



ETHIOPIAN CIVIL AND COMMERCIAL LAW SERIES

(VOLUME - IX)

Addis Ababa University - School of Law

Labour Relations Law in Ethiopia

EDITOR

Mehari Redae (PhD)



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Ethiopian Civil and Commercial Law Series is an annual thematic publication of the School of Law of Addis Ababa University in the field of civil and commercial laws. It was re-established by the Academic Committee of the School of Law on December 2, 2016 to publish cross-cutting thematic researches on domestic and international legal, social, economic and political issues in the field and to support the graduate programs of the School thereby encouraging staff and student participation in research activities.

Each volume of *Ethiopian Civil and Commercial Law Series* covers different themes in priority areas identified by committee of conveners and approved by the Academic Committee of the Law School. Submissions to this volume have been presented in a national conference organized by the School from 28th – 29th June, 2019 attended by invited faculty members from law schools in Ethiopia and experts from different walks of life. Moreover, each submission has been blind peer-reviewed by experts in the field for substantive merit as per the Addis Ababa University School of Law Thematic Research Conference and Proceedings Rules of 2016.

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Editor's Note

The present volume of Civil and Commercial Law Series is devoted to labour issues in Ethiopia. In a broader context, if development is to be inclusive and sustainable, there is a need to strike a reasonable balance between its economic and social dimensions. Labour relation is one of the areas where economic and social dimensions are manifestly visible. Since labour relation is mainly capital and labour interaction, capital is interested on the attainment of economic goals through profit maximization by focusing on economic dimension. Conversely, labour for its part, expects a fair share of the benefit that may be generated by the interaction of capital and labour. This is where the social dimension in the form of better working condition kicks in. The contributions in this volume are informed by this analytical framework.

The contributors to this volume have laboured to address the capital and labour equation from different perspectives but for a common goal. Bereket in his piece titled "*Foreign Direct Investment vis-à-vis Labour Law in Ethiopia: Is Race to the Bottom an Existing, Impending or Illusory Menace?*" analyzed the efforts of the Ethiopian government to attract and retain foreign direct investment within its territory. With a view towards attracting investment, Ethiopian authorities offered fiscal and regulatory incentives. Although regulatory incentives have had the benefit of easing burden in doing business, they had chilling effect in implementing labour rights in Ethiopia.

Bereket tried to pin point the adverse effect on labour being manifested in the "*race to the bottom*" as a real danger and not an illusion. According to him the race to the bottom has been manifested through the government's reluctance to enforce the labour standards incorporated under Ethiopian labour law in order to appease investors. He, however, contends that such an approach is inconsistent with the grand aspiration of the country's goals toward inclusive and sustainable

development. He recommends that even though provision of incentives may put countries in competitive advantage among peers in attracting foreign investment, it is advisable that such incentives should limit themselves to fiscal incentives as regulatory incentives would, at times, be at the expense of labour rights.

Gebreamlak, for his part, coined a title *“Introducing Statutory Minimum Wage into Ethiopian Private sector: A Contradiction between Labour Rights and Promoting Investment?”*, raising the issue as to whether there is a need or not to have a statutory minimum wage for the Ethiopian private sector. In essence, he examined whether stipulating minimum wage by law would discourage investment. He spelt out the arguments in favour and against having a statutory minimum wage. He recorded the experience of few other African countries that introduced minimum wage by law as well.

He is concerned that with huge unemployed labour force coupled with the absence of statutory minimum wage in Ethiopia; employees have been exposed to notorious exploitation since their bargaining power would naturally be low. In fact, he underlined that since labour is not a commodity, fixing the minimum price for it by law, does not in any way interfere with free market economy. Finally, he recommends that the Ethiopian government should introduce minimum wage for the private sector, as soon as possible, if benefit sharing in the formal economy is to be equitable and sustainable.

Jetu attempted to show us the dilemma in which developing countries found themselves in the global economic order in his piece *“Global Labour Flexibilization Conditionalities: Implications for Ethiopian Labour Law Regulatory Space”*. On the one hand developing countries desire to obtain technical and financial handouts from donor and lending institutions by complying with the latter’s conditionalities. On the other hand they aspire to respect and protect the rights of their labour force at workplaces. Such an aspiration may emanate from internal motivation

and/or ILO commitments. Unfortunately, one of the conditionalities prescribed by these institutions happens to be the so called “*labour market deregulation*” which dictates labour issues to be left to market forces. There comes the dilemma.

Taking the Ethiopian labour law as a case study, Jetu elaborated at length how and to what extent the Ethiopian legislature discharged its “double subordination” in this regard. Jetu cautions that based on the global imperatives, multinational corporations’ search for business-friendly environment has already found its normative basis in Ethiopian labour law regulatory space thereby paving the way for labour standard erosion.

Finally, Mehari’s contribution appeared under the title “*Labour Rights in Industrial Parks: Lessons for Ethiopia*”. He documented the experience of some other countries as to the scope of applicability of their labour laws in the so called “*industrial parks*”. With the object of attracting and retaining foreign investment, many of them exclude the applicability of their labour laws or parts of them in their industrial parks. The purpose of this documentation is to enable Ethiopian policy makers learn or unlearn from such experiences. Mehari further discussed the situational analysis at the industrial parks in Ethiopia pertaining to labour conditions therein.

The analysis verified that, though at the level of the surface, labour laws in their entirety are applicable all-over Ethiopian territory including at the industrial parks, their enforcement, however, proved to be weak or non-existent. Thus, non-enforcement has equivalent effect with that of non-legislating since regulatory suffocation has minimal effect in the absence of enforcement.

Overall, all contributors in this volume did attempt to elaborate the situation of labour conditions in Ethiopia from various angles. They tried to investigate the adequacy of the efforts undertaken by policy

makers to strike a reasonable balance between investment promotions on the one hand and labour rights protection on the other. Furthermore, the contributors flagged up their concerns in situations where the balancing act is misguided or deliberately avoided.

For further details, you are advised to read each piece. Enjoy reading!!

Mehari Redae (PhD)

Editor

Foreign Direct Investment vis-à-vis Labour Law in Ethiopia: Is Race-to-the-Bottom an Existing, Impending or Illusory Menace?

Bereket Alemayehu Hagos*

Abstract

In line with the global trend, Ethiopia has been involved in the competition with other countries to attract and retain foreign direct investment (FDI). For this purpose, the Ethiopian government has been taking various measures, which include providing different incentives to foreign investors. This article finds some evidence, focusing on foreign investments in the Ethiopian industrial parks, that the government has been engaged in a race-to-the-bottom with respect to labour standards, a phenomenon that harms the rights and interests of workers. Thus, the problem of race-to-the-bottom on labour standards exists in Ethiopia. The race-to-the-bottom has been manifested through the government's reluctance to enforce the labour standards provided in the Ethiopian labour law (particularly the core labour standards) in order not to "discourage" foreign investors. Since such approach to promoting foreign investment is contrary to the grand goal of sustainable development, the article provides some thoughts on how the Ethiopian government can balance its interests of promoting foreign investment with the protection of the rights of workers. These include promoting FDI through fiscal and financial incentives instead of the reluctance to enforce labour standards, while ensuring that foreign investors comply with the labour law so as to protect the rights of workers.

