

Legal Protection Against Labour Trafficking In Domestic Workers Under Ethiopian Labour Law

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Abstract: Despite its ubiquitous nature and indispensability to the economy outside the household, domestic work has been greatly undervalued, gendered and generally invisible. In addition, mainly owing to its private nature, domestic work is unregulated by the general labour laws of many countries. As a result, domestic workers are vulnerable to labour trafficking. Following the widespread approach, the 2003 Ethiopian labour proclamation excludes domestic workers from its scope of application. The exclusion of domestic workers from the 2003 labour law have allowed the continued application of labour law provisions under the 1960 Ethiopian Civil Code with regard to the condition of Ethiopian domestic workers. This article has analyzed the adequacy of the Ethiopian labor law provisions under the 1960 Ethiopian Civil Code in safeguarding Ethiopian domestic workers against labour trafficking. The article found that the labour law provisions under the 1960 Ethiopian Civil Code are very limited in protecting Ethiopian domestic workers against labour trafficking. Firstly, the labour law provisions under the 1960 Ethiopian Civil Code are very defective in their content. Secondly, the labour law provisions of 1960 Ethiopian Civil Code left a host of important rights of domestic workers unregulated. This article has also found that, in spite of gaps in data, the limited empirical research conducted on the condition of Ethiopian domestic workers reveal that Ethiopian domestic workers are practically exposed to various types of labor trafficking. Finally, the article recommended that there is a need for enacting comprehensive labour law that can provide effective solution to the vulnerability of Ethiopian domestic workers to labour trafficking.

Keywords: Domestic Work, Domestic workers, Labour law, Labour trafficking, Domestic servitude

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I. INTRODUCTION

Domestic work around the world shares common physiognomies that may act to define it. For the purpose of labour regulation, the definition incorporated in the Decent Work for Domestic Workers Convention captures the characteristics of domestic work by defining it as “work performed in or for a household or households”¹. Article 1 (b) of the Convention defines a domestic worker as “any person engaged in domestic work within an employment relationship”.

In some developing countries, the concentration of domestic workers within the workforce can be significant, where nearly twelve percent of all workers work within a household in one form or another.² The International Labour Organization (ILO), analyzing data from 177 countries, estimates there are between 52 and 100 million domestic workers.³

Despite its ubiquitous nature and indispensability to the economy outside the household⁴, domestic work has been greatly undervalued, gendered and generally invisible⁵. Furthermore, mainly owing to its private

¹Decent Work for Domestic Workers Convention No. 189, International Labour Office, Geneva, June 2011, Article 1 (a). [hereinafter Domestic workers Convention]

² See Press Release, Int'l Labour Org., 100th ILO Annual Conference Decides to Bring an Estimated 53 to 100 Million Domestic Workers Worldwide Under the Realm of Labour Standards (June 16, 2011) [hereinafter ILO Press Release] (noting that current estimates are limited, and are likely under-representations of the true figure)

³Yamila Simonosvky&Malte Luebker, Conditions Of Work & Employment Programme (Travail), Int'l Labour Off., Domestic Work Pol'y Brief 4, Global And Regional Estimates On Domestic Workers 8(May 27, 2011), available at http://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/-travail/documents/publication/wcms_155951.pdf.

⁴ L. Heimeshoff and H. Schwenken, 'Domestic Work: A Significant Sector', in Helen Schwenken and Lisa-Marie Heimeshoff (eds.), Domestic Workers Count: Global Data on an Often Invisible Sector, (Kassel University Press, Kassel, 2011), p. 5.

nature, domestic work is unregulated by the general labour laws of many countries.⁶ Whereas some laws are silent in relation to the employment law protections provided to domestic workers, others grant lower levels of protection, and still others explicitly exclude domestic workers from their coverage.⁷ Overall, as Smith points out, “the legal history of domestic service is one of exclusion”.⁸ As a result, domestic workers are vulnerable to a wide range of abuses. The most serious form of domestic worker abuse is a form of human trafficking known as domestic servitude.⁹

Following the widespread approach the 2003 Ethiopian labour proclamation excludes domestic workers from its scope of application.¹⁰ The exclusion of domestic workers from the 2003 labour law have allowed the continued application of the ‘1960 Civil Code’¹¹ with regard to the condition of domestic workers.

This article is designed to analyze two sets of related issues. The first is to analyze the adequacy of the Ethiopian labor law provisions under the 1960 Ethiopian Civil Code in safeguarding Ethiopian domestic workers against labour trafficking. The second is to analyze current practical reality of labour trafficking in domestic workers in Ethiopia.

The article is divided into six sections. The next section discusses definition of the concept of labour trafficking. Section 3 discusses a specific kind of labor trafficking to which domestic workers are exposed know: domestic servitude. Section 4 evaluates adequacy Ethiopian labour law provisions under the 1960 Ethiopian Civil Code for combating labour trafficking against Ethiopiandomestic workers. Section 5 discusses current reality of lboutrafficking in domestic workers in Ethiopian. Finally, section 6 concludes the article.

II. DEFINING LABOUR TRAFFICKING

Labour trafficking constitutes one of the defining elements of the concept of human trafficking. To clearly understand the definition of the concept of labour trafficking it necessary to first understands the broader concept of human trafficking. Therefore, the author will deal with the definition of the concept of human trafficking in this section. The definition of labour trafficking as one the defining elements of human trafficking will broadly analyzed in section 3 of the article.

