

The Protection of Women's Labor Rights in Ethiopia: Bottom-Up Approach

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Abstract

Investment projects are increasing in number from time to time in Ethiopia. The country is also receiving some rewards from the sector. Parallel to this, investments usually cause unnecessary harm to human rights and other social interests. In particular, women and children are the primary victims and they deserve special protection. This research aims at investigating how women workers are affected in employment relations in the private sector and the type of protections available for them. The study heavily relies on the doctrinal methodology and uses empirical data. It finds that employers engage in various unlawful activities against women including, but not limited to, unsafe working environment, denial of rest and leave, lower wages and denial of benefits, and many more. Ethiopian laws invoke the protection of human rights of women though the country took only few steps towards ensuring these rights. The country is also committed to ensure that all economic activities in its territory contribute to sustainable development. Thus, it recommends the importance of maximizing the protection of the labor rights of women workers in the country without discouraging economic activities in the country in order to realize inclusive and sustainable growth and development in the country.

Keywords: 1.Ethiopia, 2.Labor Rights, 3.Oromia, 4.Wollega, 5.Women

1. INTRODUCTION

Ethiopia is fast developing into dynamic labor intensive investments.ⁱ Manufacturers from China, South Korea, India and other countries have opened new plants in the country, while a growing number of European and U.S. brands are sourcing investments here.ⁱⁱ Both domestic and foreign investors are engaging in the investment sector thereby attracting the interests of researchers in how the government, businesspersons and other stakeholders are handling and responding to the impacts of such projects on human rights in general and labor standards in particular.

Even if the promotion of investments results in the creation of job opportunities, unregulated investments may sometimes become a threat to the labor rights of workers. The tight spot is exacerbated when it comes to the working conditions of women workers because of their more vulnerability. According to Human Rights

Watch, in Cambodia, many factories repeatedly issued unlawful short-term contracts to avoid paying workers maternity and other benefits, and to intimidate and control them.ⁱⁱⁱ Some factories hire workers on a casual basis, making it harder for workers to assert their rights because they risk being easily fired. In Bangladesh, workers interviewed by the Human Rights Watch revealed that some managers intimidate and mistreat employees involved in setting up unions, including threatening to kill them.^{iv}

Women comprise half of the productive human resource in the Ethiopian economy.^v But their working condition is not that much decent compared to their male counterparts. Compared to their male counterparts, women workers are more susceptible to long and unpredictable working hours, poor or non-existent maternity protection, various forms of violence, abuse and harassment and safety issues.^{vi} Low wages, weak collective bargaining opportunities and lack of equal pay for work of equal value can make women vulnerable to exploitation inside and outside the workplace.

Ethiopia has adopted various international human rights instruments.^{vii} The country is party to fundamental ILO Conventions which strive to improve the labor conditions of workers. Besides, the working conditions have got Constitutional^{viii} and legislative protections. Moreover, the government has designed a feasible policy and strategy for women empowerment in socio-economic and political aspects.^{ix} The objective of this research is to examine the extent to which the labor rights of women workers are protected in three Wollega Zonal administrations of Oromia Regional State of Ethiopia. It also examines the existing legal and institutional frameworks for the protection of labor rights of workers. In order to achieve the aforementioned objectives, the study asks whether the existing legal and institutional frameworks adequate in protecting the labor rights of women workers engaging in investments.

The research is asocio-legal in type. It used both primary and secondary sources of data. The primary data are collected through identifying, arranging and reading binding legal instruments and key informant interviews. Thirty women workers in various private sectors of from the three zones were purposively selected for the interview. The secondary data were collected through in-depth review of pertinent existing secondary sources of data such as law books, journal articles, internet, magazines and dictionaries. The data are analyzed qualitatively and quantitatively as well as through content analysis of documents.

1. THE PLACE OF LABOR CONCERNS UNDER INVESTMENT LEGAL REGIME

1.1. The ILO Regime and the Labor Rights of Women Workers

The International Labor Organization (ILO) established back in 1919 aims at ensuring the improvement of working conditions through international cooperation of employers, workers, and governments. One of the major parts of the ILO's program since its foundation has been the establishment of international labor standards through the promulgation of conventions and recommendations. International labor standards are one of the ILO's primary means of action to improve the working and living conditions of women and men, and promote equality in the workplace for all workers.^x Non-discrimination and the promotion of equality have been fundamental principles of ensuring decent and productive work in conditions of freedom, equity, security and human dignity. The right to decent work is not only for those working in the formal economy, but also the self-employed, casual and informal economy workers. The Declaration on Fundamental Principles and Rights of Work adopted in 1998 encourages Member states to respect and promote principles and rights in four categories, whether or not they have ratified the relevant Conventions.^{xi} The four categories are freedom of association and the effective recognition of the right to collective bargaining, the elimination of forced or compulsory labor, the abolition of child labor and the elimination of discrimination in respect of employment and occupation.

