



## Ratification and Implementation of ILO Conventions Nos 97 and 143 on Migrant Workers and Convention No 189 on Domestic Workers, for Fair and Safe Labour Migration Governance in Ethiopia



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Title: Why is it Important to Ratify and Effectively Implement the ILO Conventions Nos 97 and 143 on Migrant Workers and Convention No 189 on Decent Work for Domestic Workers to Achieve Fair and Effective Labour Migration Governance in Ethiopia?

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## 1. Introduction

Ethiopia is an origin, transit and destination country for mixed migration flows in the Horn of Africa. Inward migration to Ethiopia has been mainly of refugees from neighbouring countries and limited number of skilled labour migrants who are usually employees of foreign companies, United Nations, African Union, and other expatriates who work in the development and private sectors. Whereas outward migration of Ethiopians are significant and due to limited options being available for regular labour migrants most tend to opt for irregular migration mainly to Middle East, and to a lesser extent to South Africa and Europe (RMMS, 2016). Most Ethiopian migrants that migrate regularly are young women mainly due to the opportunities they have for regular labour migration into domestic work in GCC States, Lebanon and Sudan, while male migrants tend to resort to irregular channels due to limited opportunities for regular labour migration. Even though migration has been in the forefront of Ethiopian foreign policy, to date none of the United Nations or

ILO Conventions relating to labor migration have been ratified by Ethiopia, and ratification of these instruments is critical to ensure good governance of migration in Ethiopia. Well-governed labour migration can contribute to sustainable development for countries of origin, transit and destination, and can provide benefits and opportunities for migrant workers and their families. On the contrary, poorly governed labour migration can bring risks and challenges, including for sustainable development and decent work, in countries of origin, transit and destination, especially for low-wage workers. These risks can include insecurity and informality, brain drain, displacement, increased risk of child labour, debt bondage, forced labour, trafficking in persons, safety and health hazards, discrimination, xenophobia in the workplace and other decent work deficits.

## 2. Why it important to ratify the ILO Conventions Nos 97 and 143 on Migrant Workers and Convention No 189 on Domestic Workers?

### a. To ensure safe, orderly and regular migration

Ratifying and implementing the ILO Migration for Employment (Revised) Convention, 1949 (No. 97) and the Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143) and their accompanying Recommendations Nos. 86 and 151, as well as the Domestic Workers Convention, 2011 (No. 189) are critical to ensure safe, orderly, and regular labour migration that maximize the benefits and opportunities for Ethiopian migrant workers and their families as well as contribute to sustainable development for Ethiopia and country of destination. The ratification and implementation of these Conventions will help reduce the prevalence of exploitation and abuse

of Ethiopian migrant workers, including migrant domestic workers, particularly in the Middle East, and maximize the development outcomes of migration by minimizing risks associated with poor governance of labour migration. Migrant workers contribute to the socio-economic development of both countries of origin and destination if labour migration is managed properly. They also provide skills, labour, and knowledge in host countries. Ethiopia as a country of origin benefits primarily through remittances, (which directly or indirectly also contribute towards improving human capital and local economies) which are estimated at the equivalent of 7.4 per cent of the country's Gross Domestic Product (GDP) or about 4 billion USD annually (World Bank Group, 2016). Through skills and knowledge transfers, migration also helps reduce the unemployment rate in Ethiopia. Where legal and institutional frameworks are in place for the protection of migrant workers, this helps enhancing the positive outcomes of migration in the countries concerned. Unfortunately not countries

nor workers share the benefits of migration equally and migrant workers face some of the most serious decent work deficits. Ratification of the abovementioned Conventions are key to attainment of Ethiopia commitment towards the 2030 Agenda for Sustainable Development's goals namely targets 8.8 and 10.7, the Global Compact on Safe, Orderly and Regular migration, African Union 2063 agenda and IGAD Protocol on free movement of persons and goods.

### **b. Strengthen the Legal and Policy Framework for Fair and Effective Labour Migration Governance**

Ethiopia does currently not have a comprehensive policy framework on labour migration. Migration issues in the country tend to be covered indirectly through statutory instruments such as the Ethiopian Overseas Employment Proclamation (2016), the Prevention and Suppression of Trafficking in Persons and Smuggling of Migrants Proclamation (2015), and the Diaspora Policy (2013). The fundamental shortcoming in these policies is that they are not particularly designed with socio-economic development in mind except, perhaps, the Diaspora Policy. However, even that policy primarily covers highly-skilled Ethiopian migrants residing in Europe and North America rather than the group of low-skilled migrant workers of which domestic workers make up a significant part. Moreover, the policy and legal framework does not provide protection to Ethiopian Migrants in an irregular situation and other mainly low-skilled migrant workers in countries of destination. Ratifying and effectively

implementing Conventions Nos 97, 143 and 189 helps to strengthen the existing legal and policy gaps since these Conventions address many aspects of labour migration, such as protecting the rights of migrant workers, promoting fair recruitment and decent work for migrant workers, addressing both migrants in a regular and an irregular situation, and enhancing the development impact of labour migration. Ratification can also strengthen synergy and linkages between migration law and policy, and between such law and policy and other relevant policies such as those on employment, education and foreign affairs. Moreover, ratification can foster consistency across regions (particularly among IGAD and AU institutions) to prevent and reduce all forms of irregular labour migration in abusive conditions including unauthorized employment of migrant workers.

