arrangement 'potentially' promoting access to sustainable livelihood, any OCP beneficiary can always opt to return to a refugee camp if, for any reason, s/he does not wish to continue life in a city.

A greater facilitation the OCP scheme might be, on the way forward under the Roadmap and the Refugee Proclamation, a few challenges remain affecting freedom of movement and residency. First, there is still no clearly defined guideline directing the application of OCP to all nationalities; no eligibility criteria is set for refugees entitled to benefit from OCP, nor are mechanisms placed to prepare refugees' adjustment to urban life and improved livelihoods through clearer interventions. While this detail may be worked out under strategy documents or particular action plans, in the meantime, the encampment policy and the limited practice of granting 'temporary

⁵⁹ Samuel Hall Consulting. Note 46. P.39.

passes' to refugees would be employed as a basis for the exercise of the right to freedom of movement.

This would mean, again, that in the meantime and pending the adoption of a comprehensive OCP regime, a great majority of refugees would live in camps in isolation; such practice would continue to raise issues of compatibility with the Convention which unequivocally establishes the right to freedom of movement and to freely chose residence – subject *only* to regulations applied in respect of aliens in similar circumstances.

9. Gainful Employment and Opportunities of 'enhanced' livelihood

Neither the Refugee Convention nor Ethiopia's repealed refugee law positively provided for refugees' right to engage in gainful employment on a par with nationals. In consequence, over the years, refugees partaking in the OCP regime have faced severely restricted opportunities of access to the Ethiopian job and petty trade/retail markets. Naturally, such legislative setting precludes refugees' local integration prospects as it withdraws from them one of the most fundamental means of sustaining lives in cities and of building self-reliance.

In actual practice, it was also discovered during the interviews that the biggest challenge OCP refugees encounter is related to sustaining livelihood. In the cities, they are often confronted with major financial strains that ensue from their protracted situation; unable to cope with the challenges, many refugees had in fact approached ARRA to facilitate the provision of basic support – although they had signed commitment pledging self-sufficiency.⁶⁰ The very policy framework designed to facilitate self-reliance was not able to fully achieve its objectives in relation to the majority – since refugees have not been afforded the right to engage in wage-earning employment, self-employment or retail trade activities on par with nationals. The absence of sustainable arrangements, Hall observed, forces refugees not to have perspective and horizons to

⁶⁰ KII with Mr. Haileselassie Gebremariam. Note 19.

strive for – explaining why many of them perilously continue secondary migration to Europe or Israel.⁶¹

OCP refugees have had clear understanding of the limits of the repealed law as far as engagement in gainful employment is concerned. While many rely on remittances from friends and families abroad which, in the long term, may not be sustainable, no so few also engaged, illegally, in wage-earning employment and in retail trading activities to cope with challenges of livelihood in OCP settings. In fact, during the interviews and FGDs with refugees, it was revealed that the drawback under the previous legislation had forced many Eritreans to unlawfully receive employment (both in casual or regular labour) and involve in small-scale business ventures unlawfully ‘using’ Ethiopian business licenses.

In relation to gainful employment, it was identified from the interviews and FGDs with refugees that the previous law’s prohibitive language had engendered three negative implications. First, many individuals and businesses have been very reluctant to hire refugees in skilled or semi-skilled labour – for fear of legal reprisals. Second, when the occasion arises, many refugees had reportedly been subjected to abuses – such as labour overexploitation and improprieties relating to timing or amount of wages paid. Since the contractual basis for the refugees’ engagement in gainful activities has also been questionable in the eyes of the law, such refugees would hardly pursue grievances before judicial bodies, this creating a sense of indifference and disincentive in actively seeking employment. Third, not so few refugees also ‘rent’ business licenses issued to nationals and engage in various commercial activities;⁶² while such incidences are normally tolerated by authorities, in so doing, refugees operate in a state of uncertainty and risk facing both administrative and criminal sanctions.⁶³

⁶¹ Samuel Hall Consulting. Note 46. P.10.

⁶² FGD with Eritrean refugees. Note 42.

⁶³ Under Article 49(2) of the Commercial Registration and Business Licensing Proclamation No.980/2016, any person engaged in business activity without having a valid license shall, without prejudice to the confiscation of merchandise, service provision and manufacturing equipment, be punished with fine from Birr 150,000 to Birr 300,000 and with rigorous imprisonment from 7 years to 15 years.

Such a depressed picture of the legal setting notwithstanding, several humanitarian organizations continued to offer OCP refugees skill trainings and facilitate self-employment and income generating opportunities by providing, among others, financial assistance,⁶⁴ – even when it was evident that these schemes could not lead to formal employment or establishment of businesses. In this regard, the widely endorsed expectation has been that the law would be changed at some point and that the skills could be utilized as capital in the future.

Today, substantive ambiguities and contentions still prevail, but it is assuring to witness that the new Refugee Proclamation has been composed of provisions which may well afford refugees wider opportunities for engagement in gainful employment – both generally and in relation to OCP.⁶⁵

This legislative development has far-reaching implication on the right of refugees to movement, to choose own residence and enhancement of socio-economic standing. This fact, therefore, warrants a thorough exposition of provisions of the new Refugee Proclamation in relation to international standards.

As discussed in the preceding sections, one of Ethiopia's commitments featured under the Roadmap relates to permitting refugees, both inside and outside camps, *access to employment within the bounds of domestic laws* and the issuance of *work permits to refugee graduates in areas permitted for foreign workers*. This intervention intends to institute for refugees the right to work and use refugee ID as residence card for purposes of issuing work permit.

This stipulation under the new Proclamation is very progressive and a fundamental departure for two important reasons. First, there was no provision under the repealed refugee law which specifically covered the right of refugees to work; Article 21 had only made a

⁶⁴ FGD with Eritrean refugees. Note 42.

⁶⁵ It should be noted that at one point in the early drafting processes, a regulation was introduced wherein a liberal approach was adopted under Article 23(5); the provision provided that notwithstanding contrary stipulations in other laws, recognized refugees may be permitted to establish *commercial or cooperative organizations or engage in business activities* in accordance with the national laws applying to *domestic investors*. However, it will be shown in the subsequent discussions that this provision never made its way to the Refugee Proclamation in the same language.

general cross-reference – indicating that refugees shall be ‘entitled to other rights under the Refugee Convention and African Refugee Convention’, a legal framing approach which often poses difficulty in the interpretation and enforcement of rights domestically. Second, the same provision had *also undermined* any potential for broader protection since it provided that the reference to international instruments notwithstanding, refugees shall *only* be entitled to the *same rights afforded and restrictions imposed on foreigners* in Ethiopia in respect of wage-earning employment.⁶⁶

Under the Refugee Convention, the pertinent standards on refugee’s right to engage in ‘gainful employment’ are composed under three headings. Article 17 on ‘wage-earning employment’ imposes on states to extend refugees ‘the most favorable treatment accorded to nationals of a foreign country in the same circumstances’.⁶⁷ Article 18 on ‘self-employment’ requires states to accord refugees ‘treatment as favorable as possible, and, in any event, not less favorable than that accorded to aliens generally in the same circumstances’ as regards the right to engage, on own account, in agriculture, industry, handicrafts and commerce, and to establish commercial and industrial companies. Under Article 19 on engagement in ‘liberal professions’, states are obliged to accord refugees who hold diplomas recognized by competent authorities ‘treatment as favorable as possible and, in any event, not less favorable than that accorded to aliens generally in the same circumstances’.

9.1. Wage-earning Employment of Refugees

On wage-earning employment, the fact that the Convention provides for minimum threshold of ‘most favored treatment’ as

⁶⁶ Reservations and Declarations. Convention Relating to the Status of Refugees. Signed at Geneva on 28 July 1951. Available at: <http://www.unhcr.org/cgi-bin/texis/vtx/search?page=search&docid=3d9abe177&query=1951%20Refugee%20Convention>

Ethiopia entered reservation to Article 17 (2) of the Convention which would have exempted refugees who fulfill certain criteria from restrictive measures of employment adopted by host state to protect the national labour market.

⁶⁷ No reservation was entered by Ethiopia with regard to this particular sub-article in pursuance of its right under Article 42 of the Convention.

accorded to 'nationals of a foreign country' does not seem to offer much justice in relation to refugees' right to work. In fact, in Ethiopia's specific context under the repealed law, it had implied less-appealing readings – gaps which the new Refugee Proclamation has endeavored to mend.

Article 26(1) of the new Refugee Proclamation *only* recognizes that 'refugees have the right to engage in wage-earning employment in the same circumstance as the *most favorable treatment accorded to foreign nationals* pursuant to relevant laws'. This is, therefore, simply a question of what the relevant laws state on the subject of foreigners' access to the job market and identifying which of the laws offer the most favorable treatment to foreigners.

Not all foreigners living in Ethiopia assume the same status – and among the class of foreign citizens, Foreigners of Ethiopian Origin (FoEO) enjoy the widest protection and set of privileges in the job and professional markets and commercial engagement by virtue of Proclamation No.270/2002,⁶⁸ followed by Djiboutian nationals accorded preferential treatment under a bilateral treaty. Literally, this legislation situates FoEO on par with Ethiopian citizens – and allows them unconditional access to job markets – in the private sector and in all civil service agencies (except defence, security, foreign affairs and political establishments) without being required to take out 'work permits'; furthermore, the law allows an unimpeded involvement of FoEO in areas of trade and investment exclusively reserved to domestic investors.

However, it must be emphasized that there is a unique context and set of objectives on which the adoption of this law is predicated. Hence, it may be very challenging to read Article 26 as permitting refugees the *same class of protection* afforded to FoEO – as this would have far-reaching implications. FoEO are foreigners of 'special class' accorded preferential treatment for particular economic, social and political rationales,⁶⁹ and the benefits and entitlements are enjoyable

⁶⁸ Providing Foreign Nationals of Ethiopian Origin with Certain Rights to be exercised in Their Country of Origin Proclamation No.270/2002. 5 February 2002. 8th Year, No.17. Addis Ababa, Ethiopia.

⁶⁹ The intervention is triggered because of the conviction that FoEO who have acquired foreign nationality due to their life circumstances or other facts could be made to contribute to the development and prosperity of the peoples and country of their origin

only by such persons who hold a special Identification Card issued by the government – the objective being to control the enforcement of the rights, privileges and responsibilities.⁷⁰ This is not to mention, also, that it is not convincing whether the comparison under Article 27 should, in the first place, be between such ‘uniquely privileged segment of foreigners (FoEO)’ and ‘refugees’, or between ‘the ordinary cluster of foreigners’ lawfully living in Ethiopia’ and ‘refugees’.

While the government’s intentions could not be clearly identified until implementation kicks off in full force,⁷¹ there is little evidence to indicate that Ethiopia’s legal commitment under the new Refugee Proclamation would stretch as far as granting *all refugees* in Ethiopia, currently about one million, automatic and unconditional right of employment across all sectors. If *equal treatment* was indeed the intention, the law could have simply said so – as is the model case under Article 26(4) on refugees’ opportunities in joint projects.