Women workers' rights constitute an integral part of the values, principles and objectives that are at the core of the ILO's mandate to promote social justice and decent work – fairly paid, productive work carried out in

conditions of freedom, equity, security and dignity. The ILO has taken a leading role in shaping a more equal future in the world of work. It does this by promoting gender equality through international labor standards; advocating for measurable progress toward gender equality with its constituents (governments, employers and workers' organizations) and in its own structures and processes; promoting gender equality through technical cooperation around the world; and promoting gender equality through the management, dissemination and sharing of relevant knowledge.

1.2. Labor Concerns under Some Regional Investment Agreements and Experiences of States

1.2.1. The COMESA Investment Treaty

The attempts to come up with a single framework convention for international investment have not become successful until today. This study has identified some regional investment agreements and the practices of some States to draw some lessons for Ethiopia. Obviously, labor issues are addressed under some regional investment agreements. For instance, the COMESA Investment Treaty, while imposing general obligations on the member States, provides that the member States shall not waive or otherwise derogate from or offer to waive or otherwise derogate from measures concerning labor, public health or safety as an encouragement for the establishment, expansion or retention of investments.^{xii} Measures aimed at safeguarding labor rights of individuals shall remain intact. Despite such stipulation, the COMESA Investment Treaty has not mentioned a single ILO convention in its list of International Multilateral Agreements to which member States to the treaty are required accede to where they have not done so. This may impair the implementation of labor concerns recognized under the Treaty.

The COMESA Investment Treaty devised two institutional arrangements for administering the Treaty. These are the COMESA Common Investment Area Committee (CCIA Committee) and the Coordinating Committee on Investment (CCI). One of the mandates given to the CCIA Committee is recommending to the Council of Ministers of COMESA established under Art. 7 of COMESA Treaty on any policy issues that need to be made to enhance the objectives of the COMESA Investment Agreement. Such recommendations include, but not limited to, the development of common minimum standards relating to investment in areas such as labor standards. The CCI is responsible for coordinating the implementation of the COMESA Investment Agreement and monitoring its constant review, among others. With this institutional setup, the member States to the Treaty can, to certain extent, strike the balance between the need to protect and promote investments on the one hand and the need to protect and enhance the labor rights of individuals.

1.2.2. The IISD Model

In addition, there are recent developments which introduced non-binding investment agreement models which could be relied upon by States in the course of negotiating their BITs. One such instruments is the International Institute for Sustainable Development Model (IISD Model hereinafter) which emphasizes the need to integrate labor concerns in investment agreements. It states that investors and investments shall act in accordance with core labor standards as required by the ILO Declaration on Fundamental Principles and Rights of Work 1998, which are further elaborated in ILO Conventions concerning freedom of association, the elimination of forced labor, the abolition of child labor and the elimination of discrimination in the work place.^{xiii} Investors and investments are also obliged not to manage or operate the investments in a manner that circumvents international labor and human rights obligations to which the host State and/or home State are Parties. In addition, the Model prohibits adopting lax labor standards in order to attract investors and investments. Accordingly, the Parties are prohibited not to encourage investments by relaxing domestic labor

measures and not to derogate from such measures as an encouragement for the establishment, acquisition, expansion or retention in their territories of an investment.

Similarly, the OECD Model explicitly requires Parties to adopt minimum standards for labor protection. Thus, each Party assumes the obligation to ensure that its laws and regulations provide for high levels of labor protection appropriate to its economic and social situation, and strive to improve these laws and regulations. Furthermore, it requires all Parties to ensure that their domestic laws and policies are consistent with the core labor requirements of the ILO Declaration on Fundamental Principles and Rights of Work, 1998.