### c. Decent Work for Migrant Workers

The ratification of Conventions Nos 97, 143 and 189 will contribute to improving the protection of the rights of migrant workers, particularly their working conditions. Ethiopian migrant domestic workers face a number of challenges including abuse, violence and harassment, discrimination, and have limited or no access to justice. The provisions of Articles 5-16 of the Convention No 189 are of paramount importance to address these injustices. Accordingly, protection against abuse, harassment and violence is responsibility of the State parties, while the minimum wage, weekly rest, direct and regular payment of wage without discrimination, provision of safe working environment, social security and, above all, effective access to justice is guaranteed by the provisions of the Convention. Similarly, Part 1 (article 1 – 9) of Convention No. 143 focuses on migration in abusive conditions and calls upon ILO member States to prevent and eliminate abuses. Ratification of these Conventions will accord Ethiopia an opportunity to influence destination countries' decisions with regard to the protection of men and women

migrant workers' right in the world of work. It contributes to improving the protection of the rights of migrant domestic workers, particularly with regard to their working conditions. This helps minimize situations that push Ethiopian men and women to migrate through irregular channels and Ethiopian migrant domestic workers to escape from their employers, which put increases their vulnerability to abuse due to their irregular status.

### d. International Cooperation and Bilateral agreement

As per proclamation 923/2016, the deployment of overseas workers outside the context of a bilateral agreement with the country of destination is strictly prohibited. Generally Bilateral agreements must at least provide details on the rights and duties of the parties and the means and venues of enforcement in case of violations as stipulated in the model agreement annexed to Recommendation No. 86. By ratifying Conventions Nos 97 and 143, Ethiopia can gain a great deal of legitimacy at the international level to promote measures and negotiate with other States. Conventions Nos 97 and 143 call for enhancing international cooperation to regulate international labour migration, providing a framework not only between Member states, but also between social partners. The Conventions also consider the international exchange of information on labour migration issues to be key. Ratification can also foster consistency across countries/regions in improving labour migration governance and ensuring decent work for domestic workers by improving labour protection. The Conventions promote cooperation among

member States to regulate international labour mobility and call upon ratifying member States to ensure equality of opportunity and treatment for persons working in countries other than their own. Convention No. 97 promotes the conclusion of bilateral labour agreements between States where the number of migrant workers to a particular country is sufficiently large (Article 10). To date Ethiopia has signed BLAs with Jordan, Kuwait, Saudi Arabia and Qatar, although there is a need to review them.



### e. Model Employment Contracts

The Annexes of Convention No. 97 provide that in countries that maintain a system of supervision of contracts of employment, migrant workers should be given (prior to departure from the country of origin) an employment contract setting out the conditions of work and remuneration, and information on living and working conditions in the country of destination. As far as possible, the information provided to migrant workers on the terms and conditions of employment should be in their own language or in a language with which they are familiar. Contracts of employment should regulate such essential matters as hours of work, weekly rest periods and annual leave, which is one of the major challenges for Ethiopian migrants. Convention No. 189 also emphasizes the importance of informing domestic workers of their terms and conditions of employment, preferably through written contracts (Article 7). The Domestic Workers Recommendation, 2011 lists additional terms and conditions, such as a job description, leave entitlements, compensation for overtime and other payments, as well as accommodation that should be included.



Convention No. 189 also specifically provides that migrant domestic workers should receive a written job offer, or contract of employment addressing the terms and conditions referring to Article 7, prior to crossing national borders. Recommendation No. 201 adds that member States should consider establishing model contracts of employment for domestic workers, which should at all times be made available free of charge to domestic workers.



**f. Recognition of fundamental principles and rights at work of all migrant workers including domestic workers**

Convention Nos. 143 and 189 recognizes the need to ensure full respect of human rights of all migrant workers, including domestic workers. Notably, these comprise the fundamental rights at work contained in the eight ILO fundamental Conventions, which are, the right to freedom of association and collective bargaining (Conventions Nos 87 and 98), the prohibition and abolition of forced labour (Conventions Nos 29 and 105 as well as the 2014 Protocol to the Forced Labour Convention No. 29), the elimination of child labour (Conventions Nos. 138 and 182), as well as the right to equal remuneration for men and women for work of equal value, and the prohibition of all forms of discrimination in employment and occupation (Conventions Nos 100 and 111).