If this reading holds, then, the next question would be one of identifying the circumstances under which foreigners (other than FoEO) are permitted to access Ethiopia’s job-market. Unfortunately, foreigners are not only afforded with very limited opportunities under various laws in Ethiopia regulating access to employment, the entitlements are also subjected to numerous conditions relating to exclusion sectors, expertise and time-frame as discussed below. For instance, under the Federal Civil Servants Proclamation which applies to all ‘government institutions’, *persons who are not Ethiopian nationals* are not eligible to be public servants.⁷² The very narrower

if the legal restrictions pertaining to the enjoyment of certain rights and privileges are lifted. Proclamation 270/2002. Note 68. Preamble and Article 3.

⁷⁰ Proclamation 270/2002. Note 68. Article 7.

⁷¹ The recently formulated National CRRF Strategy document states very explicitly that its *vision* is to see refugees and host communities being self-reliant and active participants in socio-economic activities; one of the key objectives (of pertinence to the discussions at hand) is that which speaks about ensuring that economic and social opportunities and benefits are realized by refugees and host communities.

National Comprehensive Refugee Response Strategy (2018-2027). Note 2.

⁷² Federal Civil Servants Proclamation No.1064/2017. Article 15; this is without prejudice to Proclamation No.270/2002 providing foreign nationals of Ethiopian origin rights to be exercised in their country of origin – including right to be employed in any sector without work permit – except in national defense, security, foreign affairs and other similar political establishments.

window – permitting such institutions to appoint a foreigner on temporary basis – is limited to circumstances where high level local expertise is lacking.⁷³ Therefore, refugees could not engage in the public service's job market – one of the largest employers of labour in Ethiopia's national context – unless they are accorded same treatment as FoEO.

Special legal regimes *also* apply on contracts relating to employees such as members of the armed forces, police force, judges of courts of law,⁷⁴ and prosecutors,⁷⁵ – generally restricting or barring foreigners, and by implication, refugees' access to employment in such professional establishments.

Outside of such *exclusive domains*, there exists restricted possibility where foreigners, including refugees, may receive employment in Ethiopia – subject to the requirement of securing work permit. In this regard, the most pertinent legal instrument is the Labor Proclamation No.377/2003 (just repealed and replaced with a new labour proclamation currently in print) which regulates nearly all relationships based on contract of employment between workers and employers.⁷⁶ Article 174 of the Proclamation (substituted by Article 176 under the new Labour Proclamation) obliges all *foreign nationals* (including refugees) to acquire specific work permit before they engage in any type of work in Ethiopia.

Under the Labour Proclamation, the Ministry of Labour and Social Affairs (MoLSA) has mandate to issue directives necessary for implementation of the law in relation to the 'types of works that require work permit for foreigners', the 'manner of employment' and 'giving of work permits to foreign nationals'.⁷⁷ In a deterring

⁷³ Federal Civil Servants Proclamation No.1064/2017. Article 21 (2).

⁷⁴ Amended Federal Judicial Administration Council Establishment Proclamation No.684/2010. Article 11 on 'Criteria for Appointment of Judgeship' provides that only Ethiopians could be appointed to such positions.

⁷⁵ A Proclamation to Provide for the Establishment of the Attorney General of the Federal Democratic Republic of Ethiopia No.943/2016. May 2, 2016. 22nd Year No.62. Addis Ababa. Article 11 states the appointment of public prosecutors shall be based on basic principles, including the requirement that the appointee shall have Ethiopian nationality.

⁷⁶ Labour Proclamation No.377/2003. February 26, 2004. 10th Year, No.12. Addis Ababa. (repealed in 2019)

⁷⁷ Labour Proclamation 377/2003. Article 170(1) (e), Article 172(3); (Art.171(1)(e) and 172(3) under the new law).

tone, the law also provided that any foreigner (including refugee) may *only be employed in any type of work* in Ethiopia where he possesses a work permit given to him by the Ministry; such work permit shall be given for an employment in *a specific type of work for three years* and shall be renewed every year, and when the Ministry ascertains that the foreigner *is no longer required for the work*, the permit may be cancelled.⁷⁸

In relation to employment in *investments*, too, employers are required to comply with rigorous preconditions set under national laws and are generally discouraged to retain foreign employees *indefinitely*. For instance, Ethiopia's investment laws – applying to investment activities carried out as sole proprietorship, business organizations or as public enterprise/cooperative society – and registered in accordance with the Commercial Code, place limitations on the employment of foreigners, including refugees – basically, in all spheres of economic activity involving the private sector. Under the Investment Proclamation, the Ethiopian Investment Commission is authorized to issue, renew, replace, suspend or cancel work permits to 'expatriates' representing MoLSA.⁷⁹ While any investor may employ 'duly qualified expatriate experts required for the operation of his business', the investor shall be responsible for replacing, within limited period, such expatriate personnel by Ethiopians by arranging the necessary training needed for the job – except when such position relates to *top management responsibilities*. In this light, employers are not only required to convince the Commission about any expat employee's *special expertise* which cannot be availed locally, such companies are also expected to introduce phased departure of all foreign employees, including qualified refugees, from positions they occupy in any enterprise.

The same restrictive stipulation is also provided under the Industrial Park Proclamation and its implementation regulation.⁸⁰ These regimes – regulating employment in one of the potentially largest

⁷⁸ Labour Proclamation 377/2003. Article 174; (Art.176(3) under the new law).

⁷⁹ A Proclamation on Investment No.769/2012 (as amended). September 17, 2012. 18th Year No.63. Addis Ababa. Art.30 and 37.

⁸⁰ A Proclamation on Industrial Parks No.886/2015. 9 April 2015. 21st Year No.39. Addis Ababa. Art.13, 14; and Industrial Parks Council of Ministers Regulation No.417/2017.

employers of labour in the country (i.e. industrial parks), *permit* the retention of expat personnel by any industrial park developer, industrial park operator or enterprises located within industrial parks. However, the laws limit the employment of foreigners *only* for top management positions, supervisory, training and other technical functions – and have furthermore imposed on employers the obligation to *replace* such expatriate personnel by transferring the required knowledge and skills through trainings.

On the other hand, Article 26(3) of the Refugee Proclamation provides that refugees who have academic credentials authenticated by the competent government authority, and who are desirous of practicing their profession, may be accorded the *most favorable treatment* given to foreign nationals as regards engaging in employment in areas permitted to foreign nationals. Inspired by an exact phraseology of a corresponding right under Article 19(1) of the Refugee Convention on ‘liberal professions’,⁸¹ this stipulation is meant to carry out the government’s commitment under the Roadmap by issuing *work permits to refugee graduates* in areas permitted for foreign workers by giving *priority* to qualified refugees.

And yet, since the treatment accorded to refugees is generally likened with foreigners (and not necessarily FoEO), this provision, too, does not appear to establish a general (automatic) right of refugees to work or an unconditional right to request for and obtain work permit just by virtue of a refugee status. No doubt, a refugee’s status as holder of recognized diploma offers a slightly enhanced opportunity for employment in the private sector. However, as work permits need to be issued before any expatriate, including refugee graduates, could start work in any professional line, inevitably, the procedures set under the pertinent laws would subject refugee graduates to the same limitations discussed above – in terms of required levels of knowledge/expertise (which ‘cannot be covered’ by Ethiopians), the temporal frame, and even regulations in some liberal professions which forbid practice by foreigners. This negative

⁸¹ Traditionally, ‘liberal professions’ include those that require special training and the provision of intellectual service, acting on one’s own without being employed by a state or another employer; such may include lawyers, medical doctors, dentists, veterinarians, engineers, architects, accountants, interpreters etc.

reading holds unless it is held, albeit unconvincingly, that under Article 26(3), refugees are treated as having same standing as FoEO. The solution to refugees' predicament should not have been sought in legislative ambiguity.

Conceivably, in relation to gainful employment, the *most progressive* opening is coined under Article 26(4) of the Refugee Proclamation. It provided that recognized refugees and asylum-seekers engaged in rural and urban projects jointly designed by the Ethiopian government and the international community to benefit refugees and Ethiopian nationals, including in agriculture, environmental protection, industry and small and micro enterprises, shall be given *equal treatment* as accorded to Ethiopian nationals engaged in the same projects.

Unlike the sub-articles above, this provision ushers a new chapter in the treatment of refugees *on par with nationals* and is partly triggered by the 1951 Refugee Convention itself⁸² and new geo-political developments in the Horn of Africa and international relations – prompting shifts in policy and response mechanisms to existing refugee situations. This is also in reading with the New York Declaration which urged host states to strengthen the nexus between humanitarian responses and development agendas and consider opening labour markets to refugees in close coordination with UN entities and international financial institutions to strengthen the resilience of host countries and communities in employment creation and income generation.⁸³

Currently, the most fitting scenario for implementation of this right is being pursued under the *Ethiopia Economic Opportunities Project (EOP)*, a scheme **which** coordinates with one of the few concrete outcomes of the UN Summit on Refugees and Migrants held in New York. Under this mutually beneficial arrangement, a strategy has been designed for implementing investment programs financed by

⁸² Article 17 (3) of the Refugee Convention asks states to give sympathetic consideration to assimilating the rights of all refugees with regard to wage-earning employment to those of nationals, and in particular of those refugees who have entered their territory pursuant to *programs of labour recruitment or under immigration schemes*.

⁸³ New York Declaration for Refugees and Migrants. Note 21. Para.84-85

international development partners⁸⁴ – intertwining the vital requirements of refugees in obtaining employment and decent livelihood opportunities in Ethiopia with the host government’s broader strategies for industrial parks development. The key objective of the EOP is to support Ethiopia’s industrial transformation agenda through the development of industrial parks which anticipate creating jobs in locations adjacent to targeted refugee sites in the North, East and South-Western parts of the country – of which about a third of the jobs would be dedicated to willing and qualified refugees.⁸⁵ Whether or not the industrial parks agenda succeeds, the EOP and other similar programs coined in the future in cooperation with development and humanitarian agencies, introduce new operational model in the accommodation and integration of refugees into productive labour forces – and also synchronize with the commitments of international organizations in creating economic resilience in *countries impacted by migration and refugee influx*.

Evidently, the exercise of the right to work under this sub-article – which assimilates refugees with nationals – is contingent on the effective implementation of investments and labour recruitment programs on the basis of which refugees would enter the jobs-market in Ethiopia. In the specific context of the Ethiopia Economic Opportunities Project, for example, this entails that industrial parks are actually established, refugees possessing the relevant skill profiles are selected, residence permits are issued on the basis of refugee IDs, and identified refugees – and possibly their families⁸⁶ – are relocated to new sites situated across the designated industrial parks. Since the Refugee Proclamation offers such refugees the same rights as ‘nationals’, the special conditions attached to work permits in relation to other foreigners – such as permits serving a defined time

⁸⁴ The partnership mainly involves the European Investment Bank, the World Bank Group, European Union and DFID.

⁸⁵ These objectives are clearly included in the Roadmap under the government’s pledge on ‘job creation’.

⁸⁶ Under Article 12 of the repealed refugee law (as is the case under the new law), the concept of family unity is already recognized, and as such, members of the family of a recognized refugee are allowed to enter and remain in Ethiopia and shall be entitled to ‘all rights and duties of an asylum seeker’. In the particular context of the discussion at hand, this entails the grant of work and residence permits to members of a refugee’s family – although, for the sake of clarity, the Refugee Proclamation should have provided an explicit provision to such effect.

frame and expat workers' eventual replacement by a national – would not be applicable. Again, since these class of refugees would also need to move from camps to selected industrial parks or project establishments where the 'joint schemes' operate, the 'equal status' proviso should be read as entitling them to seek employment elsewhere in Ethiopia if, for any reason, they could not continue to work in such facilities or the facilities could not kick off as planned for any reason – as would likely be the case with the industrial parks.