1.2.3. The US Model BIT

The 2012 US Model BIT in its preamble advocates for the need to promote labor rights. It states “[d]esiring to achieve these objectives in a manner consistent with the protection of health, safety, and the promotion of internationally recognized labor rights.”^{xiv} It indicates the Parties’ desire to achieve the economic interest of protecting and promoting investments while at the same time promoting non-economic interests including labor rights. The Model also employs a separate substantive provision which would enable the signatories to accommodate labor rights.

1.2.4. The South African Development Community Model BIT

The SADC Model BIT of 2012 tries to reflect a balanced approach between member states’ development objectives and investor interests.^{xv} Thus, while it contains substantive provisions to protect investors, it also provides for obligations of investors regarding corruption, environmental and social impacts, transparency, and human rights and labour standards, among other areas. Art. 15 of the Model provides for the minimum standards for human rights, environment and labor. The pertinent provision reads:

Investors and their investments shall act in accordance with core labour standards as required by the ILO Declaration on Fundamental Principles and Rights of Work, 1998. Investors and their investments shall not [establish,] manage or operate Investments in a manner inconsistent with international environmental, labour, and human rights obligations binding on the Host State or the Home State, whichever obligations are higher.^{xvi}

The provisions impose a duty on investors and investments to respect the international labour standards adopted by the Host State through participation in international agreements and these are easily identifiable from the commitments of States. It sets such international agreements as a floor for their conduct, even if not fully incorporated into domestic law. It has to be noted here that these are not open-ended obligations, but derive expressly from the act or ratification of an agreement by the Host State, or Home State in certain circumstances. The SADC also recognizes the sovereign right of States to regulate. It stipulates that, in accordance with customary international law and other general principles of international law, the Host State has the right to take regulatory or other measures to ensure that development in its territory is consistent with the goals and principles of sustainable development, and with other legitimate social and economic policy objectives. Likewise, the SADC Model requires Member states to establish their own levels of labor laws and standards and not to encourage investments by adopting lax labor standards.

1.2.5. Lessons from Some African States

In the BITs to which some African States are parties, it is possible to locate the place of labor concerns. For instance, the BIT concluded between Canada and Senegal makes a general reference to the notion of Corporate Social Responsibility, which includes the protection of labor rights. The treaty provides that member States should encourage enterprises operating within their respective territory to *voluntarily* incorporate internationally recognized standards of corporate social responsibility including labor and

human rights in their practices and internal policies.^{xvii} The drawback of this stipulation is that the provision is only permissive, as it goes *voluntarily*.

The BIT concluded between Kenya and Finland makes a reference to the protection of labor rights in its preamble. It provides “recognizing that the development of economic and business ties can promote respect for internationally recognized labor rights.”^{xviii} In addition, its substantive texts adopt exemptions to the provisions of the BIT. Accordingly, the obligations of the Parties to protect and promote investments within their territory shall not affect their obligations to protect labor rights as by virtue of labor market agreements. The relevant part reads:

The provisions of this Agreement shall not be construed so as to oblige one Contracting Party to extend to the investors and investments by investors of the other Contracting Party the benefit of any treatment, preference or privilege by virtue of any existing or future: (a) ... regional labor market agreements, to which one of the Contracting Parties is or may become a party;^{xix}

1.3. Labor Concerns under some BITs of Ethiopia: The Culture of Silence

Ethiopia signed BIT in order to create favorable conditions for investors and investments thereby promoting the contribution of foreign investments to the country’s development. The preamble to the Ethiopia-Austria expresses this deep concern of both member States. Apart from this economic concern, the preamble has not employed terminologies that urge both parties to protect labor standards in the course of investments. Similarly, under the preamble to the Ethiopia-Algeria BIT, the primary objective of the Parties in concluding the treaty is to strengthen economic cooperation, increasing capital flows and technology transfer. Apart from this economic concerns, labor issues are regulated nowhere under the preamble of these BITs. Thus, it can be said that the preambles of most of the BITs of Ethiopia address economic interests, i.e. the need to create favorable conditions for investments.^{xx}

This, however, is not to mean that the Ethiopia’s BITs totally ignored labor concerns. In the following paragraphs, the author discusses some BITs of Ethiopia which addressed labor issues under their preamble and/or substantive texts. For instance, some attempts are made by the Ethiopia-Belgian-Luxembourg BIT to address non-economic interests including labor issues. In this regard, the BIT states the following:

Recognizing the right of each Contracting Party to establish its own domestic labor standards, and to adopt or modify accordingly its labor legislation, each Contracting Party shall strive to ensure that its legislation provide for labor standards consistent with the internationally recognized labor rights set forth in paragraph 6 of Article 1 and shall strive to improve those standards in that light.^{xxi}

