Finding the gap?
Prosecution of trafficking in persons in Ethiopia

Tadesse Simie Metekia

Summary
Ethiopia has recently brought perpetrators to justice for trafficking Ethiopian immigrants and subjecting them to various forms of exploitation in countries such as Kenya, Tanzania, Sudan and Libya. The state has also demonstrated a growing political will to prevent and prosecute transnational forms of trafficking in persons. Yet, effective prosecution will elude Ethiopia unless it removes the impediments that are limiting its ability to ensure witness availability and bring more masterminds to justice.

Key findings
- Despite Ethiopia’s efforts to combat trafficking in persons (TiP), the crime continues unabated.
- The Ethiopian legal framework on the prohibition and criminalisation of TiP falls short of adequate criminalisation of the act, the means and the purpose elements of the crime.
- Due to legal and institutional gaps in Ethiopia’s criminal justice system, TiP has been mischaracterised and prosecuted as the smuggling of migrants, often carrying a lesser penalty.
- International cooperation is limited or absent and hinders opportunities for prosecuting masterminds and ringleaders.
- Current practices of prosecutors and judges regularly see TiP proceedings discontinued due to unavailability or unwillingness of witnesses to testify.
Introduction

The past year has seen a significant increase in Ethiopia’s prosecution of transnational forms of trafficking in persons (TiP). In September 2020, the Federal High Court (FHC) concluded the case of Dejene Filatte et al. – a case involving the exploitation of Ethiopian migrants who left the country through the southern route to South Africa. In a landmark sentencing decision on 15 June 2021 in the case of Kidane Zekarias et al., the Federal First Instance Court (FFIC) handed down a life sentence to the TiP perpetrator for crimes committed along the north-western route involving Ethiopia, Sudan and Libya. Three days prior, Emanuel Yirga Damete, a former ringleader of a Libya-based TiP and smuggling of migrants (SoM) syndicate, was sentenced to 18 years in prison by the FFIC.

Ethiopia is an epicentre for irregular migration from eastern Africa to southern Africa, North America, Europe and the Middle East. It is common to come across news about Ethiopians who have been killed in Libya, perished in the Mediterranean, tortured in Yemen, or suffocated to death on their way to South Africa or suffered in overcrowded and unhygienic prisons in Saudi Arabia.

Ethiopia is an epicentre for irregular migration from eastern Africa

Alarmingly, Ethiopia is now categorised by the US Department of State’s TiP report as ‘Tier 2 Watch List’, a downgrading from ‘Tier 2’ for the first time in 17 years. One of the reasons for this downgrading is that women are now taking one of the most dangerous routes of irregular migration, which was previously used exclusively by men – the north-western route through Sudan and Libya to the Middle East and across to Europe.

Irregular migration from and via Ethiopia is typically facilitated by family members, relatives and trusted community members who work directly and indirectly with organised networks of criminal actors. Trafficking ringleaders based in Kenya and Tanzania for the southern route, in Sudan and Libya for the north-western route, and in Djibouti, Somaliland and Yemen for the eastern route subject immigrants to various forms of financial and physical exploitation that often result in the death of the victims. In addition to the three land routes, illegal migrants are also smuggled out of Ethiopia by air through Bole International Airport, mainly to the Middle East and Europe.

The fact that most criminal syndicates perpetrate the crime of TiP with impunity and that it has continued unabated brings into question the effectiveness of Ethiopia’s criminal justice system in prosecuting TiP cases. Answering this question requires a thorough analysis of Ethiopia’s legal framework on TiP, the relevant efforts and existing political will in fighting impunity for perpetrators of this crime, the institutional set-up in investigating and prosecuting TiP, as well as the scope and outcomes of the actual TiP trials.

Most criminal syndicates perpetrate the crime of trafficking in persons with impunity

This brief is a result of research conducted by ENACT in Ethiopia on prosecution of acts of trafficking that have been committed against Ethiopians and other persons transiting through Ethiopia. Methodologically, the research employed legislative and case analysis. The former was considered important to identify the nature and scope of the proscription of TiP in the Ethiopian legal system, while the latter was used to examine the relevant factors behind acquittals and convictions in TiP cases. The research examined more than 280 criminal cases collected from federal courts in Addis Ababa and Dire Dawa from 2015.