A second progressive development under the new Refugee Proclamation also relates to the enhanced status of the right to work offered to certain category of refugees under Article 26(9). The provision provides that none of the restrictions as applying to foreigners in relation to right of work would be applicable on a refugee who marries an Ethiopia national, or have one or more children who possess Ethiopian nationality.

Once a refugee is employed – whether within or outside of the scheme designated under Article 26(1) or 26(4), Ethiopia's laws extend benefits and protections to refugees that are as favorable as those availed to nationals. While the labour law imposes obligation on employers not to discriminate between employees on the basis of any condition,⁸⁷ in the case of Article 26(4), the new Refugee Proclamation even goes further – entitling refugees to 'rights and obligations' imposed by applicable laws and prohibiting 'any discrimination between refugees and Ethiopian nationals'.⁸⁸

In conclusion, while Ethiopia's commitment under the Roadmap is widely labeled as positive development and may well ease the challenge few qualified refugees had experienced in the past, for the 'broader' and 'largely unskilled' refugee community, Article 26(1) of the Refugee Proclamation has not really established a right to work – unless it is submitted that they have the same standing as FoEO. Indeed, in this regard, the new Proclamation is clearly impacted by the framing of the Refugee Convention itself as well as the Roadmap wherein Ethiopia *only* undertook to extend access to employment 'within the bounds of domestic laws' (as applying to ordinary foreigners) – which laws, as discussed above, are but very deterring. A more proactive approach would have been to establish a clear legal basis that would have allowed the broader refugee community to join the Ethiopian labour market in phased numerical progression

⁸⁷ Labour Proclamation No.377/2003. Note 76. Article 14 (1)(f).

⁸⁸ Labour Proclamation No.377/2003. Note 76. Article 25 (6) and (7).

- with due emphasis accorded to facilitating opportunities of enhanced livelihood and self-reliance.

9.2. Self-employment

Another gainful activity, vitally complementing the potentially limited opening availed to refugees under 'wage-earning employment', is provided under Article 18 of the Refugee Convention in relation to 'self-employment'. It states that a refugee should receive 'treatment as favorable *as possible and, in any event, not less favorable* than that accorded to aliens generally in the same circumstances, as regards the right to engage on his own account in agriculture, industry, handicrafts and commerce, and to establish commercial and industrial companies'.

This provision implies that refugees shall generally benefit from same opportunities of access as are available to 'foreigners' - if they wish to involve in agricultural, commercial and industrial activities. In Ethiopia, these sectors are regulated by different bodies of national laws - which define rights, obligations and requirements that particularly apply to foreigners. It is, therefore, evident that any understanding of refugees' rights to self-employment and challenges encountered in such setting require sufficient exposition of the rights accorded to *foreigners* under a plethora of domestic laws.

The most important of such legislations - directly impacting the livelihood and economic opportunities afforded to refugees in relation to self-employment - are laws adopted to regulate trade, business and investment operations in Ethiopia.

Under the Roadmap, Ethiopia's commitment is anchored on one fundamental pillar: *augmenting self-reliance* which mainly, if not exclusively, impacts refugees participating in the OCP scheme. In particular, Ethiopia undertook to expand the OCP 'with due emphasis on facilitating opportunities for self-reliance' and on creating 'enhanced livelihood opportunities to OCP refugees - thus enabling them to work, support themselves and reduce dependency on the government or aid agencies'. What is more, in addressing the needs of OCP beneficiaries in relation to self-employment opportunities, Ethiopia has also promised to arrange 'internships

and apprentice opportunities’, ‘improve access to business, finance and start-up capital’, and ‘access to markets’. As part of the self-reliance initiative, Ethiopia also pledged, ‘to make available 10,000 hectares of irrigable land’ within the bounds of national law ‘to allow refugees and local communities to engage in crop production by facilitating irrigation schemes, subject to the availability of external financial assistance’ and to ‘develop a legal and policy framework outlining the terms and conditions for access to land by the refugees.’⁸⁹

For the most part, such agenda, intending to realize the ‘enhanced status’ of refugees in utilizing self-employment opportunities, will be pursued within the framework of discretionary policies and administrative instruments, which may not necessarily be good in itself and of itself. However, what would be more pertinent in the context of refugees’ lived experience and expectation is the question of how the new Refugee Proclamation addresses refugees’ right to self-employment and how far it goes in accommodating the objectives outlined above under the Roadmap.

Article 26(2) of the Refugee Proclamation on self-employment provides that a recognized refugee or asylum-seeker shall have the right to engage, on his own account, including, in agriculture, industry, small and micro-enterprise, handicrafts and commerce, and to establish business organizations, in the same circumstance as the *most favorable treatment* accorded to foreign nationals pursuant to relevant laws. Obviously, this goes above the protection contemplated under the Refugee Convention. The issue, then, is what the relevant legislations provide in terms of the *measure of treatment* accorded to different classes of foreigners to engage in self-employment.

The Commercial Code of Ethiopia – currently undergoing reform – establishes the fundamental right of every person to engage in any commercial activity – subject to compliance with the requirements of the law which may provide conditions relating to nationality. On the other hand, Articles 2 and 3 of the Commercial Registration and Business Licensing Proclamation No.980/2016 – which apply to ‘any

⁸⁹ ARRA. *Roadmap for the Implementation of the Ethiopian Government Pledges*. pp.7-8.

business person, sectoral association, commercial representative and any other person engaged in commercial activity', regulate services dispensed professionally and for gain by any person in relation to activities specified in the Commercial Code. The same law obliges that no person shall obtain a business license without being registered in commercial register and no person shall engage in business activity without having a valid business license.

The Commercial Registration and Business Licensing Proclamation is silent on the subject of the right of foreigners in the context of the discussion at hand; but, Ethiopia's investment laws have been refined over the years to determine trade and investment areas that are exclusively reserved to Ethiopian nationals/domestic investors and in specifying areas which are open to foreigners, including refugees.

Under an investment law which had since been repealed,⁹⁰ nearly all commercial activities that would be pertinent to refugees' self-employment opportunities are clearly branded as 'areas of investment reserved for domestic investors'; these had included retail trade, brokerage, most of the wholesale trades, import trade, a significant number of sectors in export trade, non-star designated hotels, motels, pensions, tearooms, coffee shops, bars, non-specialized restaurants, taxi cabs, commercial transport, bakeries, mills, barber shops, beauty salons, goldsmith, tailoring (except on factory-scales), and building and car maintenance services. A subsequently adopted legislation – which is also undergoing reform – followed a different approach,⁹¹ ambiguously leaving such detailing of areas of investment reserved for nationals or left open to foreigners to a regulation that would be adopted by the Council of Ministers. Two regulations, promulgated in 2012 and 2014, strove to specify these sectors.⁹²

Under the regulations, areas of investment exclusively reserved for Ethiopian nationals were substantially trimmed, and much the same, areas in which foreigners would not be allowed to engage were

⁹⁰ Proclamation of the Federal Democratic Republic of Ethiopia No.37/1996. 18 June 1996. 2nd year No.25. Addis Ababa.

⁹¹ Proclamation No.769/2012. Note 79. Article 7 and 8.

⁹² Council of Ministers Investment Regulation No.270/2012 (amended by Regulation No.312/2014).

narrowed to far fewer commercial activities.⁹³ In consequence, under Article 4 of Regulation 270/2012 (as amended), foreigners – including refugees, would be allowed to invest in areas of investment specified in the schedule attached to the regulation. By implication and *de facto*, all retail trades of vital importance to refugees and engagements in small-scale business activities listed above – which are not specified in the schedule – would be beyond the reach of foreigners, and hence refugees.

The effect of such legislative organization appears to be clear and distressing. Extending refugees the right to engage in agriculture, industry, handicrafts and commerce and to establish commercial and industrial companies as ‘the most favorable treatment accorded to foreign nationals’ *only ends up* offering such refugees very limited choices and opportunities in Ethiopia – submitting, again, that their standing would not be compared with FoEO. In the context of the lived experience of refugees, the impact of such legislative organization would be very painful.

Again, the way out lies in constructive application of the law wherein refugees would be allowed to benefit from self-employment opportunities in phased numerical progression over years –based on structured programs and considering the socio-economic realities on the ground. In practice, though, this would present a serious challenge.

10. Conclusions

⁹³ Banking, insurance, micro-credit and saving services; Packaging, forwarding and shipping agency services; Broadcasting and mass media services; Attorney and legal consultancy services; Preparation of indigenous traditional medicines; Advertisement, promotion and translation works; air transport services using aircraft with a seating capacity of up to 50 passengers.

Foreigners cannot also engage in the following services: Finishing of fabrics, yarn, warp and weft, apparel and other textile products using certain processes; Tanning of hides and skins below finished level; Printing industries; Manufacture of cement; Manufacture of clay and cement products; Tour operation below grade 1; Construction, water well and mining exploration drilling companies below Grade 1; Kindergarten, elementary and junior secondary education by constructing own building; Diagnostic center service by constructing own building; and Clinical service by constructing own building; Capital goods leasing (excluding leasing of motor vehicles).

The study has analyzed the positive advances as well as challenges observed in the design and implementation of Ethiopia's policy on refugees – particularly focusing on the rights to residence, freedom of movement and engagement in gainful employment. With the successive adoption of policy, sectoral legislation and national strategy, Ethiopia has for the first time endorsed measures – predicating its actions on a comprehensive framework of thinking which seems to acknowledge that the problems of refugees last longer and that the conventional humanitarian response mechanism in camps cannot, in the long term, proffer viable solutions.

In this context, the progressive developments in national policy discourses and the protective regimes designed under the Roadmap and the new Refugee Proclamation could be viewed as commendable measures. Both have fundamentally diverged from the past, liberally provided for an expanded outline of rights, and furthermore contemplated specific interventions for managing longer-term displacement of refugees.

However, the recent progresses in refugee law regime notwithstanding, refugees' entitlements and experience remain challenged by regulatory gaps and uncertainties in many areas – including in the context of rights to residence, movement and engagement in gainful employment. Considering the multilayered pledges undertaken by Ethiopia in 2016, today, it is uncertain if all the assurances could be accommodated within the framework of the recent legislative overhaul, and even more so, whether the new refugee legislation fully corresponds with the rights of refugees under international instruments.

In particulars, the general encampment policy continues in violation of the Refugee Convention; in actual practice, the grant of refugee status in Ethiopia does not automatically entitle a person the right to move freely or choose a place of residence in much the same way as other foreigners with legal residency status. While ARRA may now 'facilitate' the freedom of movement (and residence) of refugees and asylum-seekers, and in fact, this scheme has been utilized widely by many refugees in the past, the procedure remains an exercise of agency discretion, and as such, is not predicated on unequivocal recognition of a right. For the larger population of refugees in Ethiopia, the right to freedom of movement and residency is *still*

conceived in the context of the encampment policy and its restrictive impacts.