According to the foregoing provision, the discretion is left to the contracting parties to adopt their respective domestic labor standards. The provision also requires parties to adopt labor standards that are recognized internationally and even encourages them to improve those standards. Such scenarios are good opportunities for the member states to the treaty to ensure the protection of labor rights in the way that they deem proper without, of course, transgressing their commitments to protect and promote investments in their territory. The Ethiopia-Belgian-Luxembourg BIT clarifies what constitutes labor legislation: It reads:

The terms “labor legislation” shall mean legislation of the contracting parties (emphasis added), or provisions thereof, that are directly related to the following internationally recognized labor rights : a) the right of association ; b) the right to organize and bargain collectively ; c) a prohibition on the use of any form of forced or compulsory labor ; d) a minimum age for the employment of children ; e) acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health.^{xxii}

It is clear from the above provision that the contracting parties can regulate investment activities within their territory in accordance with their domestic laws that comply with internationally accepted labor standards.

Apart from such explicit regulatory space, the Ethiopia-Belgian-Luxembourg BIT prohibits the adoption by member states of lax labor standards in their attempts to encourage investments.^{xxiii}

In addition to the Ethiopia-Belgian-Luxembourg, the preamble to the Ethiopia-Finland incorporates a phrase which strikes a balance between economic and non-economic interests. It reads “[n]oting that the development of economic and business ties can promote respect for internationally recognized labor rights.”^{xxiv} It goes on saying “[a]greeing that these objectives can be achieved without relaxing health and safety measures of general application.” Apart from explicit reference to labor rights protection, it is possible to adopt preambles that recognize policy objectives of the member States to BITs to regulate foreign investments. The preamble to the Ethiopia-South Africa BIT focuses on securing an overall balance of rights and obligations between and among investors and host countries, acknowledging the right of the Parties to regulate, on a non-discriminatory basis, the manner and flow of investments within their territories in order to meet national policy objectives and recognizing the role of investment in ensuring sustainable economic growth and development, when accompanied by appropriate domestic policies.

In sum, almost all BITs of Ethiopia stick to traditional succinct formulations that leave considerable discretion to arbitral tribunals and make no mention of human rights in general and labor concerns in particular.

1.4. The Major Domestic Labor Laws of Ethiopia

1.4.1. The FDRE Constitution

The FDRE Constitution recognizes and protects the rights to labor, form associations, bargain collectively with employers, express grievances including the right to strike, reasonable limitation of working hours, rest, periodic leave with pay, remuneration for public holidays as well as healthy and safe work environment. As the Constitution is the supreme law of the land in Ethiopia, any law, customary practice or a decision of an organ of state or a public official which contravenes this Constitution shall be of no effect.

1.4.2. The Labor Proclamation No. 1156/2011

Ethiopia adopted Labor Proclamation No. 1156/2011 in place of the former Labor Proclamation No. 377/2003. The new proclamation covers, among others, contract of employment, duration, obligation of parties, unlawful activities, suspension, termination of contract of employment with notice and without notice, severance pay, reinstatement or compensation, homework contract, contract of apprenticeship, hours of work and overtime, leave, working conditions of women and young workers, occupational safety and health measures to be observed, occupational injuries and occupational disease, trade unions and employers’ associations, collective agreement, Labor Courts and the LRB, strike and lockout, period of limitation, labor administration, employment service and labor inspection service, and penalty provisions. The Labor Proclamation aspires to establish a working system that guarantees the rights of workers to freely establish or join associations and to engage in social dialogue and collective bargaining.

1.4.3. Directives of the Ministry of Labor and Social Affairs

The Ministry of Labor and Social Affairs is empowered under Article 171 of the Labor Proclamation No. 1156/2011 to issue directives necessary for the implementation of the proclamation with respect to, among others, occupational safety, health and the protection of working environment, standards for working conditions, determination of hazardous jobs, the type of works which are dangerous to the health and reproductive systems of women. The proclamation also states that directives issued pursuant to the repealed Proclamation No. 377/2003 (as amended) remain in force to the extent they are not inconsistent with the new law. It has to be noted that, under the repealed proclamation, the Ministry has issued directives on procedures of reduction of labor force, establishment of committees at enterprises which follow

implementation of safety and health conditions, on works prohibited for young workers, works prohibited for pregnant women and guidelines on work and working procedure of the Labor Advisory Board (LAB) which is established by the Ministry to study work conditions, the safety and health of workers and the labor law in general and give advisory opinion to the Ministry.