In addition, the researcher conducted site visits and interviews at key offices responsible for the investigation and prosecution of TiP cases to understand and examine Ethiopia’s investigative and prosecutorial capability and the relevant institutional set up.

Focus group discussions and key informant interviews were conducted with persons purposively selected based on their level of expertise and their direct involvement in the prosecution of TiP in Ethiopia: researchers; police; prosecutors; judges; and experts working in the national and international organisations such as the International Organization for Migration (IOM), the United Nations Office on Drugs and Crime,
the Inter-Governmental Agency on Development, and the Attorney General Office’s National Partnership Coalition on Migration.

The brief is intended to show the gaps in Ethiopia’s prosecution of TiP and put forward actionable recommendations. The findings and recommendations reported in this brief were presented to a validation workshop that ensured the participation of key experts from the relevant offices.

This brief starts by examining the Ethiopian legal framework prohibiting and criminalising the crime of TiP, followed by a section examining TiP trials in Ethiopia. It then reviews the state of international cooperation in Ethiopia’s efforts to prosecute TiP. Thereafter, it explores how key institutions are structured to investigate the crime and punish the offenders. The final section provides an overview of existing efforts as well as key recommendations for strengthening future action.

Prohibition and criminalisation of TiP in Ethiopia: the legal framework

Historical overview of the legal framework: 1930–2021

In Ethiopia, prohibition of TiP rests on a constitutional basis. Article 18(2) of the 1995 Constitution provides that ‘Trafficking in human beings for whatever purpose is prohibited’. It also states that ‘no one shall be held in slavery or servitude’. This overarching prohibition has been translated into a criminal offence through specific provisions incorporated into the criminal codes as well as through the promulgation of special legislation on TiP.

In fact, criminalisation of TiP is as old as the history of modern criminal law in Ethiopia. Although the 1930 Penal Code, the country’s first written penal law, did not explicitly and discretely proscribe human trafficking, it criminalised acts of exploitation which were frequently linked with trafficking, such as forced labour, sexual exploitation and illegal restraint. Nonetheless, slavery was abolished in Ethiopia only in 1942 and the country is not yet a signatory to the Slavery Convention of 1926.

The Federal Crimes Proclamation of 1953, the law that came into force to proscribe and regulate crimes that fall under the jurisdiction of the federal government established after Eritrea’s confederation with Ethiopia in 1950, was the first to proscribe acts that were somewhat closer to the contemporary definition of TiP. In particular, this law proscribed the intentional act of transporting or causing to be transported, or aiding or abetting in transporting, in interstate or foreign commerce, any person who had been unlawfully seized, confined, inveigled, decoyed, kidnapped, abducted or carried away by any means whatsoever and held for ransom or reward.

Ethiopia enacted its most comprehensive and advanced penal code in 1957 with the help of international jurists. However, it did not proscribe trafficking in persons except for women, infants and young persons. Its successor, the Criminal Code of 2004, although coming into force four years after the adoption of the Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children (the Palermo Protocol), which supplemented the United Nations Convention against Transnational Organized Crime, did not incorporate the international definition of TiP.

The Criminal Code of 2004, like its predecessor, had specific provisions punishing trafficking in women and children. Unlike the Penal Code of 1957, the Criminal Code of 2004 criminalised ‘unlawful sending of Ethiopians for work abroad’ under its Article 598. As discussed below, this provision has been invoked for most of the TiP and SoM prosecutions in Ethiopia. Based on the belief that most Ethiopians sent abroad for work are subject to exploitation, the second paragraph of the provision provides that a person who unlawfully sends an Ethiopian abroad for work shall be punished with rigorous imprisonment from five to twenty years where the victim suffers an injury to her or his human rights, or to her or his life, body or psychological make-up. Essentially, a person can be considered to have trafficked a victim even if his or her act and intention did not go beyond smuggling the victim.

In 2012, Ethiopia ratified the United Nations Convention against Transnational Organized Crime (UNTOC) and the Protocol Against the Smuggling of Migrants by Land, Sea and Air, supplementing UNTOC as well as the Palermo Protocol. Three years later, it enacted Proclamation No. 909/2015, a special criminal law dedicated to the prevention, suppression and punishment of TiP and SoM. Enacted in the aftermath of the mass protests in Ethiopia in solidarity
with Ethiopians who were slaughtered in April 2015 by the Islamic State militants in Libya, the proclamation is known for its inclusion of the death penalty for aggravated forms of TiP, that is, where victims suffer bodily injury or death.