On the other hand, it is noted that the OCP scheme has facilitated better enjoyment of the right to freedom of movement and residency of a fraction of the refugee community in Ethiopia. Today, regulation will yet provide details on whether the current OCP practice will continue as it is and furnish guideline that directs the application of OCP to all nationalities and their socio-economic adjustment in urban life settings. But, considering the present trajectory and the strategic designs under the Roadmap and National Comprehensive Refugee Response Strategy documents, it is evident that Ethiopia's transition from camp-based approach to a more integrated system which works on the provision of protection and assistance to *all refugees* in off-camp setting will not be realized any soon. A belated reaction on a comprehensive OCP or ACP regime prompts social isolation and frustration of refugees in camps, and will raise issues of compatibility with the Convention which accords the right to freedom of movement and freely choose residence – subject *only* to such regulations as are applied in respect of aliens in similar circumstances.

In relation to the right of refugees to engage in gainful employment, substantive ambiguities and contentions prevail. But, it is encouraging to observe that the new Refugee Proclamation has been designed to afford wider opportunities to refugees. Potentially, this legislative development could have far-reaching implication on the right of refugees to movement, residence and on the enhancement refugees' livelihood and self-reliance.

However, on wage-earning employment and self-employment, the fact that the new law provided for minimum threshold of 'most-favored treatment' as accorded to 'foreign nationals' would not seem to offer much justice in relation to refugees' right to work and self-employment. While not all foreigners living in Ethiopia assume the same status – and it is true that among the class of foreign citizens, Foreigners of Ethiopian Origin (FoEO) enjoy the widest protection in the job and professional markets and commercial engagements, it would be very difficult to read the Refugee Proclamation as permitting refugees the *same class of protection* afforded to FoEO – as this would have far-reaching implications.

On the other hand, outside of FoEO, it is troubling to note that foreigners (and by implication, refugees) are not only afforded with extremely limited opportunities under various laws in Ethiopia regulating access to employment and commercial activities, such 'entitlements' are also subjected to numerous conditions. In the context of the lived experience of refugees, the impact of such legislative organization is very painful.

Considering the gaps, a well-considered approach on the way out would be to avoid extremes (of complete denial or wholesale permission of rights) and in a constructive application of the law wherein refugees would generally be allowed to benefit from wage-earning and self-employment opportunities in Ethiopia in phased numerical progression over years – based on structured programs and assessment of the socio-economic setting on the ground.

In practice, this may entail starting from recognizing the aforementioned rights of refugees *in principle*, but proceeding to issue work permits and trading licenses only on a case by case and quota basis which may, among others, be determined in light of the socio-economic realities on the ground and the level of commitment of the international community in responsibility and burden sharing.

‘Sell Me the Oranges’: Change in Migrants’ Worth across the Ethiopia-Sudan Border

Kiya Gezahegn

Abstract

The people in Metema Yohannes, a small town along the Ethiopia-Sudan border, used to refer migrants as oranges, implying a fruitful business for all. Migrants, for long, have been a source of income as well as conflict in this area located on western part of the Ethiopian border. In 2015 alone, an estimate of 14,000 to 32,400 migrants crossed to the Sudan or further to Libya and Egypt using this border town. With no accurate statistics of migrants who use this route, the migration industry along this route is estimated to be worth 203 million USD annually.

To the argument of many, despite government efforts to tackle irregular migration, different factors and change in context strengthened irregular migration routes that put migrants’ life at risk on a different level. Selling of migrants as merchandize, poaching of migrants, organ trafficking have become a common phenomenon. Following the strict border control, the cost of migration has also increased. This paper thus looks into such changes in migrants’ value and safety brought by state actions and inter-state relations.

Key words: *Ethio-Sudan border, mobility, migration industry*

Introduction

In 2015 the Ethiopian government established anti-human trafficking and smuggling taskforce secretariat headed by the Federal Attorney General to deal with the increasing human migration out of the country. Under the 2015 anti-trafficking Proclamation, No.909/2015 a taskforce was established replacing the previously existing national coordinating body, which was not backed by a legislative measure. The taskforce is supported by the secretariat and coordinates concerned government and non-government institutions to strengthen the effort and put an end to human trafficking and smuggling across the country.

At national level, the task force has as its member ministries and other national government structures. Similar taskforces are also established at regional and lower levels. Other initiatives taken by the government such as legal and policy changes on migration have also impacted the movement in and out of the country. Regardless, the youth continued to move out of Ethiopia through the different migration routes for different reasons. One of the destination countries for these migrants has been the Sudan through the western border point of Metema Yohannes. According to United Nations Population Division (UN DESA) 2017 report, there were 71,631 Ethiopian migrants in the Sudan¹². Earlier report in 2014 by Regional Mixed Migration Secretariat (RMMS) indicated between 18,000 and 100,000 migrants leave to Sudan through Metema each year, the majority taking the irregular route.

For such crossing of the border, migrants are expected to pay a significant amount of money depending on their place of origin. The price required by brokers and other migration 'facilitators' also varies based on the season and any other arrangements made. Better state control of the borders and strict regulations against human trafficking forced migrants to use routes which are more dangerous; with the increased risk brokers take, price for migration also increases. It further put the safety of migrants open to danger. Regulations by the government pushed the migration industry in Metema Yohannes underground; what was then an open business is now done in secrecy. The once used hotels which openly gave shelter to human smugglers and their clients have now changed into private homes used as warehouse. Brokers are heavily armed to protect themselves and migrants, whom they see as merchandize, from security forces and other brokers. Residents are now involved in 'selling' migrants for and among the different broker networks.

Further in the Sudan, police forces and detention centers have tapped into this economic source by requiring 2000 US Dollar (USD) from detained 'illegal' migrants for their deportation. In 2018, however, this has changed following the political change in the

¹ These numbers are restricted to documented migrants. The actual number, including irregular migrants, is believed to be more than the official statistics indicated.

² <http://www.un.org/en/development/desa/population/migration/data/estimates2/estimates17.shtml>

country and other external factors. With the coming to power of the new Prime Minister Dr Abiy Ahmed in Ethiopia, the peace deal between Ethiopia and Eritrea and economic turmoil in Sudan, migration to the Sudan has shown decline. Following these changes, other new actors emerged with human smuggling being openly practiced once again. This paper thus attempts to look into how migrants' value and the migration industry adjust to the changing state actions and relations between countries. The data presented in this paper was collected in 2017 (August-September) and 2018 (March), as part of a PhD research project in progress. In order to explore and analyze the issues at hand, interviews were conducted with potential migrants, returnees, ex-brokers, Metema Yohannes residents, IOM officers, and government officials at different levels. Informal interviews were also conducted with intermediary brokers and Sudanese residents in the border town of Gallabat.

The Study Area

Metema Yohannes is, one of the three major migration outlets in Ethiopia³, used mainly by migrants to cross into the Sudan⁴. This area is located bordering Sudan at 36°17' E and 12°39' N' under the west Gondar administrative zone of Amhara National Regional State. Until 2015, Metema Yohannes used to be a *kebele*⁵ and since then a town administration with its own municipality.

Having a long established historical tie with the corresponding Sudanese border town of Galabat, Metema Yohannes had economic, political, social, and cultural significance in the history of the country. The battle of Metema (9-10 March 1889) between Emperor Yohannes IV and the Dervishes made the area well known among the Ethiopian public as a historical landmark. Metema also served

³ The other routes include of the eastern route through Djibouti and Somalia and the southern route through Moyale. Majority of migrants using these routes make their destination at the Middle East and the Republic of South Africa

⁴ What is known as the Metema route includes different towns and crossing points in Metema *woreda* and its surrounding *woredas*. From among these routes, Metema Yohannes town has for long being used as the main exit route for many migrants. In this paper, therefore, the author focused on Metema Yohannes town from among the different Metema routes.

⁵ *Kebele* is the smallest administrative structure in the Ethiopian government next to *woreda* (district)

historically as an outlet for the long distance trade of the 19th century and still continue to be used as an inland port for export and import trade from Port Sudan.

Characterized by continuous conflict and at the same time harmonious relations, the two communities on both sides of the border sustained the relationship. Economic relation, based on trade and agriculture, however, comes out strong which allows local residents to cross the border on daily basis. In this cross border interaction, contraband trade and smuggling of firearms is also taken as a livelihood by the youth. Meanwhile, the service sector in hotels and tea shops are dominated by women, particularly migrants who came from other parts of the country. Other internal migrants, mainly men, also come to this town to work on large-scale agricultural plantations located in the different industry zones within the *woreda*. And as a result of the uninterrupted flow and movement of people from and to the town, the total population has been highly irregular and unpredictable. Regardless, according to *woreda* offices, in the year 2015/16, Metema Yohannes had a total population of 25,008 of which 12,657 are male and 12,350 females.

The Migration Trend

The significance of what is called “the western route” to the Sudan among migrants has been notable. The number of Ethiopian migrants using this route to the Sudan and Europe remarkably increased since 2014 regardless of the danger and human right violations experienced en route (Carter and Brigitte 2016).

However, migration through this route to the Sudan and further is not a recent phenomenon. Mass flow of people through Metema Yohannes was observed during the DERG⁶ regime because of famine, civil war, political instability and the repressive political rule (Faiz 2013; Hailemichael 2014; Grabska 2016). By 1990, 942,295 Ethiopian migrants lived in the Sudan (UN DESA 2017). Later, after the downfall of the DERG, the repatriation program of Ethiopian political refugees from Sudan to Metema and other nearby *woredas* bordering the Sudan further made the route familiar as a gate out of

⁶ Also known as the Provisional Military Government, DERG came to power in 1974 after the overthrow of the last monarchy, Emperor Haile Selassie I and ruled the country until 1991.

the country. According to Bariagaber (1997), political conflict and war with Eritrea led for the displacement of thousands, particularly Eritreans, who migrated to the Sudan through Metema Yohannes. These migrants of the 1980s and 1990s, according to Grabska (2016), are refugees unlike the present predominantly economic migrants. As a pull factor, Faiz (2013) stated the existence of petroleum in the 1990s and the economic boom afterwards attracted many economic migrants to the Sudan, including Ethiopians.

In addition to the longstanding migration trend, the cultural similarity between Ethiopia and Sudan and geographical proximity encouraged migrants to travel to the Sudan. Others consider the Sudan as a transit to reach Europe or Israel. In 2011, ILO reported the number of Ethiopian migrants travelling to Libya through Sudan to be around 75,000-100,000 per year (Anteneh 2011, 48). In 2014, the number of migrants using the western route was reported to be between 18,000 and 37,000 per year (Frouws 2014). Zeyneba (2017) puts this estimate at 14, 4000 to 32,400 migrants annually in the year 2015.

During the militarist DERG regime (1974-1991), people fled the dictatorial administration and unlawful prosecution to the Sudan and further to Europe and the States (Asnake and Zerihun 2016). Though many expected the route to be of less important to Ethiopian migrants after the downfall of DERG and the return of political refugees from the Sudan, migration through Metema Yohannes to Sudan has shown no decline. In fact, in spite of the strict border regulations set by both governments, Metema Yohannes still continued to be the chosen route for those who aspire to go to the Sudan and further to Europe. Irrespective of the risk migrants face along the route, which in most cases is anticipated and well prepared for by migrants, people continued to use this route. Nonetheless, the trend has shown dramatic change on different levels adjusting itself to government response to tackle irregular migration and political changes in the different states in the region.