By virtue of Article 186(1) of the Labor Proclamation No.1156/2011, it is indicated that violation of directives issued, or recognized, in accordance with the proclamation is considered as an offence. Accordingly, any employer, employer's association, a representative of an employer, a trade union or trade union leader who violates regulations and directives issued in accordance with the new proclamation pertaining to the safety of workers and commit an act which expose the life and health of a worker to a serious danger or does not accord special protection to women workers or young workers as provided for in the proclamation will be fined ETB 5,000.00 up to ETB 20,000.00 where the violation is for the first time; and ETB 20,000.00 up to 40,000.00 for the second violation; and a fine of up to 70,000.00 if for the third time.^{xxv} The commission of the prohibited act or the omission of the required act for more than thrice may result in the closure of the undertaking.

1.4.4. Collective Agreement and Work Rule

Collective agreement refers to an agreement on [conditions of work]^{xxvi} concluded in writing between representatives of one or more trade unions and one or more and one or more employers or representatives or agents of employers' associations. A collective agreement has a legal effect as between all the parties to it and with respect to all matters it cover as of the date of signing by the parties. As such, employers are duty bound to obey all available collective agreements as an integral part of the country's labor laws.

Work rules are internal rules which govern working hours, rest period, payment of wages, and methods of measuring work done, maintenance of safety and prevention of accidents, disciplinary measures and their enforcement as well as other conditions of work subject to the provisions of the labor proclamation and other relevant laws. The employer has the obligation to observe the provisions of the labor proclamation, collective agreement, work rules, directives and orders issued in accordance with law.^{xxvii}

1.4.5. A Proclamation to Protect the Labor Rights of Persons with Disabilities

Ethiopia adopted a proclamation to protect the labor rights of persons with disabilities as far back as 2008.^{xxviii} As evident from its preamble, the law seeks to implement the country's policy of equal employment opportunity, provides reasonable accommodation for people with disabilities to employment and lays down simple procedural rule that enable them to prove before any judicial organ discriminations encountered in employment. The law states that, unless the nature of the work dictates otherwise, a person with disability having the necessary qualification and scored more to that of other candidates shall have the right without any discrimination to occupy a vacant post in any office or undertaking through recruitment, promotion, placement or transfer procedures; or to participate in a training programme to be conducted either locally or abroad. Similarly, it states that any law, practice, custom, attitude or other discriminatory situations that impair the equal opportunities of employment of a disabled person are illegal.

2. THE PROTECTION OF THE LABOR RIGHTS OF WOMEN WORKERS IN LIGHT OF THE MINIMUM STANDARDS

2.1. General

Workers in general and women workers are provided with different sorts of rights under Ethiopia's laws. Employer is required to ensure that workers are protected from violations of rights. In this chapter, the empirical data collected through interview from various stakeholders is presented and analyzed in light of the pertinent laws. According to this survey, super majority of the respondents used for this study fall between 19-40 years of age accounting for 73 percent. On the other hand, those above 55 years of age are the lowest in number constituting only 6 percent.

With respect to educational level, the large part of the respondents of this study is those with certificate and diploma after completing their secondary schooling which makes 61 percent of the total respondents. And six percent has attended only up to primary school. Those who have attained a degree or above are only nine percent. In the next paragraph, we will discuss the physical and psychological harms that were faced by women workers.

2.2. Physical and/or Psychological Harm

Employer shall not cause any physical or psychological harm to worker or cause any form of harassments. The above table illustrates that physical and psychological harms are common particularly to women workers. 71 percent of the respondents of the survey have disclosed that they have suffered from different types of harms from their employers while only 29 percent replied that they did not sustain physical, psychological harms from their employers. When it comes to the types of the harms, sexual harassment is the largest of all accounting 37 percent of the total harms, followed by defamation (30%), beating (20), grave physical assault (9%) and others (4%).