The legal definition of human trafficking has evolved over time.¹² The United Nations[Hereinafter,UN] human Trafficking Protocol¹³ is applauded for introducing a clear and internationally agreed definition of human trafficking.¹⁴ The UN human Trafficking Protocol represents an effort to harmonize global understanding around the concept of trafficking in persons.¹⁵

The UNhuman trafficking protocol attached to the Convention of Transnational Organized Crime¹⁶ defines the problem of human trafficking in the following way:

The recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, or fraud, of deception, of the abuse of power or of a position

⁵ International Labour Office, Decent work for domestic workers, International Labour Conference, 99th Session, Report IV(1), Geneva, 2010, p.1. http://www.ilo.org/wcmsp5/groups/public/@ed_norm/@relconf/documents/meetingdocument/wcms_104700.pdf, (Accessed on January 16, 2016).

⁶ International Labour Office, ILO Resources on Domestic Work- Catalogue, Geneva, 2016, p. 3. http://www.ilo.org/wcmsp5/groups/public/@ed_protect/@protrav/@travail/documents/publication/wcms_248947.pdf, (Accessed on February 26, 2016).

⁷ This pattern, which summarizes the worldwide situation, was suggested as describing labour legislation in European Union countries; see Dilvel, "Domestic Work – a Legislative Frame in the EU?", European Trade Union Confederation seminar, Brussels, 14-15 April 2005

⁸ Smith, Ageing and Caring in the Home: Regulating Paid Domesticity in the Twenty-First Century, 92 Iowa L Rev 1851, 1851 (2007)

⁹ M. Ensalaco ,Ensuring Decent Work For Domestic Workers: An Integral Approach To The Prevention Of Labor Trafficking, 7Intercultural Hum. Rts. L. Rev. 45, 47-48(2012)

¹⁰LabourProclamation of the Federal Democratic Republic of Ethiopia No. 377/2003 (26th February 2004) Year 10, No. 12 FederalNegaritGazeta (Addis Ababa) art. 3(3)(c)[Hereinafter Labor Proc.377/2003]

¹¹ The Civil Code of the Empire of Ethiopia Proclamation No. 165/1960 (5th May 1960) Year 19, No. 2 The Empire Extraordinary NegaritGazeta (Addis Ababa) article 2601-2604[Hereinafter the 1960 Civil Code]

¹² J. Elliott *The role of consent in human trafficking* (Routledge New York 2015), p.47

¹³Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the U.N. Convention Against Transnational Organized Crime, G.A. Res. 55/25, 55 U.N. GAOR Supp. (No. 49), U.N. Doc. A/45/49 (Vol. I) (2001) [hereinafter Trafficking Protocol]

¹⁴UNODC *Legislative Guides for the Implementation of the United Nations Convention against Transnational Organized Crime and The Protocols Thereto* (United Nations Publication New York 2004)[Hereinafter UNODC Legislative Guides], p. 267

¹⁵UNODC *Toolkit to Combat Trafficking in Persons* (United Nations Publication New York 2008) 1

¹⁶UN Convention (2000) UN Convention Against Transnational Organized Crime (United Nations: A/RES/55/25, 2000)

of vulnerability or the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.¹⁷

Exploitation is defined to include, at a minimum, exploitation of prostitution, other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude, or the removal of organs.¹⁸ The term 'at a minimum' in the definition of 'exploitation' offers the possibility of including other forms of exploitation.¹⁹

The UN human Trafficking Protocol's definition of human trafficking includes a provision to the effect that the consent of a victim to the intended exploitation is irrelevant where any of the means set out above have been used.²⁰ Consent is also irrelevant if the trafficking victim is a child.²¹ That provision serves to make clear that the means of human trafficking such as coercion and deception operate to annul meaningful, informed consent. In other words, "once it is established that deception, force or other prohibited means were used, consent is irrelevant and cannot be used as a defence."²²

Ethiopia has become a party to the UN Treaty on Organized Crime and its supplementing human Trafficking Protocol.²³ As can be observed from the definition of human trafficking in UN human trafficking Protocol one type of human trafficking is labour trafficking which includes trafficking whose end purpose is servitude.²⁴ In the next section of the article the author broadly discusses the concept of domestic servitude which is a form of labor trafficking which occurs in the context of domestic work.²⁵

III. DOMESTIC SERVITUDE: A SPECIFIC FORM OF LABOUR TRAFFICKING IN DOMESTIC WORKERS

Domestic servitude is a form of labor trafficking which occurs in the context of domestic work.²⁶ Partly because of the ill-defined and under-regulated nature of domestic work, domestic workers are vulnerable to a wide range of labor abuses through wage, hour, and occupational health and safety violations.²⁷

Nevertheless, not all forms of labor abuse and exploitation meet the legal standard of labor trafficking. The ILO made this clear in the 2010 report which stated: "domestic workers are particularly vulnerable to discrimination, exploitation and abuse, without this necessarily constituting trafficking."²⁸

Analytically, domestic servitude should be located on a continuum of labor abuse and exploitation. That continuum runs from no abuse or exploitation to domestic servitude as a specific form of labor trafficking that involves work in or for the household within an employment relationship. In other words, domestic servitude constitutes the most severe form of labor abuse and exploitation against domestic workers. Severity is the critical differential.²⁹