Key Terms: Investment, foreign direct investment, FDI, investment law, labour law, labour standards, core labour standards, race-to-the-bottom, sustainable development.

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1. Introduction

The surge in FDI is one of the features of the globalized nature of the contemporary world.¹ In fact, foreign capital has become omnipresent, from developing countries to developed countries, as of the last two decades of the 20th Century. Essentially, it is the multifaceted benefits that FDI can bring about that caused the proliferation of foreign investment in different countries, particularly in the developing world. These benefits, among others, are foreign capital, job opportunities, transfer of knowledge and technology, public revenue, increase in Gross Domestic Product, economic growth and development.

With the aim of reaping these and other fruits of FDI, countries have been constantly striving and competing to attract FDI, mainly with the help of their investment policies and laws. This is mostly clearly visible in many developing countries' policies that have been put in place since the late 1980s, particularly in former socialist states.² In addition to their domestic measures, countries have been taking various measures that aimed at promoting and protecting FDI internationally, as can be demonstrated by the constant rise in the Bilateral Investment Treaties (BITs) signed between countries from all continents.³

On the other spectrum, at the international and national levels, the number of legal instruments that promote and protect the rights of workers, which “are first and foremost about the development of

¹ Ulrich Mückenberger, “*Can International Investment Agreements support labour standards?*” in Sigurt Vitols (ed.), *Long-term investment and the Sustainable Company: a stakeholder perspective*, (European Trade Union Institute), Vol. III, (2015), p. 183. See also Ritash Sarna, “*The impact of core labour standards on Foreign Direct Investment in East Asia*”, (2005), p. 3.

² Surya P Subedi, *International Investment Law: Reconciling Policy and Principle*, (Hart Publishing Ltd), (2008), p. 28.

³ *Id.*, p. 1.

people as human beings”,⁴ has been on the rise.⁵ The works of the International Labour Organization (ILO) have hugely contributed to the incorporation of the rights of workers in international legal instruments and domestic laws. As such, the rights of workers are now well-recognized as human rights of individuals that should be exercised in the context of the workplace.⁶

The competition among countries to attract and retain FDI, principally through the provision of different incentives to foreign investors, has both opportunities and challenges to workers’ rights. On the one hand, the race to attract FDI can enable the nationals of host states (countries where investments are made) mainly to get employment opportunities and improve their living standards. On the contrary, the competition could prejudice the rights of workers because states (especially developing countries), as part of their incentive packages, may lower their labour standards, not enforce their labour regulations or provide exemptions from them for investors, a phenomenon commonly known as “race-to-the-bottom”. These forms of incentives are regarded as unhealthy and harmful,⁷ as they aim at attracting FDI at the expense of violating workers’ rights. Proper investment policies and laws must, thus, balance the interests of attracting and retaining FDI with the respect and enforcement of workers’ rights.

This article, therefore, has the purpose of evaluating the Ethiopian investment laws to comprehend whether there is a race-to-the-bottom with regard to labour standards in Ethiopia or it is an impending or illusory problem. Additionally, the article is designed to share some

⁴ International Labour Organization, *Rules of the Game: A brief introduction to International Labour Standards*, (2014), p. 10.

⁵ *Ibid.*

⁶ *Id.*, p. 15.

⁷ Charles Oman, *Policy Competition for Foreign Direct Investment: A Study of Competition among Governments to Attract FDI*, (OECD), (2000), p. 91.

thoughts in order for Ethiopia to balance the two interests (investment promotion and protection of workers' rights) and craft its investment policies that take into account the rights of workers.

In terms of structure, the remaining part of the article is divided into seven sections. The first section of the article provides an overview of the concepts and purposes of foreign investment, FDI and investment law, in addition to a general introduction to Ethiopian investment law. The second section provides an overview of labour law and the Ethiopian labour law. The competition to attract FDI and the associated problem of race-to-the-bottom are explained in the third section. The next section is concerned with the intricate nexus between FDI and labour laws. The fifth section, as the main component of the article, deals with FDI and labour law and the issue of race-to-the-bottom on labour standards in the Ethiopian context. Then, the section that provides some lessons for Ethiopia for attracting FDI without compromising the enforcement of labour standards follows. In the last part of the article, some concluding remarks and recommendations are offered.

At this juncture, it should be noted that this article does not claim to be an all-inclusive one. It, however, contains analyses of the international and national laws on FDI and labour standards. Additionally, with the intention of ensuring its practical importance, the available limited empirical data on the state of FDI and labour standards in Ethiopia have been utilized. Yet, the data on FDI and labour standards focuses on the manufacturing sector, mainly due to the labour-intensive nature of the industries, more particularly on those located in the industrial parks in Ethiopia. In this regard, the article is focused.

2. Overview of FDI, Investment Law and the Ethiopian Investment Law

a) The Concept, Nature and Purposes of FDI and Investment Law

Foreign investment involves the transfer of tangible or intangible assets from one country to another for the purpose of their use in that country to generate wealth under the total or partial control of the owner of the assets.⁸ In the parlance of foreign investment law, foreign investment occurs when there is a transfer of capital from a home country, also known as a capital-exporting country, to the host country, also referred to as a capital-importing country.

FDI is one of the two modalities of foreign investment, the other one being portfolio investment. FDI has been defined as “an investment made to acquire a lasting interest by an entity resident in one economy in an enterprise resident in another economy.”⁹ As such, FDI should enable an investor to “exert direct control over the management of assets in the invested firm.”¹⁰ On the contrary, a portfolio investment “is normally represented by a movement of money for the purpose of buying shares in a company formed or functioning in another country.”¹¹ In general, the main distinguishing factor between FDI and a portfolio investment is an investor’s level of control over the management of the investment. Hence, a foreign investment that grants an investor a power of 10 percent or more of the ordinary voting shares

⁸ M. Sornarajah, *The International Law on Foreign Investment*, (3rd Edition, Cambridge University Press), (2010), p. 8.

⁹ OECD, *The Impact of Foreign Direct Investment on Wages and Working Conditions*, (2008), p. 3.

¹⁰ *Ibid.*

¹¹ Sornarajah, *Supra* note 8.

or its equivalent is regarded as FDI¹², while an investment that results in owning less than this threshold is considered as a portfolio investment.¹³

FDI can generally take two forms. A foreign investor can establish a new enterprise, such as a factory. This type of FDI is referred to as a green field investment.¹⁴ Alternatively, a foreign investor may fully or partially acquire the assets or shares of an existing enterprise in order to continue, expand or change the business purposes of the enterprise. This form of FDI is referred to as a brown field investment.¹⁵ The choice of the form that a particular FDI takes depends on a number of factors that investors must take into account, including investors' desired level of control of the management of an enterprise and tax implications of investments.