Unfortunately, only 30 percent of the respondents reported the harms and violations of rights caused to them to the concerned organs whereas the remaining 70 percent did not make any report of the incidents. Among the reported cases, 70 percent of them were made to only families, relatives and friends not to concerned government organs empowered to take lawful measures. 12 percent were reported to courts, eight percent to prosecution departments, five percent to police and the remaining five percent to Women and Children Affairs Offices. From the reported incidents, 11 percent of the respondents replied that they have obtained adequate remedies while the large part, i.e. 89 percent responded that they did not get the desired remedies. With respect to the question why they failed or hesitated to report the violations of their rights, 39 percent of the interviewees answered that their passiveness in that regard was due to fear of loss of job or other consequential measures from their employers. This is followed by lack of knowledge of the existence of legal and institutional protections (31 %), fear of societal reaction (20) and others (10%).

2.3. Deduction of Wages and Normal Hours of Work

Looking at specific provisions of the labor law, of the Labor Proclamation stipulate that employer shall refrain from deduction of wages and benefits. Art. 59 of the Proclamation reads "employer shall not deduct from, attach or set off the wages of the worker except where it is otherwise provided by law or collective agreement or work rules or in accordance with a court order or a written agreement of the worker." It goes on saying that "unless the worker expresses his consent in writing, the amount that may be deducted at any one time from the worker's wage shall in no case exceed one-third of his monthly wage."

In practice, women workers are the victims of arbitrary deduction of wages by their employers. Likewise, they usually suffer from long hours of work. These and other similar issues are depicted in the above table.

Out of the total respondents contacted for this study, 55 percent replied that they have faced arbitrary deduction of their wages by their employers whereas 45 replied that they were not affected by arbitrary deduction of wages and benefits. From those whose wages have been deducted by their employers, only two percent responded that the deduction was lawfully made or on the basis of their consent while 73 disclosed that the deductions were not made on the basis of law, agreement, work rules or court orders.

Pursuant to Art. 64 of the Proclamation, the average number of hours over a period shall not exceed eight hours per day or forty eight hours per week. And under Arts. 66 and the following, a worker may not be compelled to work overtime except where the conditions prescribed under the law are satisfied. Workers are also allowed to receive annual leave and it is unlawful for any worker under Art. 79 and the following of the Proclamation to waive her right to annual leave and any such agreement is null and void. It provides that weekly rest, annual leave and special leaves (leave for family events, union leave, leave for special purpose and sick leave) shall be granted according to law.

With respect to the hours of work, 78 percent replied that they were compelled to work beyond eight hours per day or 48 hours per week. Similarly, nine percent of the interviewees of this research replied that they were granted weekly rest, annual leave and special leaves (leave for family events, union leave, leave for special purpose and sick leave) according to law whereas 54 percent responded negatively.

2.4. Gender-based Discrimination

Women are also given special protection under the Labor Proclamation. This is evident from Art. 87 and the following. It declares that there shall be no discrimination on the basis of sex or other grounds and even priority shall be given to women if they get equal result with men during employment, promotion or any other benefit. Similarly, it is unlawful to assign women to works that are particularly dangerous to them or hazardous to their health. In particular, pregnant woman shall not be assigned to night work between 10 pm and 6 am or to overtime work and such woman shall be transferred to another place of work if her job is hazardous to her health or to the fetus. Her employer is prohibited from terminating her contract of employment during her pregnancy and until four months after her confinement (delivery) except for the conditions laid down under Arts. 27(b-k) and 29(3) of the same Proclamation provided that such conditions are not related to her pregnancy. The ICESCR to which Ethiopia is a part provide that “special protection should be accorded to mothers during a reasonable period before and after childbirth. During such period working mothers should be accorded paid leave or leave with adequate social security benefits.” Similarly, the Labor Proclamation states that pregnant worker is entitled to a maternity leave with pay of 30 consecutive days of pre-natal and 90 consecutive days of post-natal leave.

Coming to the practice on the prohibition of gender-based discrimination, 71 percent of respondents generally believe that there existed such type of discrimination and 29 percent responded the inexistence of gender-based discrimination. The largest gender-based discrimination is recorded during promotion (54%), followed by at the time of employment (31%) and in the course of other benefits (24%).

Moreover, 76 percent of women workers contacted for this survey have been assigned to works which are dangerous and hazardous to their health. With respect to the protection of pregnant women workers, nine percent of the interviewees replied that they were assigned to night work between 10 pm and 6 am or to overtime work without their pregnancy being taken into account. In addition, five percent reported that they faced termination of their contract of employment during pregnancy and before the end of four months after delivery. Only four percent replied that they were granted maternity leave with pay of 30 consecutive days of pre-natal and 90 consecutive days of post-natal while 11 percent did not receive the maternity leave as prescribed under pertinent laws.