Proclamation No. 909/2015 includes the death penalty for TiP and was the first in Ethiopia to incorporate the international definition of the crime. It was promulgated to bring the criminalisation of TiP in line with the Constitution and relevant international instruments. Nonetheless, the authoritative version of the law – the Amharic version – referred to refugees instead of migrants and persons. This resulted in the dismissal of TiP and SoM cases brought to court under this law. Indeed, applying Proclamation No. 909/2015 to TiP cases could have resulted in violation of the principle of legality as it would have amounted to creating a crime by analogy. Furthermore, its provision on TiP was also considered hard to prove mainly because the proclamation did not allow for the presumption of exploitation.

As a result, most TiP prosecutions resorted to the provisions under the Criminal Code of 2004. Proclamation No. 909/2015 was repealed altogether in 2020 on the grounds of lack of clarity and inconsistency with other laws and that it did not provide an adequate response to the problem. Its successor, Proclamation No. 1178/2020, came into force on 1 April 2020.

The current state of the law: the missing corrigendum

Proclamation No. 1178/2020 repealed and replaced both Proclamation No. 909/2015 and the relevant provisions of the Criminal Code of 2004. Unlike the Criminal Code, it is a law designed not only to prevent and prosecute TiP but also to protect and rehabilitate victims. Unlike Proclamation No. 909/2015, Proclamation No. 1178/2020 came up with more comprehensive and lasting mechanisms to prevent and suppress TiP and SoM. It replaced the national committee established under its predecessor with a more robust national council. Similarly, it replaced a taskforce established under the previous law with the National Partnership Coalition on Migration (NPCM) for the prevention and control of the crimes of TiP, SoM and the unlawful sending of persons abroad for work.

Although Proclamation No. 1178/2020 referred to persons instead of refugees and, in doing so, fixed the main gap in the previous law, it failed to address its most important function, which is defining TiP in compliance with the Palermo Protocol. Article 3 of the Proclamation that criminalises acts of TiP was initially supposed to incorporate the elements of the crime listed under the Palermo Protocol’s Article 3. It does incorporate the purpose element of the crime in full. It even expanded the list by incorporating the purposes of exploitations such as debt bondages, begging, forced

| Table 1: Definition of TiP – the Palermo Protocol vis-à-vis Proclamation No.1178/2020 of Ethiopia |
|-----------------------------------------------|-----------------------------------------------|-----------------------------------------------|
| **Elements of TiP** | **The Palermo Protocol** | **Proclamation No.1178/2020** |
| Act | Recruitment, transportation, transfer, harbouring or receipt of persons. | X |
| Means | Threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person. | X |
| Purpose | Exploitation: the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs... | Exploitation: the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude, the removal of organs or debt bondages, begging or criminal act, forced marriage, surrogacy... |

X – not indicated
marriage and surrogacy, which have not been explicitly mentioned in the Palermo Protocol.

However, the proclamation omitted the act and the means elements of the crime of TiP. The international definition of TiP involves acts such as recruitment, transportation, transfer, harbouring or receipt of persons. The crime is perpetrated, as defined under Article 3 of the Palermo Protocol, by means of threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person. None of these acts and means are mentioned in Proclamation No. 1178/2020.

Those involved in the drafting process of the proclamation state that the omissions resulted due to an error that occurred while printing the final version of the draft for parliament’s approval. Indeed, Article 3 of the earlier draft of the proclamation contained additional paragraphs listing the act and means elements of the crime of TiP. Abel Gebreigziabher of the NPC Secretariat claims that the Attorney General Office has been informed by the parliament that a corrigendum will be prepared for the proclamation to rectify the defect.

The alleged corrigendum has not been prepared and approved by the parliament although the proclamation is now almost a year and half old.