There are numerous advantages of FDI to host states that justify the FDI-friendly measures they relentlessly take. FDI can become a source of employment in host states,¹⁶ thereby contributing to alleviating the problem of unemployment in host states. The other advantage of FDI in relation to employment is the positive contribution it can have on human capital enhancement in the host state, principally in the form of employees' acquisition of new skills and knowledge via trainings.¹⁷ FDI

¹² Michiel van Dijk & Myriam Vander Stichele, "Is Foreign Investment Good for Development?: A Literature Review", (SOMO Paper), (2008), p. 1. See also OECD, *Supra* note 9.

¹³ OECD, *Supra* note 9.

¹⁴ Jan Drahokoupil, "Foreign direct investment", Encyclopaedia Britannica, (14 September 2014), Available at <https://www.britannica.com/topic/foreign-direct-investment>, (Last accessed on May 23, 2019).

¹⁵ Corporate Finance Institute, "What is a Brownfield Investment?", Available at <https://corporatefinanceinstitute.com/resources/knowledge/strategy/brownfield-investment/>

¹⁶ OECD, *Foreign Direct Investment for Development: Maximising Benefits, Minimising Costs: Overview*, (2002), p. 14.

¹⁷ *Ibid.*

can also result in the transfer of knowledge and technology from home states to host states.¹⁸ In other words, when FDI is made in a host country, particularly in a developing country, the nationals of the host state (employees, suppliers and others) could get the opportunity to acquire knowledge and technologies that are not available in their home country. The other advantage of FDI is that it normally results in the increase of public revenue of a host state, mostly through the various types of taxes paid by foreign investors.

Moreover, FDI can benefit host countries in other ways. It can result in increased competition in the domestic markets of host countries, thereby bringing about productivity, lower prices and efficient allocation of resources.¹⁹ Enterprise development in host states could also be achieved by FDI, such as through the movement of skilled employees and technology from foreign investors to domestic enterprises (spill-over effects of FDI).²⁰ FDI could result in the improvement of environmental, labour and other social standards in a host state if foreign investors conduct their activities in accordance with the mostly higher standards of their home countries.²¹ In general, FDI has the potential to help host states achieve economic growth and development.

However, the mere existence of FDI in a host state does not mean that the country will necessarily reap the aforementioned fruits of FDI.²² In other words, the economic advantages of FDI to host states are “real, but they do not accrue automatically.”²³ Thus, proper policies and

¹⁸ *Id.*, pp. 12-13.

¹⁹ *Id.*, pp. 15-16.

²⁰ *Id.*, pp. 17-18.

²¹ *Id.*, pp. 19.

²² Sornarajah, *Supra* note 8, p. 57.

²³ OECD (2002), *Supra* note 16, p. 21.

regulations on FDI should be put in place.²⁴ In the absence of appropriate regulations and policies and the enforcement thereof, FDI can have effects that are diametrically opposite to its benefits to host states.²⁵ As such, there should be apposite investment policies and regulations if the benefits of FDI are to be maximized and its adverse effects minimized.

The purposes of investment law (both national and international) can be generally categorized into three. The first objective is promotion of investment (including FDI) in a host state.²⁶ Investment law commonly provides various incentives to foreign investors so as to attract investment. The other objective of investment law is protecting investment.²⁷ Foreign investments normally face a number of risks, such as expropriation and discriminatory treatments by host states, for which protective mechanisms should be put in place. The other purpose of investment law is to regulate investment, particularly through domestic investment law.²⁸ It has been well-recognized that investment requires some level of regulation in host states, such as on the entry and exit of investments.²⁹

²⁴ Sornarajah, *Supra* note 8, p. 58.

²⁵ Lorenzo Cotula, Foreign investment, law and sustainable development: A handbook on agriculture and extractive industries, (IIED Natural Resource Issues), (2nd Edition), (2016), p. 4.

²⁶ Maaiké Kokke & Myriam Vander Stichele, Jim Turner (trans.), “*Promotion of Foreign Direct Investment: What Are the Costs?*”, (SOMO Paper), (2008), p. 3.

²⁷ Stephan W. Schill, *The Multilateralization of International Investment Law*, (Cambridge University Press), (2009), p. xiv. *See also* Christoph Schreuer, “*Investments, International Protection?*”, (2011).

²⁸ Christoph Schreuer, *Ibid.*

²⁹ Sornarajah, *Supra* note 8, p. 58.

b) The Ethiopian Investment Law and its Purposes

Ethiopia's investment law³⁰ is principally contained in the Investment Proclamation No. 769/2012 (as amended), the Investment Incentives and Investment Areas Reserved for Domestic Investors Council of Ministers Regulation No. 270/2012 ("Investment Regulation") and the bilateral and multilateral investment promotion and protection agreements to which Ethiopia is a party.

The Ethiopian investment law aims at enabling Ethiopia to benefit from the aforementioned advantages of FDI and domestic investment. Its general objective is to "improve the living standards of the peoples of Ethiopia through the realization of sustainable economic and social development".³¹ Besides, the Investment Proclamation provides the particular goals of creating ample job opportunities for Ethiopians, advancing the transfer of technology, developing the domestic market through the growth of production, productivity and services, exploiting and developing Ethiopia's immense natural resources and increasing the foreign currency earnings of Ethiopia through encouraging exporting and import-substituting investments.³² In addition, the Ethiopian investment regime aims at accelerating the country's economic development, encouraging a balanced development and integrated economic activity among the regions and strengthening the inter-sectoral linkages of the economy and enhancing and enabling the role of the private sector and foreign investment in the acceleration of Ethiopia's economic development.³³

³⁰ It must be noted that the investment law is currently under revision. Ethiopian Press Agency, "New proclamation to boost investment, FDP", (July 13, 2019), Available at <https://www.press.et/english/?p=8198#>

³¹ Article 5, the Investment Proclamation.

³² Article 5 (2), (3), (4), and (8), the Investment Proclamation.

³³ Article 5 (1), (5), (6), and (7), the Investment Proclamation.

Under the investment law, investment areas are generally categorized into four. These are areas of investment open for foreign investors, domestic investors, the government and joint investment with the government.³⁴ Hence, foreign investors can engage in all investment areas listed in the Investment Proclamation and Regulation, except in the areas exclusively reserved for domestic investors and the government. The investment law defines a “foreign investor” as “a foreigner or an enterprise wholly owned by foreign nationals, having invested foreign capital in Ethiopia or a foreigner or an Ethiopian incorporated enterprise owned by foreign nationals jointly investing with a domestic investor, and includes an Ethiopian permanently residing abroad and preferring treatment as a foreign investor.”³⁵

In order to attract foreign investment and achieve the afore-stated objectives, the Ethiopian investment law provides different incentives for investors that engage in many areas of investment. Specifically, the Investment Regulation contains income tax and customs duty exemptions, income tax deduction and loss carry forward as methods of incentivizing investors.³⁶ Yet, the specific type and duration of incentive provided to a specific investor depends on the particular area and location of his investment. In addition to the Investment Regulation, the Export Trade Duty Incentive Schemes Proclamation No. 768/2012 entitles investors that produce for exporting their products to additional incentives.