Mindful of the importance of distinguishing common forms of abuse and exploitation from labor trafficking, including domestic servitude, the Office of the Special Representative and Coordinator for Combating Trafficking in Human Beings, of the Organization for Security and Cooperation in Europe (OSCE) draw attention to its main descriptors:

poor living and working conditions, extremely long hours, systematic lack of sleep, real starvation, no wages beyond mere subsistence, psychological and sexual abuse, violent punishment, and continuous humiliation.³⁰

Hence, these conditions of domestic servitude are far in excess of the conditions of abuse and exploitation too often associated with domestic workers. In next section of the article the author analysis Ethiopian labour law framework for combating domestic servitude in Ethiopia.

¹⁷ Trafficking Protocol, *supra* note 13, Art. 3

¹⁸ *Id.*, Art. 3

¹⁹ Touzenis *Human rights* 38 (UNESCO Paris 2010)

²⁰ Trafficking Protocol, *supra* note 13, at Art. 3(b)

²¹ *Id.*, Art.

²² UNODC Legislative *supra* note 14, at 270

²³ Status of adherence to the United Nations Convention against Transnational Organized Crime and the Protocols thereto as at 10 September 2014 (CTOC/COP/2014/CRP.1)

²⁴ See, Trafficking Protocol, *supra* note 13, Art. 3

²⁵ Ensalaco *supra* note 9, at 47-48

²⁶ *Id.*

²⁷ *Id.*

²⁸ Int'l Labor Org., Decent Work for Domestic Workers, ILC.100/IV/1 (2010), available at http://www.ilo.org/wcmsp5/groups/public/---ednorm/---relconf/documents/meetingdocument/wcms_143337.pdf

²⁹ Ensalaco *supra* note 9, at .52

³⁰ See, Organization for Security & Cooperation in Europe [OSCE], Unprotected Work, Invisible Exploitation: Trafficking for the Purposes of Domestic Servitude, Rep. of the Tenth Alliance Against Human Trafficking in Persons Conference, 23 (June 17-18, 2010) <http://www.osce.org/cthb/75804>.

IV. ETHIOPIAN DOMESTIC LABOUR LAW FRAMEWORK FOR COMBATING LABOUR TRAFFICKING IN DOMESTIC WORKERS

The labour law is one of the laws that that can be employed to combat the problem of labour trafficking in domestic workers. Labour law can be used to combat labour trafficking in domestic workers as it regulates labour issues like hours of work, weekly rest, leave, working condition of women and young worker, occupational safety, health and working environment.

In Ethiopia the 2003 Ethiopian federal labour law excludes domestic workers from its scope of application.³¹ Yet, it states that the Council Ministers shall issue a special regulation that deals with the condition of domestic workers. Subsequently, the 2003 labour law was partially amended by Proclamation No. 466/2005 and Proclamation No.494/2006 in 2005 and 2006, respectively.³² But the amending Proclamations, said nothing about the issue of domestic workers.³³

The exclusion of domestic workers from the 2003 federal labour law and failure to issue a special regulation based on the pledges made under the 2003 federal Labour Proclamation have allowed the continued application of the '1960 Civil Code'³⁴ with regard to the condition of domestic workers.

The 1960 Civil Code was considered modern during the period of its enactment as most of its provisions were transplanted from European codified laws with minor domestic contextualization.³⁵ Nevertheless, internationally, domestic work was not treated as a real work and therefore, domestic workers were not at the time enjoying similar rights recognized for industrial workers. Moreover, the then Ethiopian feudal system with its deep-rooted values of hierarchy, obedience and subordination was not favourable to domestic workers.³⁶

The provisions in the Civil Code that deal with labour relations between an employer and a domestic worker are therefore the result of the socio-political realities that prevailed in the 1960s.³⁷

The specific provisions (arts 2601-2604) provided under the 1960 Civil Code are applicable to the condition of domestic workers. These provisions will be analyzed as follows.

Article 2601 of the 1960 Civil Code empowers the employer to set standards in the regulation of the condition of domestic workers with regard to key issues such as housing, food, working time, and rest taking into account the domestic worker's health and well-being.³⁸ This provision has left the overall regulation of the condition of domestic workers to employers' sense of fairness rather than providing legally stipulated minimum working conditions and benefits.³⁹

Articles 2602 and 2603 the 1960 Civil Code declare the obligation of employers to care for his/her domestic worker. Sub article 1 of Article 2602 states that (1) "Where an employee who is living with the family of the employer and being fed by the latter falls sick, the employer shall, during the currency of the contract, provide any care which the illness of the employee requires, either by way of medical attendance at his house or by sending the servant to hospital".⁴⁰

However, Sub article 2 of Article 2602 declares that "such obligation shall be limited to one month where the illness occurs after at least one year from the beginning of the contract, and to two weeks, where it occurs after at least three months from the beginning of the contract".⁴¹

Sub-article 3 of Article 2602 gives the power to the employer to "set off any expenses which he thus incurs against the wages that become due during the period of illness."⁴² Consequently, Sub-article 3 Article 2602

³¹Labor Proc.377/2003, *supra note* 10, art. 3(3)(c)

³²Labour (Amendment) Proclamation of the Federal Democratic Republic of Ethiopia No. 466/2005 (30th June 2005) Year 11, No. 56 Federal NegaritGazeta (Addis Ababa), and Labour (Amendment) Proclamation of the Federal Democratic Republic of Ethiopia No. 494/2006 (29th June 2006) Year 12, No. 30 FederalNegaritGazeta (Addis Ababa), respectively.