2.5. Occupational Safety, Health and Working Environment

Pursuant to Art. 92 and the following of the Labor Proclamation, employer is duty bound to ensure that workers are properly instructed and notified concerning the hazards of their respective occupations; safety officers are assigned and safety committee established. In addition, employer must provide workers with protective equipment, clothing and other materials and instruct them of their use and arrange medical examination. It is also the obligation of the employer to ensure that the work place and premises of the undertaking do not pose threats to the health and safety of workers.

Parallel to this, Art 93 of the Proclamation imposes obligations on a worker to co-operate in formulation and of work rules to safeguard the workers' health and safety, and implement same and inform forthwith defects of appliances and injuries to employer and report potential hazards. In particular, it is prohibited for a worker under Art. 94 of the Labor Proclamation to interfere with, remove, displace, damage or destroy any safety devices or other appliances furnished for protection of workers and obstruct any method or process adopted with a view to minimizing occupational hazard.

When it comes to the safety and health of the working environment, 84 percent of the respondents of this study expressed that they have not been properly instructed and notified of the hazards of their respective occupations and no safety officers have been assigned to undertake this responsibility. Only 16 percent replied in that such instructions and follow up have been made by their employers. And 71 percent responded that employers do not regularly provide protective equipment, clothing and other similar materials while 29 percent replied that their employers provided them with such safety equipment. Asked to explain their overall attitude towards the safety of the working environment, six percent replied that the working environment is safe whereas 94 percent answered that it is unsafe. Consequently, 78 percent of respondents have faced either occupational injury, occupational disease or both for which employer were held responsible only for five percent.

In case of occupational injuries, employer has liability irrespective of fault for employment injuries sustained by his worker and employer is obliged pay employment injury benefits in accordance with Art. 95 of the Proclamation. The law also oblige the employer to provide the injured with first aid, take to nearest medical facility. And the right to form association is recognized pursuant to Art. 113 of the Labor Proclamation. 73 percent of the interviewees who faced occupational injury, disease or both answered that their employer were not held responsible for the incidents. In most instances, workers are not allowed to form trade union which would ensure their protection of their labor rights. 79 percent of the respondents of this study replied that their employers do not let them establish trade unions and four percent answered that they were allowed to organize themselves in trade unions and bargain with their employers.

3. CONCLUSION AND RECOMMENDATIONS

This study has investigated the extent to which the labor rights of women are protected under international and Ethiopian legal frameworks. It started with identifying the international experiences and went to regional frameworks for the protection of labor rights of women. The study has consulted various binding and model investment agreements and identified how the different countries are handling and resolving this pressing problem. This is in addition to the analysis of how the ILO regime focuses on the need to protect the labor rights of women.

The experience from the laws of various nations indicate that it is possible to strike the balance between the apparently competing interests of protecting and promoting investments on the one hand and the rising need to safeguard the labor rights of women. This is evidenced from such instruments as the COMESA Investment Treaty, IISD Model BIT, US Model BIT, SADC Model BIT and the BITs of some African states. The aforementioned legal instruments recognize the need to protect labor rights in variety of ways including

stipulations in preambles, separate provisions in the main text, as exceptions to standards of treatments or curve outs.

The study has also closely investigated how labor concerns are dealt with under the BITs of Ethiopia. Accordingly, it has found that the country's BITs has not devised adequate mechanisms of addressing labor concerns through investment treaties. This is clear from the readings of the BITs. It has to be noted that domestic laws of Ethiopia have tried to extend protection to women workers. The Labor Proclamation, the decisions of the Federal Supreme Court Cassation Bench, and Directives of the Ministry of Labor and Social Affairs can be mentioned in this regard.

Instead of the existing legal frameworks, the labor rights of women are being breached by employers repeatedly and the victims are not getting adequate redress. This is because of various reasons. First, workers lack sufficient knowledge of what rights and obligations they have as workers. Second, they fear loss of job opportunity as a consequence of the measures of their employers if they disclose and report the violations of their rights. Third, the existing institutional frameworks are not strong and bold enough in ensuring that the protection of the labor rights of women workers. This was understandable from the interview results conducted with the officials from various organs including investment offices, justice sectors, labor and social affairs offices and women and children offices. This is highly related to the need to encourage investments at all costs, which results in race to the bottom. Fourth, the existing laws are not comprehensive enough in guiding the concerned organs in taking appropriate actions against investors and investment projects which transgress the rights of women workers. This in turn hampers the country's move towards ensuring inclusive, equitable and sustainable socio-economic growth and development.