Challenges in prosecution of TiP in Ethiopia

The research for this brief examined cases decided after 2015, the year Ethiopia promulgated Proclamation No. 909/2015 to implement the Palermo Protocol. Eighty of the 280 criminal cases analysed in this brief were collected from federal first instance and high courts in Addis Ababa and Dire Dawa. Two hundred of the cases were collected from the Federal Supreme Court (FSC), an appellate court, and therefore the cases had originated from several first instance and high courts in the country, including from the regional courts of Amhara, Ethio-Somali, Oromia, Southern Nations Nationalities and Peoples Regional State, and Tigray. Of the 280 cases, 234 involved prosecutions conducted on the basis of the provisions of the Criminal Code of 2004 while the 2015 trafficking and smuggling proclamation was invoked in the remaining 46 cases.

Traffic as smuggling

Ethiopian courts do not distinguish TiP cases from cases of SoM. This could be because there is no provision in the Criminal Code that distinguishes between the two. As noted, Article 598 of the Criminal Code refers to both TiP and SoM using the phrase ‘unlawful sending of Ethiopians abroad for work’. Article 598(1), which traditionally denotes the crime of SoM, prohibits sending an Ethiopian abroad without having obtained licence or by any other unlawful means. When the smuggling results in violation of the victim’s human rights and injury to life, body or psychological make-up, this is punishable under Article 598(2) and colloquially understood in the criminal justice system as the crime of TiP.

The main gap in Ethiopia’s prosecution of TiP is that acts that constitute trafficking are often prosecuted as smuggling. Only 42 of the 234 trials conducted on the basis of the Criminal Code explicitly dealt with acts of exploitation prohibited under Article 598(2) of the Code. In several other cases, judges came across evidence of exploitation in trials started as SoM cases. Despite the availability of relevant evidence, an Ethiopian court is procedurally prohibited from entering a conviction for TiP when the initial indictment is for SoM. This is because TiP is a more serious crime carrying a maximum penalty of 25 years as compared to the 15 year maximum sentence under SoM. An accused person may be convicted of an offence with which he or she was not initially charged if that offence is of lesser gravity than the offence charged.

This mischaracterised of TiP as SoM has a significant implication for the purpose and effectiveness of punishment. From the perspective of deterrence, the main purpose of punishment in Ethiopian criminal law, it is less likely that a mischaracterised conviction and punishment for SoM would deter future TiP crimes given that these are two different crimes. This practice may also be seen as a denial of justice to victims of trafficking.

Judicial officers are of the opinion as SoM cases are easier to prove and less time consuming than TiP cases that police and prosecutors prefer to opt for charging traffickers as smugglers. Indeed, exploitation is not an element of the crime that needs to be proved in SoM cases. According to the Organized and Transnational Organized Crimes Directorate of the Attorney General
Office, prosecutors have questionable capacity and skills in terms of distinguishing SoM from TiP. This may also be inferred from the fact that the NPCM and prosecution offices do not maintain a separate report for SoM and TiP prosecutions.

Unavailable and unwilling to testify

According to a report compiled by the NPCM, Ethiopia prosecuted 2,953 TiP/SoM cases between July 2018 to July 2020. Of these, 201 were reported as pending by the end of July 2020. Of the completed 2,752 cases, 45 per cent (1,240 cases) resulted in conviction of the defendants. Fifty-five per cent of the completed TiP/SoM cases, ended in acquittal or were discontinued due to the unavailability and unwillingness of witnesses and victims to testify or due to non-appearance of the defendants.

Witnesses are unavailable or unwilling to testify against the traffickers and smugglers for several reasons, including fear of retaliation by members of organised crime syndicates. According to Habtamu Haile, a senior prosecutor at the Attorney General Office, the fact that family members and trusted members of the community participate in SoM and TiP further complicates the matter for witnesses and victims to come forward and testify against alleged perpetrators.

Protection and safety measures have not been provided for witnesses in TiP/SoM trials

Most importantly, many victims and other members of the community do not see smuggling and trafficking as problems that require legal consequences, even when exploitation and abuse occur. All of those who participated in the focus group discussion agree that TiP and SoM are socially embedded phenomena that most communities in Ethiopia consider a necessary risk (discussed later).

Lengthy trial processes contribute to witness unavailability. In fact, some TiP cases decided by the FFIC were adjourned up to 34 times while others took as long as seven years to conclude. Court hearings are often adjourned over and over again for various reasons, such as the non-appearance of judges, the non-appearance of the accused, or because of the last-minute adjournment of trials due to judges’ case overload.