³³MussieMezgeboGebremedhin, Procrastination in Recognizing the Rights of Domestic Workers in Ethiopia, 10 Mizan L. Rev. 38, 60 (2016)

³⁴The 1960 Civil Code, *supra note* 11, Arts. 2601-2604

³⁵John H. Beckstrom, Transplantation of Legal System: An Early Report on the Reception of Western Laws in Ethiopia, 21 American Journal of Comparative Law, 557-583(1973)

³⁶ Christopher Clapham, The Ethiopian Experience of Devolved Government, 1 Ethiopian Journal of Federal Studies Addis Ababa University, 18(2013)

³⁷Gebremedhin, *supra note* 33, at 60

³⁸The 1960 Civil Code, *supra note* 11, art. 61

³⁹Gebremedhin, *supra note* 33, at 62

⁴⁰The 1960 Civil Code, *supra note* 11, art. 2602(1)

⁴¹*Id.*, art. 2602(2)

⁴²*Id.*, art. 2602(3)

ultimately makes a domestic worker bear all the expense of her/his medication and/or care, which may seriously reduce her/his meagre monthly wage.⁴³

As per article 2603 (1) and (2) of the 1960 Civil Code an employer may, however, be relieved of his/her obligation to care for his/her domestic worker, if the domestic worker has intentionally contracted the illness or is covered by a compulsory health insurance scheme⁴⁴. Nonetheless as per Article 2603 (3) of the 1960 Civil Code an employer may not free himself/herself of this duty by terminating a domestic worker's employment on the ground of illness⁴⁵.

Apart from what is discussed in the forgoing paragraphs, the main shortcomings article 2602 and article 2603 of the Civil Code is their failure to distinguish between occupational and non-occupational injuries/illnesses.⁴⁶

Finally, the Civil Code, under Article 2604 (1), provides that a domestic worker's wage should be paid every three months, unless otherwise agreed in an employment contract.⁴⁷ Yet, Article 2604 (2) provided that if the employment relationship between an employer and a worker is terminated, wages will be automatically due.⁴⁸

When seen in the light of the Ethiopian practice of not using written employment contracts for domestic workers and the difficulties of proving the terms of oral employment contracts, making salaries payable every three months inhibits domestic workers from utilizing their salaries for routine purchases and other expenses.⁴⁹

In addition to the aforementioned defects of each of the four articles governing domestic work, the 1960 Civil Code left a host of other important rights of domestic workers unregulated. Among others, these include maximum daily and weekly working hours, paid leave (maternity, sick, paternity, annual and other special leave), occupational safety and injuries, formation of unions, grounds of termination of employment and associated rights (certificate for services provided, due compensation and severance payments etc.).⁵⁰

In sum, from analysis done in this section we can conclude that the Ethiopian labour law cannot effectively and coherently address the vulnerability of domestic workers to domestic to labour trafficking (domestic servitude).⁵¹

V. CURRENT REALITY OF LABOUR TRAFFICKING IN DOMESTIC WORKERS IN ETHIOPIA

Researches indicate that domestic work is pervasive in Ethiopia. For example, in a study in seven regions of Ethiopia among nearly 10,000 young people, domestic work was the most common form of work among urban girls (37% of working girls).⁵² Similarly, in a study of adolescents in slum areas of Addis Ababa, 77% of working girls were in domestic work⁵³.

In Ethiopia, domestic work is considered among the lowest status work of all occupations.⁵⁴ As in other African countries, domestic workers in Ethiopia are mostly internal migrants, who travel from rural to urban parts of the country due to poverty, lack of education and harmful traditional practices⁵⁵. Since the skills

⁴³B.A. Hagos, Remembering the Forgotten: The Need for Proper Regulation of Working Conditions of Live-in Domestic Workers in Ethiopia, 5E-Journal of International and Comparative Labour Studies 1, 5(2016)

⁴⁴The Civil Code, *supra note* 11, Art. 2603 (1) and (2).

⁴⁵*Id.*, Art.2603 (3).

⁴⁶Hagos, *supra note* 43

⁴⁷The 1960 Civil Code, *supra note* 11, Art. 2604 (1),

⁴⁸*Id.*, Art.2604 (2).

⁴⁹Hagos, *supra note* 43

⁵⁰K. Mulugeta Gebre, Vulnerability, Legal Protection and Work Conditions of Domestic Workers in Addis Ababa, International Institute of Social Studies, MA Thesis, The Hague, December 2012, p. 19. https://thesis.eur.nl/pub/13194/Kidist%20Mulugeta%20Gebre_Kidist%20RP_1503.pdf f, (Accessed on January 10, 2016), p.13-14

⁵¹ See section 3, *supra* for definition of domestic servitude.