**g. Recognition of occupational skills**

Ethiopia is a developing country with a very young population, 70 per cent of whom are below the age of 35. The current economic growth has been accompanied by the expansion of public and private higher education institutions. Hundreds of thousands of graduates enter the labour market ever year despite limited or no employment opportunities within the country. Most of the graduates end up either unemployed, underemployed or in the informal sector within the country or migrate in search of low skilled work abroad. Convention No. 143 (Art. 14) recognises occupational qualifications as a significant prerequisite to migrant workers being capable of competing on equal terms with national workers in the labour market, and calls for making regulations concerning the recognition of occupational qualifications acquired abroad, including certificates and diplomas. Paragraph 4 of Recommendation No. 86 mentions that the “parties shall determine the conditions to be met for purposes of recognition in the territory of immigration of any document issued by the competent authority of the

territory of emigration in respect of migrants and members of their families [or in the case of refugees and displaced persons, by anybody established in accordance with the terms of an international instrument which may be responsible for their protection] concerning (c) occupational qualifications; (d) general education and vocational training. Ratifying the Convention, contributes to the development of recognition of labour market needs at all skill levels and recognition of qualification/skills will help to expand the labour market for skilled Ethiopian migrant workers in the Middle East and other Regional Economic Communities.



#### **h. Promote Fair recruitment including Zero Recruitment Fees and Related Costs**

Ethiopia has ratified the Private Employment Agencies Convention, 1997 (No. 181). In line with the Convention, the overseas Employment Proclamation (923/2016) promotes fair recruitment. However enforcement of the legal framework remains a challenge as most migrant workers still pay recruitment fees due to abusive/illegal recruitment practices. Convention No 97, and its Annexes, also contain provisions dealing with regulation of recruitment and placement of migrant workers, the provision of services to facilitate departure, including recruitment, arrival and employment. Convention No. 97 also requires member States to take steps against misleading information about the migration process, including job opportunities or conditions of work for example (Article 3). Convention No. 143 requires Member States to adopt measures to address migration in abusive conditions. The main purpose of these provisions is to: protect migrant workers; facilitate the control of recruitment; and suppress unauthorized employment. They cover

not only direct engagement by employers or their representatives, but also operations conducted by intermediaries, including public employment services and private recruitment bodies (Article 7 and Annexes I and II of Convention No. 97 and Paragraphs 1(b), 1(c), 1(d), 13, 14 and 15 of Recommendation No. 86). The Conventions confirm the importance of the need that both countries of origin and destination adopt measures to prevent abusive and fraudulent practices (including trafficking in persons and forced labour) in the recruitment for employment and placement abroad. Similarly, Convention No 189 emphasizes the need for fair recruitment of domestic workers including migrant domestic workers, and the principle that no recruitment fee and related costs should be charged to the domestic worker (Article 15). Ratifying the Convention helps to address the gaps in policy and practice and so as to reduce the abuse and exploitation endured by migrant workers.

### **3. The significance of Tripartism and Social Dialogue in realizing ILO's Fair Migration Agenda**

The instruments on migrant workers recognize the pivotal role of social dialogue and tripartism (representatives of ministries of labour, employers' and workers' organizations) in the effective governance of labour migration and creating decent work for migrant workers, including migrant domestic workers, particularly in the formulation and implementation of migration and labour related policies. The Ratification of Convention Nos. 97 and 143 promotes the creation of tripartite forums (representatives of Ministries of Labour, employers' and workers' organizations) where measures can be adopted to guarantee and safeguard the labour rights of migrant workers.

### a. Importance of the Confederation of Ethiopian Trade Unions

The ratification of the Conventions provides the necessary framework to carry out activities to ensure the protection and prevent the deterioration of labour rights of migrant workers, including migrant domestic workers. ILO Conventions 97, 143 and 189 are way of offering labour protection to migrant workers through freedom of association and the benefits of collective bargaining by demonstrating that trade union organization is a fundamental tool in enhancing, strengthening and defending the rights of all workers. The ratification of the Conventions ensures labour migration policies based on tripartism and social dialogue and provide the necessary framework for trade unions. The Confederation of Ethiopian Trade Unions and its Lebanese counterpart, the National Federation of Workers and Employees Trade Union (FENASOL) have signed bilateral agreements to carry out activities to prevent the deterioration of labour rights of Ethiopian migrant domestic workers in Lebanon.