Apart from investment incentives, the Investment Proclamation grants investment guarantees and protections to investors, investments and their expatriate employees. Accordingly, it permits foreign investors to

³⁴ Article 6, the Investment Proclamation, and Articles 3 and 4, the Investment Regulation.

³⁵ Article 2(6), the Investment Proclamation.

³⁶ Articles 5, 6, 7, 12 and 13, the Investment Regulation.

own immovable property (land, building etc.),³⁷ which otherwise is not permitted for foreigners to acquire immovable property without having a special permission of the government under the 1960 Civil Code.³⁸ It also guarantees investments against uncompensated and unlawful expropriation and nationalization.³⁹ The Proclamation, in addition, allows foreign investors to repatriate their funds (profits, dividends etc.) in convertible foreign currency, as per Ethiopian foreign exchange laws.⁴⁰ Expatriates are also, similarly, permitted to remit part of their salaries and other payments accruing from their employment.⁴¹

In addition to the Investment Proclamation and the Investment Regulation, there are other domestic laws in Ethiopia that are relevant to FDI. The most important of these is the Industrial Parks Proclamation No. 886/2015, which particularly incentivizes, regulates and protects FDI made in industrial parks.

The other important sources of Ethiopian investment law are the bilateral and multilateral investment promotion and protection agreements Ethiopia signed with other countries. There are several BITs that Ethiopia has signed with other countries. The BITs' provisions mainly aim at promoting and protecting foreign investments. In a similar way to BITs signed by other countries, the BITs signed and ratified by Ethiopia contain, among others, protections against expropriation (direct and indirect) and discrimination (through the national and most-favoured nation treatment principles). They also oblige the signatories to accord fair and equitable treatment and full protection and security to foreign investors. Although not in detail, the

³⁷ Article 24, the Investment Proclamation.

³⁸ Article 390, the 1960 Civil Code.

³⁹ Article 25, the Investment Proclamation.

⁴⁰ Article 26(1), the Investment Proclamation.

⁴¹ Article 26(3), the Investment Proclamation.

BITs also empower the host state, Ethiopia, to regulate foreign investors of the other signatory parties. Furthermore, there are multilateral agreements to which Ethiopia is a party that contain rules that promote and protect FDI. The notable one, in this regard, is the Common Market for Eastern and Southern Africa (COMESA) Treaty that obliges the Member States (including Ethiopia) to take measure in order to promote, protect and regulate FDI in their jurisdictions.⁴²

The abovementioned and other measures that Ethiopia has been taking in order to attract FDI have paid off in terms of increasing FDI flow. For instance, a report of the United Nations Conference on Trade and Development (UNCTAD) shows that there has been a constant surge in inward FDI into Ethiopia over the years.⁴³ In particular, the report clearly evinces that the average number of inward FDI in Ethiopia has been increasing each year, except in 2018.⁴⁴

3. Labour Law in General and the Ethiopian Labour Law

a) The nature and purposes of labour law

Labour law, as documented in domestic and international legal instruments, deals with issues arising out of or in connection to the relation between an employer and an employee under an employment contract. Yet, it is generally not like the conventional civil laws that are based on the principle of freedom of contracting. It, thus, has a regulatory nature.⁴⁵ The main purpose of labour law is “to ensure that

⁴² Articles 158 and 159, Treaty Establishing the Common Market for Eastern and Southern Africa, (December 1994).

⁴³ The United Nations Conference on Trade and Development, World Investment Report 2019, “Country fact sheet: Ethiopia”, Available at https://unctad.org/sections/dite_dir/docs/wir2019/wir19_fs_et_en.pdf

⁴⁴ *Ibid.*

⁴⁵ Arturo Bronstein, International and Comparative Labour Law: Current challenges, (International Labour Organization 2009), p. 1.

no employer can be allowed to impose – and no worker can be obliged to accept – conditions of work which fall below what is understood to be a decent threshold in a given society at a given time.”⁴⁶

Specifically, labour law aims at achieving its ultimate purpose in different ways. First, it prescribes minimum standards of labour below which an employer and an employee cannot agree.⁴⁷ As such, it restricts the autonomy of parties to an employment contract from agreeing to appalling labour conditions. Second, labour law contains rules designed to correct the imbalance of power between an employer and an employee.⁴⁸ For instance, it could limit the grounds of termination of an employment relation. Third, labour law also regulates the labour market, such as by imposing minimum wages to be paid to employees.⁴⁹

Labour law also has other objectives. It provides rules that enable employers (particularly, businesses) to be efficient and profitable. For instance, it restricts the freedom of trade unions,⁵⁰ thereby preventing abuses of employees’ rights and the resultant negative effects on the productivity of employers. It also aims at ensuring that industrial peace is created and maintained. Finally, it ultimately serves as an instrument of improving workers’ standards of living by providing the framework for decent working conditions.⁵¹

⁴⁶ *Id.*, pp. 1-2.

⁴⁷ Daniel Blackburn, “*The role, impact and future of labour law*” in “Labour law: Its role, trends and potential”, (Labour Education 2006/2-3 No. 143-144), (International Labour Office), (2006), pp. 1-2.

⁴⁸ *Id.*, p. 1.

⁴⁹ *Id.*, p. 2.

⁵⁰ *Ibid.*

⁵¹ International Labour Organization, *Supra* note 4.

b) The Ethiopian Labour Law

Ethiopia has adopted the Labour Proclamation No. 1156/2019⁵² that governs employment relations in the private sector. The Proclamation generally contains minimum labour standards.⁵³ It follows that employers can provide better labour standards to their employees than what the Labour Proclamation, collective agreements or work rules prescribe.⁵⁴ Therefore, in the application of specific rules to employment relations, the one that is more favourable to an employee must be given priority.⁵⁵

Since Ethiopia has ratified all ILO Core Conventions,⁵⁶ the Labour Proclamation generally encompasses the fundamental principles contained in the conventions.⁵⁷ Specifically, it protects the core labour standards as outlined in the 1998 ILO Declaration of Fundamental Principles and Rights at Work. These core labour standards are freedom of association and the effective recognition of the right to collective bargaining, the elimination of all forms of forced or

⁵² This Proclamation entered into force in September 2019 and replaced Labour Proclamation No. 377/2003 (as amended). As a result, it should be noted that this article is prepared based on sources that studied the Labour Proclamation No. 377/2003 (as amended). However, there are no major changes introduced by the new Proclamation that are relevant to the subject-matter of this article.

⁵³ Article 4(5), the Labour Proclamation.

⁵⁴ *Ibid.*

⁵⁵ በላዥኛው መከራከያ፣ የኢትዮጵያ አሰሪና ሠራተኛ ህግ መሠረታዊ ነጥቦች፣ (2ኛክትም፣ 2004 ዓ.ም.)፣ገፅ 69 (Author's translation).