On the basis of the findings of this study, the research recommends the following:

First, the country should reconsider the existing investment laws and policies so as to reassert the commitment to strike the balance between investment protection and protection of labor rights. This holds true for the country's BITs and other domestic legislations. Second, all concerned government authorities particularly those at all levels must seriously implement the existing laws and policies in the light of international human rights treaties recognized by Ethiopia and other good practices of States in the regulation of investments. Third, all government and non-government organs need to raise the awareness of workers and employers with respect to the rights and obligations under labor laws. They should also participate in rendering other supports so as to empower women workers thereby contributing their part in the prevalence of justice, rule of law and industrial peace.

Endnotes

ⁱMasanori Tobita, Nikkei Asian Review, Asian Investment is turning Ethiopia into textile hub, July 27, 2017.

ⁱⁱ*Id.*

ⁱⁱⁱHuman Rights Watch, Cambodia: Labor Laws Fail to Protect Garment Workers: Brands Should Disclose Suppliers, Help Vulnerable Workers, March 11, 2015.

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^vTsegayHagos, Ethiopia: Decent Working Condition for Women, The Ethiopian Herald.

^{vi}International Labor Organization, Wages and Working Hours in the Textiles, Clothing, Leather and Footwear Industries, Geneva, Switzerland, 2014.

^{vii}Generally, Ethiopia has recognized the Universal Declaration on Human Rights, the International Convention for Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights etc.

^{viii}The Constitution of the Federal Democratic Republic of Ethiopia, FDRE Constitution, Proclamation No 1/1995, Fed. Negarit Gazette, 1st Year No.1, 1995, Art. 42, (hereafter *FDRE Constitution*).

^{ix}National Planning Commission, Growth and Transformation Plan II (GTP II) (2015/16-2019/20), Vol. 1: Main Text, Federal Democratic Republic of Ethiopia, 2016, at 55.

- ^xILO, ABC of women workers' rights and gender equality, Geneva, International Labour Office, Second edition 2007, preface, at xi.
- ^{xi}ILO Declaration on Fundamental Principles and Rights at Work, Adopted in 1998.
- ^{xii}Investment Agreement for the COMESA Common Investment Area. Art. 5(e).
- ^{xiii}OECD Model, Art. 14(C).
- ^{xiv}The Treaty between the Government of the United States of America and the Government of [Country] Concerning the Encouragement and Reciprocal Protection of Investment, 2012 (hereinafter referred to as the 2012 U.S Model Bilateral Investment Treaty).
- ^{xv}United Nations Economic Commission for Africa: Investment Policies and Bilateral Investment Treaties in Africa, Implications for Regional Integration, 2016, at X.
- ^{xvi}SADC Model Bilateral Investment Treaty with Commentary, 2012, Art. 15.2 and 15.3.
- ^{xvii}Canada-Senegal BIT, Art. 16.
- ^{xviii}Kenya-Finland BIT, preamble.
- ^{xix}*Id.* Art.4 (a).
- ^{xx}See the preambles of the Ethiopia's BITs concluded with Algeria, Austria, Belgian-Luxembourg, China, Denmark, France, Germany, India, Iran, Israel, Kuwait, Libya, Malaysia, Netherlands, Russia, Spain, Sudan, Sweden, Switzerland, Tunisia, Turkey, United Kingdom and Yemen.
- ^{xxi}Ethiopia-Belgian-Luxembourg BIT, Art. 6 (1).
- ^{xxii}*Id.* Art.1 (6).
- ^{xxiii}*Id.* Art.6 (4).
- ^{xxiv}Ethiopia-Finland BIT, preamble, fifth paragraph.
- ^{xxv}Labor Proclamation 1156/2011, Art. 186(1)(a).
- ^{xxvi}Condition of work is defined under Art. 2(7) of Proclamation No. 1156/2011 as the entire field of labor relations between workers and employers including hours of work, wage, leave, payments due to dismissal, workers health and safety, compensations to victims of employment injury, dismissal because of redundancy grievance procedure and any other similar matters.
- ^{xxvii}*Id.* Art.12(9).
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