⁵²Erulkar A, Ferede A, Ambelu W, et. al. 2010. "Ethiopia Young Adult Survey: A Study in Seven Regions," Addis Ababa: Population Council and UNFPA, September

⁵³A. Erulkar and T. Mekbib, Invisible and vulnerable: Adolescent domestic workers in Addis Ababa, Ethiopia, 2 J. of Vulnerable Children & Youth Studies, 246-256 (2007)

⁵⁴Human Rights Watch (HRW), "Swept Under the Rug: Abuses against Domestic Workers around the World," Human Rights Watch, Vol 18, No. 7, July, 2006; UNICEF, "Child Domestic Work," Innocenti Digest, Florence: UNICEF, 1999. M. Black, "Child Domestic Workers: Finding a Voice," London: Anti-Slavery International, 2002

⁵⁵ S. Tesfaye, Denial of Rights, Human Rights Abuses and Violence Against Domestic Workers in Some Selected Areas of Addis Ababa, Addis Ababa University, Institute of Gender Studies, MA Thesis, Addis Ababa, July 2007, p. 37. <http://etd.aau.edu.et/bitstream/123456789/5989/1/21.%20SELAMAWIT%20TESFA%20YE.pdf>, (Accessed on March 03, 2016).

domestic work demands are low when compared to other types of work, it is mainly unschooled and less educated women who are employed as domestic workers in Ethiopia.⁵⁶

The above circumstances together with the insufficiency of the 1960 Ethiopian Civil Code to protect their rights make Ethiopian domestic workers vulnerable to labour trafficking.⁵⁷ In spite of gaps in statistics and data, the limited research conducted in Ethiopia on the condition of domestic workers reveal that Ethiopian domestic workers are exposed to various types of labor trafficking.⁵⁸ Examples of the kinds of labour trafficking to which Ethiopian domestic workers are exposed are outlined in the following as follows.

Firstly, Ethiopian domestic workers are subjected to long hours of work.⁵⁹ For example, in a study of adolescents in slum areas of Addis Ababa, domestic workers worked an average of 64 hours per week.⁶⁰ The first problem, in this regard, is the use of unwritten employment contracts and job descriptions⁶¹. These circumstances expose domestic workers to unrestrained responsibilities and long hours of work⁶².

Secondly, domestic workers in Ethiopia do not usually take leave. They typically do not take annual leave, which is one of the most important rights of workers. Even when they are granted, their “annual leave” will customarily be once a month, usually on the Sunday⁶³, that should have been their weekly day of rest. As such, most of the times, there is no clear distinction between weekly rest days and annual leave. There are also no statutory and, typically, contractual bases that allow domestic workers to take paid sick leave. They are, in addition, frequently not granted maternity leave. Before getting to the issue of maternity leave, women domestic workers are discouraged, sometimes even prohibited, by their employers from engaging in romantic relationships, thereby facing unwarranted invasions of their privacies⁶⁴.

Thirdly, due to the sector’s highly feminized nature, many women domestic workers are subjected to sexual harassment and violence⁶⁵. For example, in a study of girls in three Ethiopian cities, domestic workers were twice as likely to have experienced unwanted sex compared to non-domestics.⁶⁶ In addition, in a study of 2,000 commercial sex workers in Ethiopia, 44% were former domestic workers.⁶⁷

Fourthly, domestic work is considered the most poorly paid.⁶⁸ As there is no legally-prescribed minimum wage⁶⁹, numerous domestic workers receive salaries that are disproportionately lower than the chores they perform⁷⁰. For example, in a study of adolescents in slum areas of Addis Ababa, domestic workers earned average of 54 Birr per month.⁷¹ Additionally, some employers of domestic workers deduct from their workers’ salaries for faults alleged against the workers⁷². Moreover, during termination of their contracts of employment, Ethiopian domestic workers also do not have legal and contractual bases for some types of claims, such as severance pay. To the contrary, many even have the payment of their salaries denied when their employment relations are terminated⁷³.

Fifthly, there are unfair practices with regard to food, accommodation and right of domestic workers to engage in social relationships. With regard to food, some “discriminatory and dehumanizing practices”, such as serving them with leftover foods, are observed⁷⁴. Similarly, providing decent accommodation to domestic

⁵⁶Hagos, *supra note*43, at, 7

⁵⁷*Id.*, at 5

⁵⁸Elsa Biadegilegn, Working conditions for Adult Female Live-in Paid Domestic Workers in Addis Ababa, Ethiopia, Research and Perspectives on Development Practice, Kimmage Development Studies Centre, Dublin, 2011, pp. 12 and 7. <http://kimmagedsc.ie/wpcontent/uploads/2013/10/Elsa-Biadegilegn.pdf>, (Accessed on May 11, 2015); Erulkar and Mekbib, *supra note*51

⁵⁹Human Rights Watch *supra note*54; UNICEF, *supra note*54; Black, *supra note*54

⁶⁰Erulkar and Mekbib. *supra note*53

⁶¹Biadegilegn, *supra note* 58, at 12

⁶²Gebre, *supra note*50, at 20.

⁶³Biadegilegn, *supra note* 58, at 9.