⁵⁶ These are the Forced Labour Convention, 1930 (No. 29), the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), the Abolition of Forced Labour Convention, 1957 (No. 105), the Equal Remuneration Convention, 1951 (No. 100), the Worst Forms of Child Labour Convention, 1999 (No. 182), the Discrimination (Employment and Occupation) Convention, 1958 (No. 111) and the Minimum Age Convention, 1973 (No. 138).

⁵⁷ Mehari Redae, *Privatisation in Ethiopia: the Challenge it poses to Unionisation and Collective Bargaining*, (PhD Thesis, University of Warwick, 2015), p. 2.

compulsory labour, the effective abolition of child labour and the elimination of discrimination in respect of employment and occupation.⁵⁸ As such, it protects the freedom of association of employees and employers and their right to collective bargaining, both constitutionally⁵⁹ and statutorily. In relation to workers, it states that workers have the right to establish and form trade unions and actively participate therein.⁶⁰ It additionally contains detailed rules for the implementation of the right to form trade unions and collective bargaining. The Constitution and the Proclamation also prohibit discrimination between employees based on race, sex, religion, political outlook and other grounds.⁶¹ Moreover, the Constitution and the Proclamation contain rules that prohibit child labour.⁶² In this regard, the Proclamation prohibits the employment of young workers (children between 15 and 18 years of age) for positions that, by their nature or due to the conditions under which they are carried out, endanger the life or health of young workers.⁶³ In a similar way, the Ethiopian labour law prohibits forced labour.⁶⁴ The Constitution also guarantees the rights to reasonable limitation of working hours, rest, leisure, periodic leaves with pay, remuneration for public holidays as well as healthy and

⁵⁸ The 1998 ILO Declaration of Fundamental Principles and Rights at Work, Adopted by the International Labour Conference at its Eighty-sixth Session, Geneva, 18 June 1998.

⁵⁹ Article 42(1), the Constitution. Constitution of the Federal Democratic Republic of Ethiopia, Proclamation No. 1/1995, Federal NegaritGazeta, Extraordinary Issue, 1st Year, No. 1, 21 August, 1995.

⁶⁰ Article 113(1), the Labour Proclamation.

⁶¹ Articles 25, 35(8), and 42(1)(d), the Constitution, and Article 14(1)(b) and (f), the Labour Proclamation.

⁶² Article 36(1)(d), the Constitution, and Article 89 (1), (2) and (3), the Labour Proclamation.

⁶³ Article 89 (3), the Labour Proclamation.

⁶⁴ Article 18(3), the Constitution, and Article 4(1), the Labour Proclamation.

safe work environment.⁶⁵ The details of these rights are provided in the Labour Proclamation. Concerning working hours, it limits the daily working hours to 8 hours and requires that employees should not be required to undertake overtime work (works outside the normal working hours) except under a few unusual circumstances.⁶⁶

With respect to the duration of employment, the Labour Proclamation presumes that any employment contract is entered into for an indefinite period, except for the grounds of definite or piecework employment enumerated in the Proclamation.⁶⁷ Accordingly, employers bear the onus of proving that specific employment contracts they signed create definite or piecework employment.

Finally, the Labour Proclamation does not prescribe the minimum wage that must be paid to workers in Ethiopia. But, it mandates the Council of Ministers to determine the powers and responsibilities of a Wage Board (comprising representatives of the government, employers, trade unions and other stakeholders) that will periodically revise minimum wages based on studies that take into account the country's economic development, labour market and other considerations.⁶⁸ The details and effects of the envisaged minimum wage are yet to be observed and evaluated.

4. The Competition to Attract FDI and the Problem of Race-to-the-Bottom

In this globalized world, the role of FDI in the economies of host states, particularly in developing states, is very crucial.⁶⁹ This could be

⁶⁵ Article 42(2), the Constitution.

⁶⁶ Articles 61, 66 and 67, the Labour Proclamation.

⁶⁷ Article 9, the Labour Proclamation.

⁶⁸ Article 55(2), the Labour Proclamation.

⁶⁹ David Kucera, "*Core labour standards and foreign direct investment*", *International Labour Review*, Vol. 141, No. 1-2, (2002), p. 31.

observed from the fact that FDI has recently been the biggest source of foreign finance for developing countries.⁷⁰ Additionally, many international organizations, such as the World Bank and the International Monetary Fund, strongly advise and guide capital-importing countries to adopt investment-friendly measures for attracting FDI.⁷¹

As a result, due to these factors and with the purpose of ultimately benefiting from FDI, countries have been constantly striving to attract FDI.⁷² Such efforts mostly include reforming host states' policies and regulations on FDI, often with the guidance or support of international financial organizations.⁷³ Many countries have accordingly been making their jurisdictions FDI-friendly, such as through liberalizing their economies, easing the requirements for the admission of FDI and providing fiscal and financial investment incentives.

Furthermore, countries have been in competition with one another for attracting FDI by engaging in what some scholars named as “rules-based incentives”⁷⁴ or “regulatory incentives”.⁷⁵ These forms of incentives take the form of the removal or lessening of regulations affecting FDI, regulations “although potentially socially desirable, are

⁷⁰ World Investment Report 2018: Investment and New Industrial Policies, (United Nations Conference on Trade and Development), (2018), p. 12.

⁷¹ Maaïke Kokke & Myriam Vander Stichele, *Supra* note 26.

⁷² Robert G. Blanton and Shannon L. Blanton, “*Labor Rights and Foreign Direct Investment: Is There a Race to the Bottom?*”, *International Interactions: Empirical and Theoretical Research in International Relations*, (2012), pp. 267-268.

⁷³ Maaïke Kokke & Myriam Vander Stichele, *Supra* note 26.

⁷⁴ Charles Oman, *Supra* note 7.

⁷⁵ UNCTAD, “Incentives”, UNCTAD Series on Issues in International Investment Agreements, (United Nations Conference on Trade and Development), (UNCTAD/ITE/IIT/2003/5), (2004), p. 7.

viewed as unattractive to firms.”⁷⁶ Regulatory incentives can also be provided by allowing exemptions to investors from the applicable regulations.⁷⁷ The two most common regulations that have been covered by regulatory incentives are labour and environmental laws. The phenomenon of competition among countries that involves the lowering or removal of or exemptions from regulatory requirements has been pejoratively referred to as the “race-to-the-bottom”.⁷⁸ This means, instead of engaging in race-to-the-top that results in the gradual improvement of regulations, the race-to-the-bottom brings about lower regulatory standards or lax enforcement of strict regulations. On how the race-to-the-bottom occurs, it has been observed that:

“...The concern, expressed by many, is that in competing to attract FDI, governments may overtly or covertly relax their enforcement of those standards — on *a de facto* if not on *a de jure* basis — thereby putting pressure on other governments to follow suit. The predicted result is growing downward pressure on those standards worldwide, analogous to the upward pressure on incentives, where governments are caught in a prisoner’s dilemma and thus find it increasingly difficult to resist that pressure...”⁷⁹

As such, this type of race happens as the lowering of regulations to attract FDI by a country forces other countries to do the same in a bid not to lose their competitive edges in the global competition for FDI.