When a proceeding is adjourned, a witness that has travelled to Addis Ababa from a remote Ethiopian village must return home, promising that he or she will appear at the next hearing. As a Supreme Court judge noted, the majority of such witnesses rarely come back to testify. They change their minds because coming back to testify is considered risky and too costly. Adjournments also create opportunities for members of organised trafficking syndicates to forcefully persuade witnesses not to testify against them.

Although Ethiopia promulgated a witness protection law in 2010, resource and logistical challenges are cited for its poor implementation. Protection and safety measures have not been provided for witnesses in TiP/SoM trials. According to Temesgen Lapiso, the AG’s Director General for prosecution of TOC, the Attorney General Office does not have specific funding dedicated to witness safety and protection and only limited efforts have been made using scarce resources.

Limited international cooperation: masterminds remain free

Trafficking masterminds and ringleaders rarely face justice in Ethiopia. As a result, prosecutions of TiP in Ethiopia typically involve only low-level accused. Recently, however, the Attorney General Office brought to justice leaders of three organised crime syndicates who had engaged in, organised and facilitated acts of SoM and TiP: Dejene Filatte and Askale Loddiso, criminal masterminds in Tanzania and Kenya; and Kidane Zekarias and Emanuel Yirga Damete, leaders of organised criminal groups based in Libya.

Askale Loddiso and Dejene Filatte were arrested abroad with the help of Tanzanian and Kenyan police, who responded to a request from Ethiopia for bilateral cooperation, as well as Interpol. Kidane Zekarias and Emanuel Yirga Damete were arrested in Ethiopia after victims identified them by accident in Addis Ababa. Kidane Zekarias managed to escape from the premises of the FHC while attending trial. In what has been regarded as a lack of international cooperation and the failure of Ethiopian law enforcement agencies, Zekarias has not been rearrested and the trial had to go forward in absentia.
Although the crimes for which Kidane Zekarias and Emanuel Yirga Damete stood trial were perpetrated in Sudan and Libya with the help of several co-perpetrators, the trials were carried out based on evidence collected from victims who resided in Ethiopia at the time of the hearings. No evidence was collected or obtained from another country to be used against the defendants. The same is true for Askale Loddiso and Dejene Filatte.

International cooperation is essential for effectively fighting against TiP

The requests for international cooperation in these cases is often not forthcoming. This may be attributed to the categorisation of TiP as a capital crime in Ethiopia, which makes some states reluctant to cooperate in investigations. Although the death penalty has a basis in Article 15 of the Ethiopian Constitution, its applicability with respect to transnational organised crimes such as TiP has an adverse effect in achieving much-needed international cooperation. Some European countries with evidence on the crimes committed by the criminal syndicate run by Kidane Zekarias in Libya refused to cooperate with the Ethiopian prosecution because Article 6 of Proclamation No. 909/2015 prescribes the death penalty for TiP.

Nonetheless, Ethiopia does not seem ready to remove the death penalty for the crime of TiP. Article 4(2) of Proclamation No. 1178/2020 has retained it for aggravated cases, that is, when the crime was committed by a member, leader or coordinator of an organised criminal group and resulted in the death of the victim. This suggests that the death penalty would rarely be imposed in TiP cases, given that masterminds are seldom prosecuted.

In a similar vein, one of the major developments in the punishment of TiP is that Proclamation No. 1178/2020 has reduced the minimum penalty to seven years of imprisonment. The penalty has been reduced by more than half because members, leaders and coordinators of organised criminal groups are not prosecuted and it is considered unfair to impose a higher penalty on individual offenders without a direct link to criminal syndicates. Consequently this means that the limited training that is available through regional and international organisations is assigned randomly. As it is not always known who will prosecute TiP cases, available training is given to any prosecutor, who may or may not end up dealing with the cases. As a result, it has become difficult to establish and build a specialised division composed of prosecutors with specific and specialised training in TiP.

The FFIC, which has the primary jurisdiction to see TiP/SoM cases, claims that there are too few such cases to warrant establishing a special bench. Nonetheless, most TiP trials in Addis Ababa take place in the Lideta, Arada and Lafto branches of the FFIC. There is in principle nothing that prohibits the remaining seven branches of the FFIC from hearing TiP cases. It

Despite providing for the death penalty, Article 4(2) of Proclamation No. 1178/2020 envisages that international cooperation is essential for effectively fighting against TiP. It has imposed an obligation on the Attorney General Office to cooperate with the competent authority of another country in the investigation, extradition of criminals, exchange of information and mutual legal cooperation in relation to TiP. It has also provides that the federal police may engage in information exchange, mutual cooperation and sign memoranda of understanding with a view to providing more effective investigation of TiP crimes.