For irregular migrants, according to an assessment by IOM (2017), there are mainly four crossing points identified in the *woreda*, which includes of Metema-Galabat, Delelo-Sennar, Lominat-Fogera, and

Tumet-Mendoka. Of these, the main exit routes for migrants have been identified to be Metema Yohannes, Shinfu, Meqa and Kokit.

From interviews held with stranded migrants, Metema Yohannes is preferred by migrants in terms of convenience and ease in crossing the border, with the main road access from Addis Ababa to Khartoum. Direct transportation facility from Addis Ababa to Khartoum, passing through Metema Yohannes town, makes this route easy and navigable.

For irregular migrants with no visa to enter the Sudan, manoeuvring the given freedom to move within the country, they cross the different check-points along the road claiming their constitutional right to free movement within the national boundary and seek the assistance of brokers to cross the international border. But, depending on situations, the relevance of the border in Metema Yohannes town as a free gate for irregular migrants sometimes changes to neighbouring border towns such as Shinfu, Meqa, Kokit and Humera, where border control is relatively loose. These migration outlets are usually preferred by migrants whose destination is Libya or Egypt and travel across the Sudan without getting into Khartoum. The selection of these routes taken by migrants also differs in accordance with the origin of migrants. Faiz (2013) attested many Ethiopians usually use the Metema-Galabat whereas for majority of Ethiopians from the North, the Humera border is more favoured. Further south, the Damazin border is used mainly by Ethiopians from Benishangul Gumuz. Recently, however, mainly after the 2016 and 2017 state of emergency and the crisis in the Sudanese economy in 2018 and 2019, migration flow to the Sudan has declined.

The Franchise

For migrants to leave to the Sudan using the Metema route, there are three main ways, both regular and irregularly. They can use the option of getting a one-month tourist visa from the embassy of Sudan in Addis Ababa and overstay their visa. The other option available is travelling through the desert to cross the border illegally with the assistance of brokers⁷. Used by the few and rarely

⁷ Here the word brokers refer to both human smugglers and traffickers. Though there is a clear theoretical difference between the two categories, in Metema Yohannes it

acknowledged is the third option of getting a *Tasrih*, a temporary residence visa (ID) provided by the Sudanese government for limited reasons. Though this is used to enter the country legally, the purpose of stay and duration is falsified and extended which makes the migrants irregular. And thus, in all the three routes, it can be argued, regardless of their entry, either regular or irregular, all end up as irregular migrants in Sudan. The entries are legal, formal and regular in the two arrangements, tourist visa and *Tasrih*. All the same, the status of the migrants who entered the country becomes irregular after the expiry of the visa and temporary residence. This show that migrants will opt to violate the regulatory requirements needed to be complied with to get into Sudan.

Though the desert route was common previously, large numbers of migrants leaving the country at present are 'legal' with temporary tourist visa. To process a visa from the Embassy of the Sudan takes only five days and costs around 980 *Birr* (ETB) [36 USD]. Other costs include passport fee (600ETB~22USD) and transportation cost (1400ETB~52USD) when using direct bus from Addis Ababa to Khartoum and around 500ETB~19USD when they use local buses). On a daily basis, forty to ninety Ethiopian migrants enter the Sudan by using temporary tourist visas (Zeyneba 2017). Of the migrants taking this route using visa, the majority are women (ibid). The Metema route, according to Anteneh (2011) and Jamie (2012), served mainly women for the purpose of domestic work. Ethiopian women are also found in the Sudan engaged in selling tea and coffee on the streets and sometimes in commercial sex work (Anteneh 2011; Shewit 2013; Zeyneba 2017).

Another legal option for these migrants is to cross the border with *Tasrih* which costs less but requires of network with Sudanese government officials, employees, police officers, and/or citizens. The *Tasrih* is processed at Immigration office in Galabat, the Sudanese border town. It is issued to Ethiopians who seek to enter the country temporarily for court cases or family reunification. Pastoral border communities who search for their livestock on the other side of the border are also given *Tasrih*. These circumstances

overlaps making it almost impossible to make distinction between the two. And thus in this paper, shying away from making differentiation, the term broker is used, as referred by migrants, to both traffickers and smugglers.

and opportunities are however explored by migrants to get into the Sudan where the ID enables them to travel freely in the country and seek for a job, though temporarily. The process of getting *Tasrih* can take from a day up to a week and usually involves bribing Sudanese officials. In addition, irregular migration under false documentation disguised as Metema Yohannes resident also exists in the town of Metema Yohannes. According to the cross border agreement, residents of the two border town can cross the border during the day without any documentation required. And so, either by acquiring Metema Yohannes residence ID or changing their dressing to look like residents, migrants cross to Sudan.

For those who lack any kind of documentation, illegal crossing points stretch along the border through the desert of Metema and Sudan. For this purpose, network of brokers is well established in the town and different routes and mechanisms are used to cross the border which makes it difficult to track and control migration flow for concerned government bodies. Looking further into the demography of migrants taking this route, it is reported that many of the migrants are young Ethiopian, Eritrean and Somali men looking forward to reach Europe through Libya and Egypt (Kuschminder 2012; Frouws 2014; Strachan 2016). There are also Ethiopians, mainly from Oromiya National Regional State, with their destination being the Sudan. However, the route, cost and network used is different for each type of migrants.

For Ethiopian migrants whose destination is Sudan, visa from the Sudan Embassy is usually processed by migrants themselves, with information provided by brokers. Though arrangements are made prior, the service of brokers is sought after migrants secure their passport and visa. Brokers are then expected to assist migrants into reaching and crossing the border. These brokers require of payment up to 800USD for Ethiopians to enter into the Sudan irregularly through Metema (Frouws 2014; Majidi and Linda 2016). This payment is more expensive for Eritreans and Somalis, who pay from 3,000USD up to 7,000USD, who travel beyond Sudan to Libya (Majidi and Linda 2016; RMMS 2017). The reason is that they are believed to have relatives abroad and are thus able to pay; and so the payment for these migrants is calculated in US dollars.

Though social networks in destination countries is regarded to have sustained migration by providing information and safer route for migrants, the existence of such network and link for Eritrean and Somali migrants make them vulnerable. At the same time, for all migrants, having such networks with a link to a broker guarantees 'relative' safety and protection en route. For instance, they are not put for sale among migrants as this can ruin the reputation of brokers and their business. Besides nationality and existence of social networks, the cost of migration also increases significantly during high seasons of migration, which is from March to June.

Because of the money required, some migrants are reported to stay in Metema Yohannes for a while to earn money and gain knowledge of the route to the Sudan. By staying in Metema Yohannes, they avoid 'full service' of brokers and cross the border themselves after learning about the illicit ways with the help of acquaintances.

They also avoid payments to be made to brokers to come to Metema Yohannes. For such migrants, brokers require from 5000 to 7000ETB ~ 185-259USD to reach to Khartoum. Other payment arrangements are also made where migrants pay brokers after reaching the Sudan or Libya. For women, their salaries are transferred directly to the brokers for the time period agreed. Some are forced to continue working for the broker and make their payment. For migrants travelling to Libya or Egypt to cross to Europe, any kind of payment is expected to be made after arriving at the shores of Libya or Egypt. This enables migrants to extort money from their families or relatives who are forced to pay or otherwise migrants are stranded and abused by brokers until payments are made. Because of such arrangements made with brokers, Ethiopian migrants from different parts of the country fled without the need to secure money for migration.

No one will be willing to give you money for your travels. They never think you will be brave enough to make the journey. That is why I approached brokers. They do not ask for money up front; it is only when you get to Libya you need to pay. How can I trust and give a broker such amount of money before I travel half way at least. Even if I want to, I do not have any. But when the brokers call

back home and threaten your family, then they pay. They have no option (Ethiopian Somali stranded migrant, Metema Yohannes, March 2018)

This has been given as a reason why migrants prefer the irregular channel though it is expensive than the legal. The 'pay later' arrangement by brokers is more suitable for young migrants who do not have money on their hands to finance their travel legally. Other reason given as to why the legal option to go to Sudan is disregarded by migrants includes lack of knowledge as well as effective marketing of the irregular route by brokers. Leaving out the difficulty and risk involved in taking the desert route, brokers publicize the irregular route as an easy option to take for migrants.

On the other hand, the lack of effort to make the 'legal' route accessible also impacted the decision made by migrants to incline into using the irregular route. Recently, however, there have been growing number of migrants who use the short term tourist visa to get to the Sudan, though the assistance of brokers still continued to be significant. Nonetheless, the cost of migration declined significantly to 7000ETB~259USD for some migrants while others pay the same amount to that of the desert route (800USD) if they lack access to information. Brokers role has also been restricted to facilitating transportation and contact in destination. They no longer accompany migrants to the embassy or immigration. The direct transportation from Addis Ababa to Khartoum also made the work of brokers easy. At the same time, there are also migrants who travel to the Sudan without any assistance from brokers or with the facilitation of relatives or friends.

In all these routes and alternatives, the network of brokers operate in an organized manner, stretching from migrants' place of origin up to Metema and further in the Sudan and Libya/Egypt (Faiz 2013; Barasa and Fernandez 2015; Majidi and Linda 2016, Zeyneba 2017). Besides this chain of local brokers, government officials, police/ border security and customs are involved in issuing *kebele* IDs for migrants, giving alert on security checks and assisting an easy pass through the border, undetected. Migrants from Eritrea and Somaliland are provided with Ethiopian residence *kebele* ID to help them navigate freely in the *woreda* and Metema Yohannes town. In 2018, according to residents of Metema Yohannes, the

involvement of security forces in smuggling migrants has been significant. Their direct involvement as brokers have been indicated in many of the interviews held; either by using government owned cars to get migrants to the border or giving blind eye to those who cross illegally and get some payment in return.

Once out of Ethiopia, the *Raishaida*, pastoral ethnic groups living in Eritrea and Sudan, are known for trafficking and smuggling migrants into the Sudan (Trieber 2013; Majidi and Linda 2016). They are also accused of being involved in organ trafficking of migrants. For those crossing the desert, selling of migrants is also another phenomenon along this route. The Amharic word “*meshet*”, which translates to selling, is used by brokers and Metema Yohannes residents. Such transaction is believed to be mainly among main brokers within or outside of their own chain where they engage in buying and selling of migrants for profit besides the fee migrants pay. The fate of migrants in such cases is decided by the brokers.

This is done without the consent or knowledge of migrants; some are sold to organ traffickers others become slaves and property of the final buyer. In some cases, migrants are expected to work for the brokers while in others they are asked to pay large sum of money to get out of servitude and cross to Europe. Those who are sold to organ traffickers undergo medical check-up for HIV/AIDS once they get into the Sudan. If found negative, they are subsequently transferred to a place unknown to many.

Considered as profitable, a single migrant can cost up to 20,000ETB~740USD when sold to traffickers on the Sudanese side. And as a result, either on the road or from safe houses, poaching of migrants has now become more visible among brokers and intermediaries. Brokers are thus forced these days to protect themselves and migrants from other brokers and security forces by carrying gun and heavy arms or bribing residents called *Sheqaba*.

These are young Metema Yohannes residents who act as intermediaries who either look out for migrants on the move for such purpose of blackmailing and poaching or assist directly in the crossing by taking commission from main brokers. Their role sometimes extends to being informants over security situations. Residents of the town, mainly young men, benefit from the

migration industry in such a way where migrants are considered as merchandize.