When applied to labour standards, race-to-the-bottom means that the rules on labour standards are intentionally lowered or not strictly enforced or exemptions are permitted from them with the intention of attracting investors. Thus, the problem of race-to-the-bottom can have

⁷⁶ Ronald B. Davies and Krishna Chaitanya Vadlamannati, “*A race to the bottom in labor standards? An empirical investigation*”, *Journal of Development Economics*, p. 1.

⁷⁷ Incentives, *Supra* note 75.

⁷⁸ David Kucera, *Supra* note 69.

⁷⁹ Charles Oman, *Supra* note 7.

de jure or *de facto* manifestations.⁸⁰ Hence, it can occur when host states lower or remove their labour regulations or if they intentionally abstain from fully or partially enforcing the regulations in practice. In fact, studies indicate that the race-to-the-bottom on labour standards “is driven less by a failure to institute regulations than by an unwillingness to enforce them.”⁸¹

At this juncture, it is vital to explain how the race-to-the-bottom on labour standards is a problem for countries, particularly developing host states. The lowering of labour standards leads to poor protections of the rights of workers, thereby negatively affecting their living standards. This defeats the very idea of sustainable development that countries aspire to ultimately attain through attracting FDI. This is why it is remarked that “economic development is not undertaken for its own sake but to improve the lives of human beings; international labour standards (which are the bases for domestic labour standards) are there to ensure that it remains focused on improving human life and dignity.”⁸²

Yet, it has to be noted that the actual effects of the race-to-the-bottom on the flow of FDI has been controversial. On the one hand, it is claimed that the race to attract FDI can result in poor labour conditions and other negative impacts on the host state.⁸³ On the other hand, it is argued that the effectiveness of race-to-the-bottom in FDI attraction is not supported by evidence and, quite the contrary, they claim that there is evidence that shows that competition to attract FDI could result in the improvement of regulatory standards.⁸⁴

⁸⁰ *Ibid.*

⁸¹ Ronald B. Davies and Krishna Chaitanya Vadlamannati, *Supra* note 76.

⁸² International Labour Organization, *Supra* note 4.

⁸³ Maaïke Kokke & Myriam Vander Stichele, *Supra* note 26, p. 7.

⁸⁴ Charles Oman, *Supra* note 7, p. 12.

However, this debate is out of the ambit of this article because this article is not concerned with the practical effects of race-to-the-bottom on the flow of FDI, rather it deals with whether the problem of race-to-the-bottom exists or is impending or illusory in Ethiopia. As succinctly stated by David Kucera, race-to-the-bottom “does not depend on investors being truly attracted to countries with lower labour standards. Perception, true or false, will suffice.”⁸⁵ Likewise, it has been observed that “even if FDI does not flow in as a result of a country's reduction in labour standards, if politicians believe that it does then this alone could result in a race to the bottom.”⁸⁶

5. The Nexus between FDI and Labour Law

The relationship between FDI and labour law has been the subject of various debates and is characterized by its complexity. Among the common connecting factors between FDI and labour standards is the fact that labour standards force investors to incur expenses, which economists refer to as “labour costs”. This means FDI investors’ compliance with labour standards, as required by labour laws, involves incurring labour costs.⁸⁷ As such, labour law forces investors to allot portions of their incomes for covering labour-related expenses, such as wages, compensations and other benefits. As a result, it is often claimed that investors could prefer to invest in countries with weak or weakly enforced labour laws.⁸⁸ This argument is based on the idea that these types of labour laws help investors reduce their operating costs. It is this argument that is the principal justification for countries to engage in race-to-the-bottom.

⁸⁵ David Kucera, *Supra* note 69.

⁸⁶ Ronald B. Davies and Krishna Chaitanya Vadlamannati, *Supra* note 76, p. 12.

⁸⁷ Ritash Sarna, *Supra* note 1, p. 12.

⁸⁸ William W. Olney, “*A Race to the Bottom? Employment Protection and Foreign Direct Investment*”, (2013), p. 6.

From the perspective of foreign investors (employers), the flexibility of labour laws has also been another area of nexus between FDI and labour standards. In general, a labour law is regarded as flexible if it “give(s) firms the ability to quickly reallocate labour, whether through hiring, firing, or adjusting the hours that employees work.”⁸⁹ In this regard, it has been observed that the “[e]xcessive protection of workers is reckoned to affect performance negatively as institutions limit businesses in making market-based decisions.”⁹⁰ As a consequence, the level of flexibility of labour laws can also affect the locational decisions of foreign investors.

There are economic studies that evince the negative relationship between FDI and strict labour standards. It is evidenced that many foreign investors, multinational companies in particular, do have the practice of investing in countries with weak or weakly enforced labour standards.⁹¹ There are also studies that show that the relation between FDI and labour standards varies across different types of foreign investment.⁹² Accordingly, it has been observed that most labour-intensive foreign investments, such as those involving manufacturing, are believed to be more likely attracted to low labour standards.⁹³ On the other hand, there are studies that indicate that foreign investors do not necessarily favour countries with weak labour standards.⁹⁴

In spite of this debate, the impact of FDI on labour standards has been the subject of regulations and soft law instruments at the international

⁸⁹ Robert G. Blanton and Shannon L. Blanton, *Supra* note 72, p. 269.

⁹⁰ Getachew Minas and Yared Berhe, *The Impact of Ethiopian Labor Laws on Business Efficiency and Competitiveness*, (Private Sector Development Hub/Addis Ababa Chamber of Commerce and Sectoral Associations), (2011), pp. 6-7.

⁹¹ William W. Olney, *Supra* note 88, p. 30.

⁹² Robert G. Blanton and Shannon L. Blanton, *Supra* note 72, p. 288.

⁹³ Ritash Sarna, *Supra* note 1, p. 13.

⁹⁴ David Kucera, *Supra* note 69, p.33.

level. A growing number of recently-signed BITs, in a departure from the traditional one-sided and pro-investor nature of BITs, contain provisions addressing labour standards.⁹⁵ These BITs contain rules that recognize the regulatory power of host states, or oblige host states to ensure that their labour standards are compatible with international labour standards and/or expressly prohibit countries from engaging in race-to-the-bottom for attracting FDI. An example is the BIT signed, but not yet ratified, by Ethiopia and the Belgian-Luxembourg Economic Union that primarily obliges the Contracting Parties to adopt labour laws in line with international labour standards and prohibits race-to-the-bottom on labour standards for encouraging investment.⁹⁶

In addition to binding legal instruments, there are non-binding instruments dealing with FDI and labour standards. Thus, the ILO Declaration of Fundamental Principles and Rights at Work provides that all ILO members should respect, promote and realize the core labour standards, whether or not they have ratified the ILO conventions dealing with the specific rights. Similarly, the 2008 ILO Declaration on Social Justice for a Fair Globalization calls up on the Members of ILO to take various measures, including the realization of core labour standards, with the aim of addressing the downsides of globalization. Besides, in the realm of international investment law, the OECD Guidelines for Multinational Enterprises, which contain a set of recommendations for transnational corporations, recommend that transnational corporations, among others, observe labour standards not less favourable than comparable employers in the host state and, in particular, respect the core labour standards.⁹⁷

⁹⁵ International Labour Organization, *Studies on Growth with Equity: Assessment of Labour Provisions in Trade and Investment Arrangements*, (2016), p. 26.