Institutional set-up

The Organized and Transnational Crimes Prosecution Directorate General at the Attorney General Office handles prosecutions of TiP crimes. There is no special or separate division in the Directorate that exclusively deals with such prosecutions. Although a senior prosecutor is often assigned to coordinate TiP/SoM prosecutions, there are no prosecutors with a primary responsibility to conduct joint TiP investigations with the police and follow cases from start to finish.

There are no prosecutors with a primary responsibility to conduct joint TiP investigations with the police

The FFIC, which has the primary jurisdiction to see TiP/SoM cases, claims that there are too few such cases to warrant establishing a special bench. Nonetheless, most TiP trials in Addis Ababa take place in the Lideta, Arada and Lafto branches of the FFIC. There is in principle nothing that prohibits the remaining seven branches of the FFIC from hearing TiP cases. It
all depends on the local jurisdiction and where the accused was arrested.

A special bench dedicated to hearing TiP cases has not been established

Establishing a special bench could solve some of the lingering problems hindering effective prosecution of TiP cases. Currently, the absence of a special bench results in there being no judges assigned by the court to work full time on TiP cases. When judges are not available because they are working on other cases, TiP cases are frequently adjourned. Due to the adjournments, witnesses sometimes end up not being heard despite travelling for days to get to the court. As noted, witnesses rarely come back to the court to testify in such instances. Ultimately, the absence of a special bench contributes to the volume of discontinued cases as well as witness unavailability or unwillingness to testify.

The absence of a special bench also results in judges not getting the chance to hone and specialise their skills and knowledge. Judges at the FFIC and FHC that have presided over TiP/SoM cases have stated that they have not been given any training focused on the national and international legal framework or the complexities and sensitivities of evidentiary issues in TiP cases. A specialised focus on TiP trials could help the court enhance the expertise and skills of the judges through training.

Figure 1: Key institutions involved in the investigation and prosecution of TiP in Ethiopia

Source: compiled by Author
Furthermore, multiple government offices work directly or indirectly on the prosecution of TiP. Some of the institutions – such as the National Intelligence and Security Service, the Immigration Agency, as well as financial institutions – contribute significantly in providing evidence and assisting the police in their investigation of acts of TiP. Institutions such as the Ministry of Labour and Social Affairs and the NPCM could also assist TiP prosecutions by ensuring and facilitating access to information and evidence.

Witnesses sometimes end up not being heard despite travelling for days to get to court

However, there is no strong interdepartmental cooperation among the many government agencies that work to combat TiP. Prosecutors and the police do not always work together in a manner that ensures immediate feedback and discussion on investigations. Instead, prosecutors send cases back to the police, demanding further investigation. Ironically, interdepartmental cooperation is missing even within the same organisation. For instance, although both are departments within the Attorney General Office, the prosecution department and the NPCM rarely meet and work together, as a senior prosecutor noted.49

The way forward: growing political will and missing concrete steps

In what could be characterised as growing political will in the fight against TiP and related crimes such as SoM, Ethiopia has established taskforces involving multiple stakeholders and high-ranking government officials.

Proclamation No. 1178/2020 established a high-level council, chaired by the deputy prime minister, to coordinate the country’s efforts to prevent and control TiP, SoM and the unlawful sending of persons abroad for work. In addition to representatives from civil society and religious institutions, the national council comprises key ministerial-level offices, law enforcement agencies as well as offices responsible for border governance, and intelligence and security.

The same proclamation established an NPCM for the prevention and control of the crimes of TiP, SoM and the unlawful sending of persons abroad for work, which is chaired by the Attorney General’s Office.

The most recent addition to Ethiopia’s effort in fighting TiP is a draft strategy for the prevention of TiP and SoM, which is currently under discussion at the Attorney General’s Office. This draft strategy is unique in that no other crime in the Ethiopian legal system has a specific strategy dedicated to its prevention. Ethiopia’s decision to develop such a prevention strategy points to the growing political will to curb TiP.