⁶⁴*Id.*, at 10

⁶⁵*Id.*

⁶⁶A. Erulkar and A. Ferede, Social exclusion and early, unwanted sexual initiation in poor urban settings in Ethiopia, 35 International Perspectives on Sexual and Reproductive Health, 186-193 2(2009)

⁶⁷W.Girma, A. Erulkar, 2009. “Commercial sex workers in five Ethiopian cities: A baseline survey for targeted HIV prevention for most-at-risk populations,” Addis Ababa: Population Council report, September

⁶⁸Human Rights Watch *supra note* 52; UNICEF, *supra note* 52; Black, *supra note*52

⁶⁹Nor is there a minimum wage for other workers in the private sector in Ethiopia

⁷⁰Gebre, *supra note*50, at 21

⁷¹Erulkar and Mekbib, *supra note*53

⁷²Biadegilegn, *supra note* 58, at 9

⁷³Gebre, *supra note*50, at 21

⁷⁴*Id.*, at 21

workers is very uncommon⁷⁵. In a study of adolescents in slum areas of Addis Ababa, 44 domestic workers percent reported having no friends.⁷⁶

Finally, another problem observed in the domestic work sector in Ethiopia is employing children as domestic workers⁷⁷. Many child domestic workers, in addition to the above-mentioned problems, are exposed to arduous and perilous tasks, marginalization and other multiple forms of exploitative activities. As a result, their health and education are negatively affected.⁷⁸

In sum, we can conclude that the examples of the kinds of labor abuse and exploitation to which Ethiopian domestic workers are practically exposed which have been analyzed in this section meet the legal standard of labor trafficking against domestic workers which have been discussed in section 3 of this article.⁷⁹

VI. CONCLUSION

Despite its ubiquitous nature and indispensability to the economy outside the household⁸⁰, domestic work has been greatly undervalued, gendered and generally invisible⁸¹. Furthermore, mainly owing to its private nature, domestic work is unregulated by the general labour laws of many countries.⁸²

As a result of the above factors, domestic workers are vulnerable to a wide range of labour abuses exploitation. The most serious form of domestic worker labour abuse and exploitation is a specific form of labour trafficking known as domestic servitude.⁸³

The labour law is one of the laws that that can be employed to combat the problem of labour trafficking in domestic workers. Sound labour law can be used to combat labour trafficking in domestic workers as it regulates labour issues like hours of work, weekly rest, leave, working condition of women and young worker, occupational safety, health and working environment.

Nevertheless, following the widespread approach, the 2003 Ethiopian labour proclamation which is the principallabour law of the country excludes domestic workers from its scope of application.⁸⁴ The exclusion of domestic workers from the 2003 labour law have allowed the continued application of the labour law provisions of the 1960 Ethiopian Civil Code⁸⁵ with regard to the condition of domestic workers. Consequently, the specific labour law provisions (arts 2601-2604) provided under the 1960 Ethiopian Civil Code are applicable to the condition of domestic workers.

This article has investigated the soundness of labour law provisions under the 1960 Ethiopian Civil Code in protecting Ethiopian domestic workers against labour trafficking. Concerning this issue this article has found that the labour law provisions of the 1960 Ethiopian Civil Code are very limited in protecting Ethiopian domestic workers against labour trafficking.

In the first place, the relevantlabour law provisions of the 1960 Ethiopian Code have left the overall regulation of the condition of domestic workers with regard to key issues such as housing, food, and working time to employers' sense of fairness rather than providing legally stipulated minimum working conditionsand benefits.⁸⁶

Secondly, the 1960 Ethiopian Civil Code'slabour law provisions limit employer's obligation to care for his/her domestic worker to one month where the illness occurs after at least one year from the beginning of the contract, and to two weeks, where it occurs after at least three months from the beginning of the contract".⁸⁷ In addition, the Civil Code gives the power to the employer to "set off any expenses which he thus incurs against

⁷⁵*Id*, at 22-23

⁷⁶Erulkar andMekbib . *supra* note53

⁷⁷ A. Kifle, Child Domestic Workers in Addis Ababa: A Rapid Assessment, Investigating the Worst Forms of Child Labour No. 38-Ethiopia, International Programme on the Elimination of Child Labour (IPEC), International Labour Organization, Geneva, July 2002, p. ix. <http://www.ilo.org/ipecinfo/product/download.do?type=document&id=689>, (Accessed on March 04, 2016)

⁷⁸*Id*

⁷⁹ Concerning definition of labor trafficking in general, and domestic servitude more specifically, see generally section3, *supra*.

⁸⁰Heimeshoff and Schwenken, *supra* note 4

⁸¹ International Labour Office, Decent work for domestic workers, International Labour Conference, 99th Session, Report IV(1), Geneva, 2010, p.1. http://www.ilo.org/wcmsp5/groups/public/@ed_norm/@relconf/documents/meetingdocument/wcms_104700.pdf, (Accessed on January 16, 2016).

⁸² International Labour Office, ILO Resources on Domestic Work- Catalogue, Geneva, 2016, p. 3. http://www.ilo.org/wcmsp5/groups/public/@ed_protect/@protrav/@travail/documents/publication/wcms_248947.pdf, (Accessed on February 26, 2016).