⁹⁶ Article 6, BIT between Ethiopia and the Belgian-Luxembourg Economic Union.

⁹⁷ Section IV, the OECD Guidelines for Multinational Enterprises.

However, it is worth noting that labour standards and costs are not the only determinants of the locational decisions on FDI. There are a number of other factors that should be taken into consideration for making decisions on FDI locations.⁹⁸ These include a host state's market size, political stability, level of rule of law, access to finance and quality of infrastructure.⁹⁹

6. FDI *vis-à-vis* Labour Laws in Ethiopia

a) FDI and Labour Standards in the BITs Signed by Ethiopia

The majority of the BITs Ethiopia signed and/or ratified take the forms of the typical BITs that “focused on the protection of investments and did not aim to address labour or employment matters.”¹⁰⁰ They contain the conventional standards of treatment and protections to foreign investors, albeit they expressly or implicitly recognize Ethiopia's regulatory power over foreign investments.¹⁰¹ Hence, most of them do not address labour standards in relation to foreign investment.

However, in line with the global trend,¹⁰² changes are observed in BITs that Ethiopia recently signed, although not yet ratified, in terms of explicitly dealing with the nexus between labour standards and foreign investment. The most important of these are the BITs Ethiopia signed with Brazil and the Belgian-Luxembourg Economic Union. The latter BIT, in its Article 6, stipulates that:

⁹⁸ David Kucera, *Supra* note 69, p. 35.

⁹⁹ *Ibid.*

¹⁰⁰ International Labour Organization (2016), *Supra* note 95.

¹⁰¹ For example, the Ethiopia-Finland BIT, under its Article 14, provides that the provisions of the BIT do not prohibit the countries from taking measures to protect public order and national security.

¹⁰² International Labour Organization (2016), *Supra* note 95, p. 27.

“1. Recognising the right of each Contracting Party to establish its own domestic labour standards, and to adopt or modify accordingly its labour legislation, each Contracting Party shall strive to ensure that its legislation provide for labour standards consistent with the internationally recognised labour rights ... and shall strive to improve those standards in that light.

2. The Contracting Parties recognise that *it is inappropriate to encourage investment by relaxing domestic labour legislation*. Accordingly, each Contracting Party shall strive to ensure that it does not waive or otherwise derogate from, or offer to waive or otherwise derogate from, such legislation as an encouragement for the establishment, maintenance or expansion in its territory of an investment.

3. The Contracting Parties reaffirm their obligations as members of the International Labour Organisation and their commitments under the International Labour Organisation Declaration on Fundamental Principles and Rights at Work and its Follow-up. The Contracting Parties shall strive to ensure that such labour principles and the internationally recognised labour rights set forth in paragraph 6 of Article 1 are recognised and protected by domestic legislation.”

Similarly, the Ethiopia-Brazil BIT expressly states the inappropriateness of promoting investment by engaging in race-to-the-bottom on labour standards.¹⁰³ This BIT even goes further to include clear obligations of investors, which is lacking in other BITs. It obligates investors to strive to respect human rights and discharge their corporate social responsibilities.¹⁰⁴

b) The Application of Labour Laws in FDI

The Ethiopian investment law provides some rules that show the relations between FDI and labour standards. Regarding the compliance of investors with Ethiopian regulations, the Investment Proclamation clearly states that an investor must observe the laws of the country in

¹⁰³ Article 16, the Ethiopia-Brazil BIT.

¹⁰⁴ Article 14, the Ethiopia-Brazil BIT.

carrying out its investment activities.¹⁰⁵ One of the laws that investors must accordingly adhere to is the Labour Proclamation.¹⁰⁶ The Investment Proclamation, in other words, declares Ethiopia's position that FDI is promoted and protected in Ethiopia, subject to the requirement that it complies with all applicable regulations, including labour laws. Thus, the Proclamation aims at balancing Ethiopia's interest in attracting FDI with its other public interests, such as the protection of the workforce.

A similar, but much express, position is taken with respect to investors that operate in industrial parks. The Industrial Parks Proclamation states that the Labour Proclamation should be applicable in any industrial park.¹⁰⁷ Aside from declaring the applicability of the Labour Proclamation in industrial parks, the Industrial Parks Proclamation expressly obliges industrial park enterprises (companies manufacturing in industrial parks) to discharge their obligations as employers pursuant to the labour laws.¹⁰⁸ Additionally, the Proclamation allows the signing of employment contracts between employers and employees in industrial parks that take into account industrial parks' peculiar features, subject to the application of the Labour Proclamation.¹⁰⁹ It has to be noted that this provision of the Industrial Parks Proclamation has been viewed suspiciously by some, in the sense that the fact that employers and employees are permitted to contract as per the unique features of industrial parks could pave the way for the erosion of the minimum

¹⁰⁵ Article 38, the Investment Proclamation.

¹⁰⁶ Martha Belete Hailu, *Investment Policy of Ethiopia: Teaching Material on Economic and Legal Aspects of Foreign Direct Investment Localization for Ethiopia*, (UNCTAD Virtual Institute), (2013), p. 48.

¹⁰⁷ Article 28 (1), the Industrial Parks Proclamation.

¹⁰⁸ Article 10 (4), the Industrial Parks Proclamation.

¹⁰⁹ Article 28 (2), the Industrial Parks Proclamation.

working conditions protected in the Labour Proclamation.¹¹⁰ This fear can be considered well-founded only if the provision is not strictly interpreted and enforced. This is because, as can be easily understood from the terms “Without prejudice to sub-article (1) of this Article” (which provides the principle of applicability of the Labour Proclamation in industrial parks), the right of employers and employees to contract as per industrial parks’ peculiar features can be exercised without affecting the applicability of the Labour Proclamation in industrial parks. Hence, employers and employees in industrial parks cannot agree in manners that violate the mandatory provisions of the Labour Proclamation, which include the requirement that no employment arrangement can validly contain working conditions below the minimum working conditions.¹¹¹

In addition, pursuant to the Industrial Parks Proclamation, the Ministry of Labour and Social Affairs is empowered to establish the rules and procedures on labour issues on the basis of tripartite modality (a mechanism of resolving labour disputes through consultations of the Ministry, employers and employees in industrial parks).¹¹²

The Ethiopian government’s declared commitment for applying the labour laws to FDI in general and investments in industrial parks in particular is commendable. This is because the establishment of industrial parks, which are variously named such as “export-processing zones” and “special economic zones”, is often regarded as a sign of race-to-the-bottom in relation to labour standards.¹¹³ However, as

¹¹⁰ Jetu Edosa Chewaka, “*Protection of Core Labour Rights in Ethiopian Industrial Development Zones: the Case of Eastern Industrial Zone*” in Getachew Assefa *et al.* (eds.), *Economic, Social and Cultural Rights in Ethiopia*, (2016), p. 123. *See also* Mehari Redae, “*Current Status of Collective Labour Rights in Ethiopia: Concerns and Challenges*” in Getachew Assefa *et al.* (eds.), *Economic, Social and Cultural Rights in Ethiopia*, (2016), p. 157.