### b. Importance of the Ethiopian Employers' Federation and Employment Agencies

ILO Conventions Nos 97 and 143 and their accompanying Recommendations provide guidance for establishing transparent labour migration policies for the admission, employment and residence of migrant workers based on clear criteria (including labour market needs-assessments) - which is a concern identified often by employers. They also promote the movement of migrant workers through bilateral, regional or multilateral agreements. Furthermore, Recommendation No. 151 (Paragraph 1) emphasizes the importance of coherent labour migration policies that are based upon the economic and social needs of both countries of origin and destination, taking into account short and long-term labour market needs and economic and social consequences for migrants and communities. Such policies also need to consider the long-term impact of demographic trends (especially ageing and population growth) and include provisions facilitating the recruitment of migrants in search of employment, and promoting the recognition of their qualifications, certificates and diplomas.

## 4. Are the Instruments Flexible, Valid and Relevant to respond to today's labour migration challenges?

### a. Flexibility

The structure of Conventions Nos. 97 and 143 is highly flexible and allows Ethiopia to ratify them partially (both Conventions are divided into several parts) or fully, thus allowing them to be compatible with existing legislation and practices at the national level. Ethiopia can ratify Convention No 97 by excluding its Annexes, and any of the Parts of Convention No. 143, . Part 1 (Articles 1 to 9) is the first attempt of the international community to address the problems arising out of irregular migration and illegal employment of migrants, while laying down the general obligation to respect basic human rights of all migrant workers. It also provides for certain protective measures for migrant workers who have lost their employment and for those in an irregular situation. Part II (articles 10 to 14) substantially widens the scope of equality between migrant workers in a regular situation and nationals, in particular by extending it to equality of opportunity.



### b. Validity

The provisions of Conventions Nos 97, 143 remain fully valid. In fact, their provisions continue to respond to present labour migration governance challenges of Ethiopia, including:

Discrimination against migrant workers in the labour market, in terms of wages, working conditions and social protection, which widens inequality and can have long-lasting harmful impacts on the development outcomes of migrants and their families as well as on economic development in the country (Ethiopian migrant workers are among the lowest paid).

Unacceptable working conditions, which start with the recruitment process, where migrants are often forced to pay high fees and bear other migration costs, this reduces their savings potential, and increases the risk of ending up in forced labour. An ILO (2017) study revealed that payment of recruitment fees has a correlation with forced labour.

Vacuum on the standard educational qualifications among different countries to which they belong; non-recognition of qualifications and strict requirement of certain sectors has led to some destination countries to focus on domestic work for Ethiopian migrant workers.

Weak capacity and limited involvement of workers' organizations and employers' organizations on labour migration issues.



### c. Relevance

Unregulated labour migration flows and weak protection of migrant workers.

Inadequate reliable, accurate and comprehensive data on labour migration.

Lack of comprehensive labour migration policies and strategies, which are coherent with employment and national development policy frameworks.

Limited or no recognition of the positive contributions of migrant workers and labour migration as key development factors in the country's economy and labour market

The ratification of the ILO Conventions on labour migration and migrant workers' rights, as well as on domestic workers, is highly relevant to the country. The Government, as well as the business community and workers' organizations have emphasized the need for safe, orderly and regular migration and decent work for low skilled workers such as domestic workers and those employed in informal economy. The growing outmigration of labour from Ethiopia makes it even more relevant today. This is clear from the 2009 National Employment Policy of which

highlights the policy priority areas for action under goal 2.3.5.3 acknowledge the growing mobility of low skilled Ethiopian workers to the Middle East and its contribution on easing the burden on the labour market. Furthermore, the Policy calls for the protection of the safety and rights of international labour migrants from Ethiopia in order to make them competitive and ensure their benefits from their employment engagements. Furthermore, goal 2.3.4.1 prioritizes “ensuring labour protection and decent working conditions as a strategy to improve labour administration and strengthen labor market institutions in the country”. However, the Ethiopia is struggling in converting these priority areas into action due to the absence of labour standards and comprehensive regulations. Therefore, international labour standards can provide guidance for translating policy into action and extending legal protection to the migrant workers.

## 5. ILO supervisory mechanisms

The ratification of the Conventions allows the ILO supervisory mechanism assess on a regular basis any possible setbacks or violations of the rights of migrant workers, or note with interest any progress made with regard to their protection. It provides the basis for ILO’s support through technical assistance to design and implement public policies aimed at protecting the rights of Ethiopian migrant domestic workers in destination countries.



## 6. Conclusion

The principles of the Conventions are consistent with the Constitution of Ethiopia, and their ratification and domestication will bring Ethiopia into line with international best practices with respect to fair labour migration governance.