The State and Migrants

According to Triulzi (2013), migrants know from the start that the journey through Sudan and Libya would be long and difficult. And thus they prepare themselves for the risks anticipated en route and at destination. Though many finish their journey into the Sudan, others return to Ethiopia, unable to continue travelling because of thirst, hunger, sexual abuse, and language barrier, among other factors. Some also get caught by security forces on either side of the border.

Metema Yohannes has thus become a place where stranded and detained migrants either in Ethiopia or in Sudan are brought to. Emergency migration response center has been set up in 2016 by International Organization for Migration (IOM) to assist Ethiopian migrants and deportees. IOM, however, only provides this service to migrants who are willing to go back home; the service is restricted to assisted return. Those who refuse to do so are kept in the police station for a while and then are let go.

The Metema Yohannes community also financially and emotionally supports victims of irregular migration and stranded migrants who come back from the Sudan. IOM and since 2018, a local NGO called *Timret Lehiwot*, provide temporary shelter and meal to stranded migrants. Further, these organizations provide transportation facility to migrants going back to their home towns. However, such assisted return program is taken by some migrants as a safe and 'free' alternative if their attempt to cross the border fails to succeed. Brokers also target these offices in search of potential migrants and clients.

Yesterday, I had to bring three Somali migrants from the immigration office. I was all alone and so I took a Bajaj to come to the office [response center] with the migrants. There were brokers who were following us on foot at first and in a Bajaj hoping to get the chance that I will get off at some stop. [...] They knew I was from IOM but did not care. I am alone and they were in groups. They saw

where we came and I have seen them once or twice since then doing a recon around our compound. They are waiting for the migrants to leave the compound. If they find them alone by any chance, they will take them back to the border (IOM response center worker, March 2018)

Woreda department of Labor and Social Affairs in collaboration with IOM, police, immigration and customs office are also working to stop irregular migration and trafficking across the border. Awareness creation and sensitization programs are launched to educate people on the risks migrants go through and thus not to be involved, directly or indirectly, in the trafficking of migrants.

They are also using local community structures to expose brokers and smugglers. To assist legal migrants into the Sudan, in 2014, the government established associations, collectively known as *Shanta Maheber*, of individuals who previously used to be *sheqaba*. The associations nowadays receive migrants at the bus station and take them to a temporary shelter near the border and immigration office. They also facilitate the process at the immigration office on behalf of the migrants. They then help them change currency and take them to the bus which comes from or go to the Sudan.

If needs be, they take them to hotel rooms to stay the night in Metema Yohannes. For this, migrants are required to pay for these services. There is, however, no supervision of these associations by the government.

The *Shanta Maheber* is thought to keep migrants safe and away from brokers who are known for their deceit and luring migrants into the irregular channel. However, if closely observed, poaching of migrants between brokers and these 'associations' who claim to provide services of legal agency has become a common scene in this border town. Within the association, some members are accused of being broker and taking advantage of the interaction they have with people coming into the town at the bus station. The *Shanta Maheber* also ask payments from migrants for the services they provide, mostly overcharging them or asking for the same payment twice. The payments required by the association includes of

assisting with luggage and barrel (300-400ETB~11-15USD) and making a copy of their passport (50ETB~2USD) for immigration⁸.

The associations further get income by exchanging currency for migrants. Though by law, the only authority to exchange foreign currency is the Bank, these associations are engaged in such line of work with the exchange rates set by the association itself. Members of the associations, according to residents, have become wealthy from the money they get from migrants. In fact, it has been taken as one of the major job opportunities in the town for the youth.

Such associations rely upon the flow of migrants crossing the border into the Sudan and coming back to Ethiopia throughout the year. In 2017, 77 to 120 legal migrants were believed to have crossed the border per day. Irregular migrants who use the desert route are also large in number, though the statistics is unknown. Recently, however, given the economic turmoil and inflation in the Sudan, the number of legal migrants who cross the border into Sudan has drastically decreased. In turn, Ethiopian returnees coming from the Sudan has increased in the past five months. Large number of Eritrean refugees from Sudan coming into Metema Yohannes town has also become new scenery since the peace deal between Ethiopia and Eritrea was struck on 16th of September 2018.

"We have lost our business, thanks to PM Dr Abiy. They used to cost more than 20,000ETB [~720USD] before. Now they are roaming around freely in the town. We used to joke that we sold migrants when there is money in our hands. Now even the joke has no punch line" said one of the residents in Metema Yohannes implying to Eritrean refugees who used to cross the border to the Sudan illegally through this border town. With the recent peace deal and the following reopening of the border between Eritrea and Ethiopia, together with the economic crisis in the Sudan, large flow of Eritrean refugees has been observed crossing the border back to Ethiopia. For many, the truce between the two countries affected the economy of Metema Yohannes at different levels. According to

⁸ According to the tariffs set by the local government, they can only ask for three to five USD (80-150 ETB) for luggage and barrels. Though not allowed by law, migrants are expected to pay twice when loading and reloading on the bus at Immigration and Customs. The expense for a single copy of passport is one ETB ~ 0.03USD.

brokers, they lost a lucrative business and as they call it a '*good merchandise*'. Such reference of refugees as merchandise and goods also extends to Ethiopian and Somali migrants who use this border town as a transit to the Sudan and further to Europe through Libya and Egypt. However, this connotation of merchandize does not imply migrants whose destination is Sudan.

Further, in addition to Ethiopia-Eritrea relations, state relation between the Sudan and Ethiopia at different times has also affected and continues to affect the migration industry and the migratory route in Metema Yohannes. During the administration of the DERG, the longstanding historical relation between Ethiopia and the Sudan has been characterized by rivalry and animosity. Ideological difference with the Socialist DERG and support of Guerrilla fights on both sides of the border affected the relation between the two countries and as a result restricted movement and interaction across the border (Doop 2013; Regassa 2007; Young 2003).

Regardless, the irregular migration route was common for Ethiopians and Eritreans who sought refuge in the Sudan. Political repression and persecution by the militarist regime forced many Ethiopians to flee the country to the Sudan using the Metema route. The Sudanese government on the other hand provided support and opened its borders to these refugees.

With the coming to power of Ethiopian People Republic Democratic Front (EPRDF), with the support of Sudanese government, the relation was once again restored in 1998, forming strong economic and political alliance (Assal 2007). As a sign of 'friendship' between the two countries, free movement across the border was allowed which extends few kilometres into both countries. Access to visa was eased and people living on both sides of the border were considered to be good neighbours of close cultural identity.

As Assal (2007:12) noted, "since 1999, the Sudanese government eased restrictions on Ethiopians in the Sudan and made it easy for Ethiopians to enter the country. The new arrival of mainly economic migrants gets to enjoy the loose border control and such freedom of movement within the Sudan. Nonetheless, to avoid detention and deportation, irregular Ethiopian migrants provide bribe to security forces en route and in Khartoum. Following the rise of economic migrants, the public perception of all Ethiopian

migrants as 'illegal' among Sudanese population also put pressure on migrants, both regular and irregular, to keep low and avoid confrontations with security forces.

Though the Ethiopian government is implementing strong border control to put an end to human trafficking, the lack of or loose border control on the other side of the border made it difficult to stop irregular movement. This also opened opportunity for brokers and organ traffickers in Sudan. In fact, the discussion of 'selling' migrants starts on the other side of the Ethiopian border.

Recent talks on cross-border coordination mechanisms and border management between the two countries in relation to seasonal migrants might result in a new trend of migration in Metema *woreda*. Internal economic and political problems in the Sudan, nonetheless, were significant in decreasing irregular economic migration to the Sudan. And thus, for many migrants coming to Metema Yohannes, Sudan is no longer a destination country but rather a transit for further migration to Europe.

Conclusion

By briefly showing the engines of migration and the contexts which define the migration industry at border crossing points such as Metema Yohannes town, this article focused on empirical developments in the change of migration industry along the Ethiopia-Sudan border. The arguments in this article put forward that migration industry is influenced by broader social and political considerations besides the macro-economy. It argues regardless of state efforts to tackle irregular migration including migrant smuggling and trafficking in persons, migration industry still carried on along the Metema route. With this, also lies the safety of the individual migrants which might be put into danger while using the irregular route.

Many in the migration industry scholarship referred the phenomena as commerce, business, industry, or entrepreneurship. In all, a common understanding that underlies is the framework to look into migration phenomenon as economic activity which constitutes dealings at different levels, and directions among different actors, including the state.

The case in Metema Yohannes shows that enterprises, including brokers and state infrastructures, move between formality and informality depending on the context. The migration trend also might take on forms which are not anticipated by government actions.

In the increasing migration industry, both in scale and scope, better transportation and communication facilities and social networks at destination make movement across the border easy and accessible. These put as a challenge, the state needs to build better migration management along the borders and promote legal channels. In such a way, the state can become part of the industry and benefit from it while providing protection for its citizens.

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‘Not My Parents’ House’: the Disciplining of Ethiopian Women Migrant Domestic Workers in the Gulf States

Sehin Tefera and Joanna Busaza

ABSTRACT

Based on the principles of discipline as developed by Michel Foucault, this article argues that Ethiopian migrant domestic workers in Middle Eastern countries find that they have safer migration experiences if they submit to multiple forms of disciplining of their bodies and characters to fit the normative ideals of the compliant, obedient and unthreatening domestic worker (Foucault, 1977). Physical, sexual and emotional harms have been well documented where domestic workers are trapped within the homes of their employers with little recourse to external resources or assistance if required. Although exact figures are unknown, large numbers of Ethiopian women find themselves in such a position of vulnerability, particularly as they tend to travel to countries in the Gulf States and Middle East where legal frameworks for labour migrants remain weak (ILO, 2011). Discipline, in the Foucauldian sense, helps vulnerable Ethiopian women migrants negotiate the perils of domestic labour in the Middle East.

Introduction

The Foucauldian Theory of Discipline and Docile Bodies

In Foucauldian terms, discipline refers to the social control mechanisms of the state that women and men wilfully submit themselves to with little ability to resist. Foucault calls these ‘docile bodies’ - ideal for the political and socio-economic designations of the modern industrial era with ‘bodies that function in factories, ordered military regimens, and school classrooms’ (Foucault, 1977).

Foucault further argues that in the modern era, discipline has created a new form of individuality for human bodies to perform the newly differentiated tasks they have been assigned to in the context of the new economic, political and military organizations. Foucault asserts that discipline helps produce unequal power

relations, and emphasizes that discipline must be practiced by the individual who has internalized her or his place with minimum force applied to bring about compliance.

Careful observation by the disciplining institution observing and recording the bodies under control is a key component of the Foucauldian notion of discipline (Foucault, 1977). Explaining the role of constant surveillance in enforcing discipline, Foucault states: 'Disciplinary power is exercised through its invisibility, at the same time, it imposes on those whom it subjects a principle of compulsory visibility. It is the fact of being able to always be seen that maintains the disciplined individual in [his] subjection' (1984). Female migrant domestic workers can clearly be categorised as marginalised in their precarious positions as both irregular migrants with unclear legal status and low-wage workers in settings with limited labour rights or protections (ILO, 2011). Indeed, Foucault himself has characterized domestic service as a form of discipline, referring to it as a 'constant, total, massive, non-analytical, unlimited relation of domination, established in the form of the individual will of the master, [his] caprice' (1984).