This growing political will should be complemented by concrete steps to fill the gaps identified in this policy brief.

Fix Proclamation No. 1178/2020

From a strictly legal point of view, there is currently no law in Ethiopia that criminalises TiP as such. This is because Article 3 of the law in force (Proclamation No. 1178/2020) has not included the act and purpose elements of the crime of TiP. Until this is changed, be it in the form of corrigendum or amendment, prosecution of acts of TiP will result in dismissal of the cases on the grounds of the principle of legality, no law no crime.

Finalise the national migration policy

Commendably, the National Partnership Coalition on Migration, in collaboration with the IOM, is developing a national migration policy initiated by the government of Ethiopia in mid-2020. A policy gap analysis was completed in March 2021 and discussions were held for further input. When completed, the policy will further the goals of Proclamation No. 1178/2020, that is, ‘fulfilling the duty of government to enact a legal framework and create a system to enable crime prevention, ensure accountability of the criminals/perpetrators and the protection of the victims of abuse in the migration sector for TiP/SoM and overseas employment’.50 It is therefore important that this initiative be swiftly concluded so that the fight against TiP may benefit from renewed policy commitments that could minimize existing gaps.
Operationalise standard operating procedures

The criminal justice system lacks consistency and uniformity in investigating and prosecuting TiP and SoM cases. In early 2021, the Attorney General Office finalised standard operating procedures (SOPs) for investigating and prosecuting such cases. The SOPs, prepared with the support of CIVIPOL and United Nations Office on Drugs and Crime (UNODC), aim at setting minimum standards that law enforcement agencies should follow and respect during the investigation of crimes of TiP/SoM and subsequent court proceedings.

The SOPs were prepared to establish a victim-centred and rights-based investigation, prosecution and litigation system for crimes of TiP/SoM at the national level. Yet, the SOPs have not been published and formally disseminated to the implementing agencies. Timely dissemination and training would contribute to standardised investigation and prosecution of these crimes.

Engage in enhanced awareness raising

TiP is largely a culturally acceptable practice for members of various communities in Ethiopia, and it is ‘normal’ to engage in smuggling activities even though these result in the exploitation of victims. This is a primary reason that witnesses and victims are unavailable and unwilling to testify in TiP prosecutions.

Migrants smuggled out of Ethiopia are often not aware of the dangerous conditions and exploitations involved

Research shows that migrants smuggled out of Ethiopia are often not aware of the dangerous conditions and exploitations involved in the process and en route to the destination countries. Awareness raising of the harms of this crime and the role of organised criminal syndicates in benefiting from trafficking people would be a necessary component of shifting the long held idea that the practice is acceptable.

In this regard, awareness raising is being highlighted as one of the focus areas in the strategic goals proposed in the Attorney General’s draft strategy for the prevention of TiP and SoM. It is important that this is implemented in a manner that results in more than just sporadic campaigns of awareness raising. Changing socially embedded phenomena requires sustainable and continuous work aimed at influencing the attitudes of the affected members of society.

Provide for witness protection and safety measures

Another reason for the unwillingness and unavailability of witnesses to testify against members and affiliates of organised criminal groups is that there is no or limited effort to ensure the safety of witnesses and victims. Additionally, witnesses travelling from distant places are rarely provided with adequate compensation to cover their expenses for travel, meals and accommodation. The government needs to strengthen its efforts to ensure the safety of witnesses and avail the necessary funds to cover expenses related to witness testimony.

Specialised TiP institutions

The Ethiopian government is making laudable efforts to fight TiP more effectively. As noted, among the issues hindering effective prosecution is the absence of a specialised institution focusing exclusively on the investigation and prosecution of TiP and related crimes.

Establishing a special prosecution division, a special trial bench and a special international cooperation unit at the Attorney General Office would be necessary steps to overcoming the existing challenges. A special prosecution division would contribute to the timely investigation and prosecution of TiP in terms of resources and expertise.

A special trial bench would provide a dedicated facility as well as personnel for TiP trials and lead to less adjournments, thus ensuring that witnesses testified without too much inconvenience. It would also ensure targeted training to enhance the skills and knowledge of the judges.