⁸³Ensalaco , *supra* note 9

⁸⁴ Labor Proc.377/2003, *supra* note 10, art.3(3)(c)

⁸⁵ The 1960 Civil Code, *supra* note 11, Arts. 2601-2604

⁸⁶*Id*, art. 61. See also, Gebremedhin, *supra* note 33, at 62

⁸⁷*Id*, art. 2602(2)

the wages that become due during the period of illness.⁸⁸ Consequently, a domestic worker ultimately bears all the expense of her/his medication and/or care, which may seriously reduce her/his meager monthly wage.⁸⁹ Moreover, the Civil Code provisions governing employer's obligation of care towards his/her domestic worker fail to distinguish between occupational and non-occupational injuries/illnesses.⁹⁰

Thirdly, the 1960 Ethiopian Civil Code's labour law provisions provide that a domestic worker's wage should be paid every three months, unless otherwise agreed in an employment contract.⁹¹ Yet, if the employment relationship between an employer and a worker is terminated, wages will be automatically due.⁹² When seen in the light of the Ethiopian practice of not using written employment contracts for domestic workers and the difficulties of proving the terms of oral employment contracts, making salaries payable every three months inhibits domestic workers from utilizing their salaries for routine purchases and other expenses.⁹³

Finally, in addition to the aforementioned defects of the 1960 Ethiopian Civil Code's labour laws provisions governing domestic work, the 1960 Ethiopian Civil Code left a host of other important rights of domestic workers unregulated. Among others, these include maximum daily and weekly working hours, paid leave (maternity, sick, paternity, annual and other special leave), occupational safety and injuries, formation of unions, grounds of termination of employment and associated rights (certificate for services provided, due compensation and severance payments etc.).⁹⁴

The other issue investigated in this article is the current practical reality of labour trafficking in domestic workers in Ethiopia. Concerning this issue this article has revealed that, in spite of gaps in statistics and data, the limited empirical research conducted on the condition of domestic workers reveal that Ethiopian domestic workers are practically exposed to various types of labor labour trafficking which occurs in the context of domestic work.⁹⁵

In summary, the article calls for enactment comprehensive labour law that can provide effective and structured solution to the vulnerability of Ethiopian domestic workers to labour trafficking.⁹⁶

REFERENCES

Books

- [1]. A.Erulkar, A.Ferede, W.Ambelu, et. Al *Ethiopia Young Adult Survey: A Study in Seven Regions* (Addis Ababa: Population Council and UNFPA 2010)
- [2]. W.Girma, A.Erulkar *Commercial sex workers in five Ethiopian cities: A baseline survey for targeted HIV prevention for most-at-risk populations* (Addis Ababa: Population Council report 2009)
- [3]. Human Rights Watch, *Swept Under the Rug: Abuses against Domestic Workers around the World* (Human Rights Watch 2006)
- [4]. J. Elliott *The role of consent in human trafficking* (Routledge New York 2015)
- [5]. M. Black *Child Domestic Workers: Finding a Voice*, (London: Anti-Slavery International, 2002)
- [6]. UNICEF *Child Domestic Work* (Innocenti Digest, Florence: UNICEF, 1999)
- [7]. UNODC *Toolkit to Combat Trafficking in Persons* (United Nations Publication New York 2008)
- [8]. UNODC *Legislative Guides for the Implementation of the United Nations Convention against Transnational Organized Crime and The Protocols Thereto* (United Nations Publication New York 2004)
- [9]. Touzenis *Human rights* (UNESCO Paris 2010)

Book chapters

- [10]. L. Heimeshoff and H. Schwenken, 'Domestic Work: A Significant Sector', in Helen Schwenken and Lisa-Marie Heimeshoff (eds.), *Domestic Workers Count: Global Data on an Often Invisible Sector*, (Kassel University Press, Kassel, 2011)

Journal articles

- [11]. A.Erulkar and T. Mekbib, 'Invisible and vulnerable: Adolescent domestic workers in Addis Ababa, Ethiopia', 2 J. of Vulnerable Children & Youth Studies, 246 (2007)

⁸⁸ *Id.*, art. 2602(3)

⁸⁹ Hagos, *supra note* 43, at 5

⁹⁰ *Id.*

⁹¹ The 1960 Civil Code, *supra note* 11, Art. 2604 (1),

⁹² *Id.*, Art.2604 (2).

⁹³ Hagos, *supra note* 43

⁹⁴ Gebre, *supra note* 50, at.13-14

⁹⁵ Section 5, *supra*

⁹⁶ Gebre, *supra note* 50, at 29-30

- [12]. Erulkar and A. Ferede , Social exclusion and early, unwanted sexual initiation in poor urban settings in Ethiopia,35 *International Perspectives on Sexual and Reproductive Health*, 186(2009)
- [13]. B.A. Hagos, Remembering the Forgotten: The Need for Proper Regulation of Working Conditions of Live-in Domestic Workers in Ethiopia, 5E-*Journal of International and Comparative Labour Studies*1(2016)
- [14]. Christopher Clapham , The Ethiopian Experience of Devolved Government, 1*Ethiopian Journal of Federal Studies* Addis Ababa University , 18(2013)
- [15]. John H. Beckstrom , Transplantation of Legal System: An Early Report on the Reception of Western Laws in Ethiopia, 21*American Journal of Comparative Law*, 557(1973)
- [16]. M. Ensalaco ,Ensuring Decent Work For Domestic Workers: An Integral Approach To The Prevention Of Labor Trafficking, 7*Intercultural Hum. Rts. L. Rev.* 45(2012)
- [17]. MussieMezgeboGebremedhin, Procrastination in Recognizing the Rights of Domestic Workers in Ethiopia, 10 *Mizan L. Rev.* 38 (2016)
- [18]. Smith, Ageing and Caring in the Home: Regulating Paid Domesticity in the Twenty-First Century, 92 *Iowa L Rev* 1851(2007)