In this article, we argue that the experiences of Ethiopian migrant workers in the Middle East offer an insight into the Foucauldian principle of discipline through their navigation of rigid gender-norms in their host countries, and through the regulation of their personal deportment and interactions with their female and male employers. Lastly, surveillance, in its literal sense of the extensive scrutiny that Ethiopian women undergo as migrant domestic workers, illustrates our argument that Ethiopian women working and living in the Middle East are disciplined in the Foucauldian sense of the term.

This article is based on a formative research commissioned by the Freedom Fund, a donor organisation working to reduce trafficking in labour migration, prior to introduction of their "Hotspot" intervention in Ethiopia. The Hotspot approach aims to increase local awareness and skills for safe migration in communities at high risk of trafficking. This study was designed to improve the Freedom Fund's understanding of existing migration preparedness in target communities and to contribute to the design of activities and awareness-raising messages.

Methods

The rapid assessment was qualitative and consisted of focus group discussions, semi-structured key informant interviews, and in-depth interviews. This research was conducted in four Kebeles (villages) and one Woreda (district) located on the outskirts of Hayk close to Dessie, in South Wello. We used qualitative data using in-depth and open-ended questions from a small sample of respondents. While not representing a large population in a statistically significant manner, our research offers an insight into a gendered norm of migration which was useful for designing context-specific interventions. The research that this article is drawn from was used to develop a Theory of Change to help guide interventions that are likely to be associated with safer migration outcomes.

Findings have been used to develop a draft programmatic Theory of Change to help guide selection of specific Hotspot activities in Amhara Region so that they increase the knowledge and skills identified as likely to be associated with safer migration outcomes.

The formative research was conducted in Amhara Region in Ethiopia, a known source location for young women's out-migration to countries in the Gulf States and Middle East, primarily for domestic labour. Data were collected in four kebeles (villages) in one woreda (district) located on the outskirts of Hayk Town. Data were collected during December 2015 and January 2016 by an Ethiopian woman independent research consultant and a female fieldwork assistant, both of whom are fluent in Amharic.

Qualitative methods were used and comprised of in-depth interviews and focus group discussions. Respondents were purposively selected to provide a diversity of perspectives, for instance, representing different age groups, religious backgrounds and education levels. Individuals were approached following discussion with woreda authorities, who were able to identify initial participants; "snowball sampling" was subsequently used to identify stakeholders with relevant information by word of mouth. Interviews took place at a time and location convenient to respondents. Informed consent was obtained prior to data collection and recorded transcripts were translated into English by the fieldworker.

The majority of respondents were returned female migrants (35). They had worked in Saudi Arabia, Bahrain, Dubai, Qatar, United Arab Emirates, and Kuwait; some had multiple experiences of migration to one or more countries.

Other participants included fathers (4) and husbands (6) of current and former migrants, and 7 key informants (School Director, Muslim Leader, Police Officer, 2 mothers of migrants, 1 former Women's Affairs kebele representative, and 2 Women and Children's Affairs at the Woreda level).

Findings & Discussion

The focus of this paper is on how Ethiopian migrant domestic workers experienced social and personal disciplining as a means of controlling and sometimes exploiting them during their employment abroad. Three main thematic domains emerged from the data: (1) Communication – the control over how and to whom Ethiopian migrants could speak; (2) Movement – demands and restrictions on women's personal mobility; and (3) Personal deportment – expectations of personal behaviour.

The ways in which women navigated and resisted these three areas of discipline affected how they were treated, and were associated with both positive and negative repercussions. Returnee migrants described the nuances of these three areas, using them to interpret their migration experiences. Returnee migrants also referred to these themes when formulating advice for future migrants to assist them in mitigating potential challenges and threats.

1. Communication

Returnees' narratives emphasised constraints they faced on their ability to communicate easily and openly with others. These constraints had multiple manifestations. First, soon after arrival, many domestic workers struggled to understand their employers' Arabic and what was expected of them, leading to potential misunderstandings and conflict. Furthermore, women learned that communication with men in many of the destination countries was severely restricted. Finally, in many cases, women were also

prohibited from contacting other domestic workers or forging links with the Ethiopian community, and in many cases their access to phones (and thus the ability to call their families back in Ethiopia) was entirely controlled by the household in which they served.

1.1. Language Barriers

Many interviewed returnees recounted difficulties in communicating with their Arabic-speaking employers, particularly when they first arrived. The returnees we spoke to stressed the importance of learning Arabic quickly and several suggested that basic language lessons should be provided to prospective migrants before they leave Ethiopia. Without any knowledge of Arabic, domestic workers risk aggravating employers by not following instructions properly or making errors. This could lead to violence, as one respondent explained:

‘Sometimes the migrant woman can’t communicate with her employer in the [first] couple of months because of language barrier. Sometimes she can’t explain herself to them and they also don’t understand what she wants to say. It would be good if migrant women were given Arabic language lessons before migrating to the destination country.

Most of the time misunderstandings happen between employers and employees because of language barrier. The employee might not do what was ordered by her employer, and the employer could be angry and abuse the woman.’ [IDI with returnee, 22]

Those returnees who had some formal education (eighth grade and beyond) reported that speaking a little English was helpful if the employer also spoke English. In addition, those migrants with formal education found it easier to learn Arabic, as they could write down new words they learned such as household objects or basic instructions phonetically in Amharic to help in memorizing them. They would also be able to read any rudimentary teaching materials available to them.

‘Once I saw a booklet which has Arabic words with Amharic translation, I bought that and I studied until I depart to the destination country. I also used it as a reference whenever my

employer orders me to do something.’ [FGD with returnee migrants, 26].

According to our informants, language barriers could often be overcome. Respondents who had repeatedly migrated to Arabic-speaking countries understandably found their language improved, although differences in dialect could also pose difficulties. Furthermore, many employers made an effort to help new migrants learn Arabic and explained their expectations through miming.

‘Our employers explained everything about the activities before we start working. They demonstrate to you how to operate every machine in the household until you fully understand how you operate it. They don’t ask you to perform anything immediately after you arrive in the household, but you have learned step by step. They try their best to communicate you with sign language.’ [In Depth Interview (IDI) with returnee, 24 years old]

1.2. Gender Norms

Many returnees highlighted that they encountered a major cultural difference between Ethiopia and the Arab countries to which most Ethiopian domestic workers travel for work related to communication between men and women. Depending on the country, migrants confronted varying degrees of disapproval or restriction on contact with adult and teenaged men in the household where they worked. Some returnees were not allowed to see any men in the household at all, while others felt there were complicated social norms and regulations by which they had to learn to abide.

‘When I was in Saudi Arabia the husband was very shy, I have never seen his face. If he wants something, he just raised his voice to order me, I just saw his back. Even when we go out of the house, [the maid] should always sit behind them [the employers], so that he won’t see her; you are also expected to cover your whole body except your eyes.’ [IDI with returnee, 22]

‘I prepared the dining table with the wife alone. After I left the room, she’d call her husband and her children, [then] after they finished eating she’d call me on a land line telephone in the kitchen to take the dishes and clean the room. By that time, they [men] already went to their room.’ [FGD with returnees, 30]

In particular, a major risk appears to be inciting the jealousy of the woman of the house by communicating with her husband and being seen to be flirtatious or overly familiar. Some women reported being ‘tested’ by female employers who subjected the domestic worker to scrutiny.

For example, one returnee described how her female employer hid in the house to assess whether she was being overly friendly with the male employer, in a Foucauldian example of surveillance as a form of discipline.

‘She...hid herself and watched me while I was talking with her husband. Sometimes he asked me to wash his car, he usually stood there ...she hid herself in the window and watched me. If I laughed or flirted with him, she might think that I am interested in her husband, but what I did was show him a very heavy face because I want her to think that I hate men. I told her I hate men, I told her I don’t want to get married, I told her I plan to get married when I am fifty years old. I intentionally did that so she would not suspect I was interested in her husband or her adolescent boy.’ [IDI with returnee, 20]

The possibility of constant monitoring thus encouraged domestic workers to moderate their own behaviour and change how they communicated with others to avoid transgressing local gender norms.

1.3. Access To Communication Technology

The very means of communication were under the control of the employers, often leaving migrant workers feeling isolated and unable to contact others both back in Ethiopia and in the destination country. In some cases, employers feared that their domestic workers would use their mobile phones to communicate with illegal brokers who would help them leave their formal contracts and seek better paid work elsewhere, without repaying the costs of transport into the country including visa and travel

costs. Other times it seems employers simply liked to wield control over their workers.

‘I didn’t have a mobile phone, so there was no way that I could call other Ethiopians. ... My employers permitted me to call my parents every month or every two months. They didn’t allow me to call relatives or friends [locally], they only allowed calls to Ethiopia.’ [IDI with returnee, 24]

‘Most employers don’t allow their employees to call even their families. There are women who were lost for six or eight months. One migrant woman in our neighbourhood disappeared for one year from her family, they even thought that she was dead. She called after one year, she told her family that her employer could not allow her to even to touch a phone.’ [KII with Muslim religious leader, 42]

Access to mobile phones was considered indicative of how well a migrant worker was treated and able to protect herself. Almost all our respondents, both returnees and their family and community members, mentioned the importance of being able to have or use a phone and the frequency with which this proved impossible was often cited as a marker of powerlessness.

‘It should be obligatory for employers to buy a mobile phone to the migrant woman. It would be very difficult for them to work without communicating their families. It is also good to chat with their relatives and friends who already migrated, so that they can share their experiences. They could encourage them and advise them until the new migrants are familiar with the environment.’ [Mother of migrant, 45]

2. Restricted Movement

Another form of discipline experienced by interviewees is constrained personal mobility. Not unlike the ban on phone use, some employers prohibited domestic workers from leaving the house, socialising with others, or even accessing certain parts of the house in which they worked. Although in some destination countries there were laws against unaccompanied women traveling

alone; in other cases, employers themselves enforced extreme sanctions against personal freedom of movement.

2.1. Within the Home

Returnee migrants reported being watched by cameras placed to monitor their work, locked in the house to prevent their seeking other employment, and forced to sleep in the same room as their employer.

‘My wife’s relative told me that she doesn’t even go out of the house for two years. She told me that they don’t even allow her to be on the ground floor, she was always working and sleeping upstairs, because the Arabs are very tired of handling Ethiopian maids. They hire them legally but most of them run away from them.’ [FGD with husbands of migrants, 39]

The threat of sexual harassment or assault also caused women to limit their own movements within the house. Already trying to remain vigilant to the norms around speaking to or mixing with men, in some cases, respondents described how they had to fend off sexual advances from male relatives of their employers:

‘My employer was an old lady; she was good to me. After some time, her divorced children came to live with her. One of her sons was sleeping near my bedroom... one day he came to my room, and my room had no lock, I heard him opening my door, then he rushed to my bed, I struggled with him and ran out of the room, he followed me.... I told him to leave me alone, he insisted that it’s okay to sleep with him, but I ran to his mother’s room, then he was scared.... The next day I told my employer that I didn’t want to sleep there since it has no lock.’ [FGD with returnees, 25]

As a result of such risk, the women further limited their own personal space, locking themselves in their own room for protection. Another participant in the same FGD emphasised that a bedroom lock was crucial. Women thus self-discipline their movements as a means to avoid assault.