Creating a dedicated international cooperation unit or office for TiP cases is important to use and increase
opportunities for international cooperation as well as solicit and enter into cooperation agreements for future use. The current death penalty sanction, and the global moratorium by a majority of UN member states though will likely stifle this cooperation. Inter-departmental cooperation at national level might be considered significant to guarantee effectiveness of the system in combatting TiP. Key institutions could consider working collaboratively at both investigation and prosecution stages.
Finding the gap? Prosecution of trafficking in persons in Ethiopia

Notes

5. See United States Department of State, 2021 trafficking in persons report: Ethiopia. www.state.gov/reports/2021-trafficking-in-persons-report/ethiopia/. According to Abel Gebreigziabher of the National Partnership Coalition on Migration, who rejects the downgrading, the Department of State did not receive the national report which could have helped a fully informed decision as to the progress Ethiopia has made in combatting TiP. Statements by Abel Gebreigziabher, member of NPC Secretariat at the Attorney General Office, on the Validation Workshop organized to discuss this research, Addis Ababa, 12 August 2021.
7. For details, see the section ‘TIP trials in Ethiopia’.
16. Ibid., Article 598(1).
17. Ibid., Article 598(2).
18. Protocol Against the Smuggling of Migrants by Land, Sea and Air Ratification Proclamation No. 736/2012.
23. For the international definition of TiP, see the discussion below regarding Article 3 of the Palermo Protocol.
27. Ibid., Article 35.
Ibid.

Interview with Judge Tesfaye Neway, vice president of Federal First Instance Court and a presiding judge in TiP/SoM cases, Addis Ababa, 8 June 2021.


A Proclamation to Provide for the Protection of Witnesses and Whistle-blowers of Criminal Offences, Proclamation No. 699/2010, entered into force 11 February 2011. This law is now under revision.

This was pointed out by participants in the focus group discussion, Addis Ababa, 27 April 2021.


Ibid.

Interview with Abel Gebreigziabehere, member of NPC Secretariat at the Attorney General Office, Addis Ababa, 12 August 2021.

Interview with Judge Tesfaye Neway, vice president of Federal First Instance Court and a presiding judge in TiP/SoM cases, Addis Ababa, 8 June 2021.

Interview with Habtamu Haile, TiP and SoM prosecutions coordinator at the Attorney General Office, Addis Ababa, 6 May 2021.

Judge Selamawit Gemechu, TiP/SoM judge at the Federal First Instance Court, opinion given during a validation workshop, Addis Ababa, 12 August 2021.

Statement by Habtamu Haile at validation workshop, Addis Ababa, 12 August 2021.

Prevention and Suppression of Trafficking in Persons and Smuggling of Persons Proclamation No. 1178/2020, Preamble, para. 4.


Subscribe to ENACT

ENACT works to enhance Africa’s response to transnational organised crime. Receive the latest analysis and research, delivered directly to your inbox:

1. Go to www.enact.africa
2. Click on ‘Connect’, then ‘Subscribe’
3. Select the topics you’re interested in, click ‘Subscribe’

infographics
publications
original analysis
trend reports

explainers
Read more about drug trafficking and counterfeit medicines at www.enact.africa
About the author

Dr Tadesse Simie Metekia is a Senior Researcher in the ENACT Programme in Addis Ababa, working on the Horn and North Africa region. His areas of expertise are transnational and international crimes, transitional justice, conflict and peace studies, criminal law and criminology. Before joining ISS, he taught comparative and international criminal law at Jimma University, Ethiopia. He has also served as a prosecution consultant for the US Department of Justice and the Netherlands Openbaar Ministerie.

About ENACT

ENACT builds knowledge and skills to enhance Africa’s response to transnational organised crime. ENACT analyses how organised crime affects stability, governance, the rule of law and development in Africa, and works to mitigate its impact. ENACT is implemented by the Institute for Security Studies and INTERPOL, in affiliation with the Global Initiative Against Transnational Organized Crime.

Acknowledgements

ENACT is funded by the European Union (EU). This publication has been produced with the assistance of the EU.

Cover image: AdobeStock

The contents of this publication are the sole responsibility of the author and can in no way be taken to reflect the views or position of the European Union, or the ENACT partnership. Authors contribute to ENACT publications in their personal capacity.

© 2022, ENACT. Copyright in the volume as a whole is vested in ENACT, its partners, the EU and the author, and no part may be reproduced in whole or in part without the express permission, in writing, of the author and the ENACT partnership.