Thesis/Dissertation

- [19]. K. MulugetaGebre, Vulnerability, Legal Protection and Work Conditions of Domestic Workers in Addis Ababa, International Institute of Social Studies, MA Thesis, The Hague, December 2012, p. 19. https://thesis.eur.nl/pub/13194/Kidist%20Mulugeta%20Gebre_Kidist%20RP_1503.pdf f, (Accessed on January 10, 2016)
- [20]. S. Tesfaye, Denial of Rights, Human Rights Abuses and Violence Against Domestic Workers in Some Selected Areas of Addis Ababa, Addis Ababa University, Institute of Gender Studies, MA Thesis, Addis Ababa, July 2007 <http://etd.aau.edu.et/bitstream/123456789/5989/1/21.%20SELAMAWIT%20TESFA%20YE.pdf>,(Accessed on March 03, 2016).

Internet

- [21]. A. Kifle, Child Domestic Workers in Addis Ababa: A Rapid Assessment, Investigating the Worst Forms of Child Labour No. 38-Ethiopia, International Programme on the Elimination of Child Labour (IPEC), International Labour Organization, Geneva, July 2002, <http://www.ilo.org/ipeinfo/product/download.do?type=document&id=689>, (Accessed on March 04, 2016)
- [22]. Elsa Biadegilegn, Working conditions for Adult Female Live-in Paid Domestic Workers in Addis Ababa, Ethiopia, Research and Perspectives on Development Practice, Kimmage Development Studies Centre, Dublin, 2011 <http://kimmagedsc.ie/wpcontent/uploads/2013/10/Elsa-Biadegilegn.pdf>, (Accessed on May 11, 2015)
- [23]. International Labour Office, Decent work for domestic workers, International Labour Conference, 99th Session, Report IV(1), Geneva, 2010, p.1. http://www.ilo.org/wcmsp5/groups/public/@ed_norm/@relconf/documents/meetingdocument/wcms_104700.pdf, (Accessed on January 16, 2016)
- [24]. International Labour Office, ILO Resources on Domestic Work- Catalogue, Geneva, 2016 http://www.ilo.org/wcmsp5/groups/public/@ed_protect/@protrav/@travail/documents/publication/wcms_248947.pdf, (Accessed on February 26, 2016)
- [25]. Int'l Labor Org., Decent Work for Domestic Workers, ILC.100/IV/1 (2010), available at http://www.ilo.org/wcmsp5/groups/public/---ednorm/---relconf/documents/meetingdocument/wcms_143337.pdf
- [26]. Organization for Security & Cooperation in Europe [OSCE], Unprotected Work, Invisible Exploitation: Trafficking for the Purposes of Domestic Servitude, Rep. of the Tenth Alliance Against Human Trafficking in Persons Conference, 23 .(June 17-18, 2010) <http://www.osce.org/cthb/75804>.
- [27]. YamilaSimonosvky&MalteLuebker, Conditions Of Work & Employment Programme (Travail), Int'l Labour Off., Domestic Work Pol'y Brief 4, Global And Regional Estimates On Domestic Workers 8(May 27, 2011), available at http://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/-travail/documents/publication/wcms_155951.pdf.

Conference/Seminar/Report

- [28]. Dilvel, "Domestic Work – a Legislative Frame in the EU?", European Trade Union Confederation seminar, Brussels, 14-15 April 2005
- [29]. Press Release Int'l Labour Org., 100th ILO Annual Conference Decides to Bring an Estimated 53 to 100 Million Domestic Workers Worldwide Under the Realm of Labour Standards (June 16. 2011)

International and regional instruments

- [30]. Decent Work for Domestic Workers Convention No. 189, International Labour Office, Geneva, June 2011
- [31]. Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the U.N. Convention Against Transnational Organized Crime, G.A. Res. 55/25, 55 U.N. GAOR Supp. (No. 49), U.N. Doc. A/45/49 (Vol. I) (2001)
- [32]. Status of adherence to the United Nations Convention against Transnational Organized Crime and the Protocols thereto as at 10 September 2014 (CTOC/COP/2014/CRP.1)
- [33]. UN Convention (2000) UN Convention Against Transnational Organized Crime (United Nations: A/RES/55/25, 2000)

Ethiopian laws

- [34]. Labour Proclamation of the Federal Democratic Republic of Ethiopia No. 377/2003 (26th February 2004) Year 10, No. 12 Federal NegaritGazeta (Addis Ababa)
- [35]. Labour (Amendment) Proclamation of the Federal Democratic Republic of Ethiopia No. 466/2005 (30th June 2005) Year 11, No. 56 Federal NegaritGazeta (Addis Ababa)
- [36]. Labour (Amendment) Proclamation of the Federal Democratic Republic of Ethiopia No. 494/2006 (29th June 2006) Year 12, No. 30 Federal NegaritGazeta (Addis Ababa)
- [37]. The Civil Code of the Empire of Ethiopia Proclamation No. 165/1960 (5th May 1960) Year 19, No. 2 The Empire Extraordinary NegaritGazeta (Addis Ababa) article 2601-2604

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