‘The migrant woman shouldn’t sleep in the room which doesn’t have a lock. In my case I realized that my bed room doesn’t have a lock the first day I arrived in the house. Then I told my

employer [and] she really appreciated my asking her. She fixed the lock that same day.' [FGD with returnees, 26]

2.2. In the Public Sphere

Different countries have different regulations about women's presence in the public sphere, and respondents often made comparisons about relative freedoms. One returnee, for example, noted that when she worked in Dubai she was able to take the children in her care to ride their bicycles outside, which allowed her to interact with other Ethiopians working in the neighbourhood.

In contrast, her employer in Saudi Arabia used to lock her inside the house with the children. As she wasn't allowed a mobile phone, she said she was always worried about how she might contact the employer if something happened to one of the children. One of the concerns about migrant workers' mobility is related to the possibility of leaving an employment contract prematurely. This incurred costs and inconvenience for employers; at the same time, however, migrants who chose to "run away" from their contract also faced risks, particularly as they then became reliant on local and illegal employment brokers. They also are in constant fear of arrest and deportation.

'It is common [for a migrant] to run away from her employer... but running away could expose her to different problems. ... Let me tell you what happened to my wife's niece. ... After she arrived, she called and told me that she is not comfortable with her employers ... She told me she couldn't tolerate the workload, she also told me that one of the boys threatened to [rape her]. Then she ran away from the house. She just went out on the street, and then she was caught by the police, they took her to a prison. Finally, they deported her.' [FGD with fathers of migrants, 55]

For many women, therefore, the potential risks of running away from legal employment, however exploitative, also served to discipline them by making it seem safer to persevere in their current situation.

'I never had any plan to run away since there could be other challenges after you run away from your employers. ...If I work with my legal employers, there could be some challenges since I am not living in my parents' house, however I have to tolerate these until I finish my contract.' [IDI with returnee migrant, 25]

Another woman actually supported more severe legal restrictions on women's movement, perceiving it as a form of protection:

'Dubai gives too much freedom to maids. We can go out of the house whenever we want. I don't like the freedom. They don't ask you to cover your hair as well. On the contrary, we are not allowed to go out of the house alone and uncover our hair in Saudi Arabia. Too much freedom exposes the migrant to danger.' [IDI with returnee migrant, 24]

3. Personal Deportment

How a migrant woman behaved abroad also affected how they were treated, and thus a key skill was to rapidly identify local (and specifically employers') expectations of behaviour and adapt to these. How to dress, act, and relate to others thus became another site of personal discipline, enforced by both employers' reactions and women's own efforts.

3.1. Personal Dress and Hygiene

The most frequent issues raised in relation to personal hygiene was use of sanitary pads and the conflicts that could result from a new migrant's unfamiliarity with them.

'The Arabs are very sensitive about menstrual hygiene. If they see blood on your clothes, they will shout at you, rather than show you how to use a sanitary pad, so, it is important that migrant women learn how to manage their periods before they migrate. ... The Arabs consider Ethiopians dirty. It is because some Ethiopian women, particularly those who migrated from rural areas, don't know how to use or dispose of sanitary pads. They don't know they should put it into the garbage after they use it. Some of them put it into the latrine and it blocks the sewage system.' [IDI with returnee migrant, 23]

Health and cleanliness in general emerged as important, and some women had to submit to regular health checks and had their eating crockery and cutlery separated from the rest of the household.

‘Employers take you to the hospital immediately when they see some symptoms. They force you to go through general check-ups. They are very scared you could have communicable diseases. They separate your cups and other dishes until you recover from the disease. They take you to the hospital if you even have strong flu. They are serious on health issues.’ [IDI with returnee migrant, 23]

This type of investment in the domestic worker is directly in line with Foucault's understanding of the body as a site of discipline in relation to its economic use. He states, 'The political investment of the body is bound up, in accordance with complex reciprocal relations, with its economic use; it is largely as a force of production that the body is invested with relations of power and domination...the body becomes a useful force only if it is both a productive body and a subjected body.' (1984)

As previously mentioned, modest dress was expected, particularly in stricter Muslim societies, and was also a strategy to prevent sexual advances. As 78% of our study respondents were Muslim, many reported they found it easy to adapt to covering their hair and praying at the requisite times each day. Christian women, on the other hand, might pretend to be Muslims (or recent converts) to avoid undue attention and suspicion.

‘They like it when you are Muslim. They respect women who respect their religion. In Saudi Arabia they don’t hire Christians. Most women who went to Saudi changed their names to get a job. They don’t tell their employers that they are Christians.’ [FGD with returnee migrants, 30]

‘I have a cross tattoo on my forehead. She asked me why I have cross tattoo if I am Muslim, and I told her I am converted Muslim, she was very happy.’ [FGD with returnee migrants, 25]

3.2. Balancing Obedience and Assertiveness

Certain personal attributes could further facilitate the migration experience. In a seeming contradiction, both obedience and assertiveness were considered desirable contradictions, and domestic workers needed to master the right balance between the two. On the one hand, the migrant needed to demonstrate humility and ability to follow instructions as given.

‘The woman should have reserved behaviour ...she should be obedient to what they told her to do even if she couldn’t actually do the job at the time. If they asked her why she didn’t perform it, she should politely explain the reason and promise them to perform it later.’ [IDI with returnee migrant, 25]

‘... The woman should be humble and follow their orders. They [Arabs] are very noisy, they usually shout even when they are talking. The woman should be patient and tolerate their behavior. If she shows them good behavior in the first months of her contract period, they [employers] would definitely like her.’ [KII with religious leader, male 42]

On the other hand, many respondents emphasised that employers respected women who spoke confidently and held up their dignity.

‘Arabs abuse you if you panic, but they respect those who are very serious. They respect those who confidently answer their questions, and they fear those who answer with a louder voice. If you fear them, they want to abuse you in your every action. They don’t usually treat shy women in a good way.’ [IDI with returnee migrant, 24]

Several returnees emphasized that prospective migrants need to prepare themselves in order to be confident in the destination country. One gave the following advice to young women considering migrating:

‘It is advisable to prepare yourself in order to be confident, not to get confused with what you see or hear. You have to convince yourself that you went there for work; you have to change your behaviour if it is necessary. If you are shy here, you should no longer be shy there. Confident and strong characteristics help you to be tolerant and successful.’ [IDI with returnee migrant, 29]

Being consistent in one's demeanor and behavior was cited as another important personal trait to help domestic workers navigate their job.

'The behavior which you show your employers should be uniform. It is not good to be serious one day and laugh and joke with them the next day.'

[IDI with returnee migrant, 22]

This returnee also went on to say that migrant domestic workers shouldn't tell their employers about their personal lives. In addition, migrants appeared to have spent considerable time studying the behaviour of others and scrutinising their own. As yet another form of self-discipline, returnee migrants sometimes blamed women who had poor experiences during migration for their misfortune. While 'fate' and 'luck' and 'God's will' were cited as contributing to whether or not migrants had positive or negative experiences, returnees also could assume that adherence to unspoken regulations or good behaviour similarly played a significant role. For example, one respondent insisted that she herself had never encountered any problems, and that the women who did must have done something to deserve it:

'Most Arabs are cruel to those who steal from them or who 'hustle' the [women employers'] husbands. Otherwise, they are good people.' [IDI with returnee migrant, 29]

Even respondents who themselves experienced difficulties looked to their own behaviour as a contributing factor and hoped to learn from the experience in future.

'But at that time, I didn't know how I went there, I just didn't also know what will happen to me. I said okay to everything to my employers because I didn't know my rights and duties, but now I am matured enough to know my duties and responsibilities, I would surely ask my rights now.' [IDI, 23]

3.3. Resistance

The fact that women submitted themselves to social control and self-disciplined behaviour does not mean that they did not also find

ways of resistance. Despite the heavy steps taken by employers to prevent 'their' house help from running away to more lucrative opportunities, and despite the peer censure of some house help who warn others of the dangers of running away, many women do run away and take control over their migration experience. Other women resist the constraints placed on them by forging links and social relationships even though these are forbidden.

'If they want, [migrant women] can call their parents here at the village, they can get the number from their families, and then communicate the people who can help them to run away. When they call each other, one of the women might suggest that her relatives or her husband or someone else can help her to run away from their employers. For instance, my sister went there legally, but now she has run away from her employers.' [KII with school director, 44]

3.4. Giving Subservice Advice to Prospective Migrants

Women find they are able to negotiate or to take back certain freedoms while still employed. While many women reported self-disciplining one's body according to the culture-specific mode of dress they were expected to adhere to, a few others found it important to insist on wearing specific outfits or articles of clothing.

'When I was in Dubai my employer ordered me not to wear one specific skirt, she doesn't like it when I wear that, but I told her I like the dress and there is no way that I was not going to wear it. From that moment onwards, she stopped complaining. I continue wearing it until I return back home. The migrant woman should be confident.' [FGD with returnees, 25]

'I heard her talking Amharic over the phone, she was on the veranda, then I approached the fence and talked to her, she told me she is from Kombolcha (25 KM from Dessie). Starting from that day we start talking to each other at every convenient hour. Later I found out that the kitchen which she is working is faced to our fence. While she was working in the kitchen, she would open the door, it became a sign for me that I can talk to her so I approached to the fence and I talk to her. On other

times, she stood on the veranda and I approached the fence and we talked. ... I was just happy to talk to her in Amharic, I missed talking to someone in Amharic.' [IDI, 22]

'I advise them to take Saudi money with them while they migrate because they can buy a SIM card and a mobile phone. They can also take the mobile apparatus from Ethiopia and take 50 Saudi [Riyal] to buy the SIM card from the airport. It is good to hide the phone.' [IDI, 25]

Conclusion

One respondent neatly summarised the entire experience of self-discipline as a means of mitigating risks and increasing the likelihood of positive migration:

'If you perform your job properly, there is nothing that you and your employer argue about. You know what you are expected to do. For instance, you know that you shouldn't communicate with your employer's husband, so you will avoid communicating with her husband; you will [avoid] seeing him. You will dress the way they like if you know what that entails. The Arabs have no problem if you know your responsibility and perform the way they like it. They don't have a problem to eat the food you cook. You won't be stressed to do your job if you're well-informed beforehand'. [IDI with returnee migrant, 25]

Foucault agrees that efficiency is a form of discipline. He states, 'The human body has entered a 'mechanics of power' which defines how one may have a hold over others' bodies, not only so that they may do what one wishes, but also so that the bodies may operate as one wishes, with the techniques, the speed, and the efficiency that one determines.' (1984)

The experiences of Ethiopian migrant women working as domestic workers in Middle Eastern countries overwhelmingly support the Foucauldian notion of discipline as effectively imposed on the self even in the absence of overt coercion. The women we spoke to are in a disadvantaged position within the unequal power relations created through domestic work where employees are almost completely at the mercy of employers' whims.

Constant surveillance is a frequent feature of the life of Ethiopian domestic workers in employment in the Gulf, and perceived or real danger plays a strong role in the self-discipline of domestic workers. However, despite the immense constraints placed on the 'docile bodies' of Ethiopian domestic workers in the Gulf, we also found instances of resistance which enable the women to retain a sense of self and dignity.

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