¹¹¹ Article 4(5), the Labour Proclamation.

¹¹² Articles 2 (25) and 28 (3), the Industrial Parks Proclamation.

¹¹³ Charles Oman, *Supra* note 7, p. 99.

mentioned above, the problem of race-to-the-bottom can also occur in practice through the non-enforcement or the lax enforcement of otherwise strict labour laws. Therefore, the legislative approach of the Ethiopian investment law on the application of the labour laws to all investments does not guarantee the non-existence of race-to-the-bottom on labour standards in Ethiopia. As such, an examination of the practical enforcement or non-enforcement of the applicability of labour laws to FDI is warranted. This issue is modestly dealt with in the subsequent sections.

c) FDI vis-à-vis Labour Standards in Ethiopia: A look at the extant evidence

i. Wages

Owing to the absence of legally-prescribed minimum wages in the private sector in Ethiopia,¹¹⁴ employers and employees fix the amount of wages depending on their bargaining positions. Thus, foreign investors, which have stronger bargaining positions than their workers, are free to pay whatever amount of salaries they wish to their employees in Ethiopia. In fact, the Ethiopian Investment Commission, which is the principal government body responsible for promoting investments (including FDI) and regulating investors in Ethiopia, actively used the low amount of wages in Ethiopia as Ethiopia's comparative advantage.¹¹⁵

The lack of minimum wages regulation has resulted, according to multiple studies, in Ethiopian employees, particularly those working in industrial parks, receiving extremely low amount of wages. It has been recently reported that employees who work in the Hawassa Industry

¹¹⁴ As stated above, the new Labour Proclamation envisions the prescription of minimum wages, but it is yet to be implemented.

¹¹⁵ Ethiopian Investment Commission, "Ethiopia: A Preferred Location for Foreign Direct Investment in Africa", (An Investment Guide to Ethiopia), (2015), p. 23.

Park earn as low monthly wages as USD 26, an amount which is much lower than what the employees need for a decent life and the lowest in the world.¹¹⁶ Though this figure is contested by the government authorities, other sources have also shown the rock-bottom nature of wages in Ethiopia.¹¹⁷

From the perspective of foreign investors, the main defence for the low amount of monthly wages is the lack of efficiency and productivity of Ethiopian employees.¹¹⁸ The concern for efficiency by the employers is appropriate because the success of a company hinges mainly on its efficiency. Yet, employers cannot always justify the low wages by the absence of efficiency, since employers do also have the obligation to adequately train their Ethiopian employees in order to increase their efficiency.¹¹⁹ In fact, the study conducted on workers in the Hawassa Industry Park indicated that the low-paid workers are inadequately trained by their employers to the nature of the manufacturing environment.¹²⁰ As a result, workers' inefficiencies and attritions are common in the Park.¹²¹

Though the Ethiopian government has not engaged in a race-to-the-bottom *sensu stricto* on the amount of wages, due to the lack of minimum wages, its use of the excessively low amount of wages as Ethiopia's comparative advantage to attract FDI is, in effect, equivalent to the objective of race-to-the-bottom, i.e. lowering labour standards or

¹¹⁶ Paul M. Barrett and Dorothee Baumann-Pauly, *Made in Ethiopia: Challenges in the Garment Industry's New Frontier*, (Stern Center for Business and Human Rights, New York University), (2019), p. 12.

¹¹⁷ Birhanu Fikade, "Int'l trade union denounces exploitative wages in Ethiopia", the Reporter, (17 January, 2018). Available at <https://www.thereporterethiopia.com/article/intl-trade-union-denounces-exploitative-wages-ethiopia>

¹¹⁸ Paul M. Barrett and Dorothee Baumann-Pauly, *Supra* note 116, p. 11.

¹¹⁹ Article 37(2), the Investment Proclamation

¹²⁰ Paul M. Barrett and Dorothee Baumann-Pauly, *Supra* note 116.

¹²¹ Paul M. Barrett and Dorothee Baumann-Pauly, *Supra* note 116, pp. 12-13.

granting exemptions from them to entice foreign investors to make investment in one's jurisdiction. This is contrary to the ultimate objectives of the Ethiopian domestic labour law and the international labour instruments it ratified, i.e, improving worker's living standards and social justice. As a result, due to its deep desire to attract FDI, the Ethiopian government has been reluctant to listen to the repeated calls for the introduction of minimum wages in Ethiopia.¹²² However, the government has now expressed its willingness to prescribe minimum wages in the new Labour Proclamation.

ii. Freedom of Association and Right to Collective Bargaining

Workers' freedom of association and right to collective bargaining are among the core labour standards incorporated in the ILO Declaration of Fundamental Principles and Rights at Work. As mentioned above, Ethiopian laws have provided the normative framework for the exercise of the freedom of association and the right to collective bargaining. Yet, in practice, the density of trade unions and collective agreements in Ethiopia is extremely low.¹²³

Even though there could be a number of reasons for the low level of unionization and collective agreements in Ethiopia, there are evidences to the effect that many foreign investors have a hostile attitude towards the exercise of the freedom of association and the right to collective bargaining by their employees.¹²⁴ In this regard, it has been revealed

¹²² Abdur Rahman Alfa Shaban, "Ethiopia needs minimum wage law to protect workers – Investment chief", Africa News, (May 24, 2019), Available at <https://www.africanews.com/2019/05/24/ethiopia-needs-minimum-wage-law-to-protect-workers-investment-chief/>

¹²³ Jelle Visser, Susan Hayter and Rosina Gammarano, "*Trends in Collective Bargaining Coverage: stability, erosion or decline?*", (Issue Brief No. 1), (International Labour Office, 2017), p. 3. See also Jetu Edosa, *Supra* note 110, pp. 130-131.

¹²⁴ See, for example, the interview of an official of the Confederation of Ethiopian Trade Unions (CETU), as cited in Jetu Edosa, *Supra* note 110, p.131.

that, in practice, the establishment of trade unions is difficult in the Eastern Industry Zone.¹²⁵ There are also employers that take serious measures on their employees that involve in acts for establishing trade unions. The case of a foreign company operating in the Eastern Industry Zone that dismissed dozens of its employees for attempting to form a trade union has been cited as a case in point for many foreign investors' anti-union attitudes.¹²⁶ As a result, it has been reported that there are no trade unions in the Eastern Industry Zone¹²⁷ and the Hawassa Industry Park.¹²⁸

There are also indicators that this anti-union position is shared by the government so as not to discourage foreign investors.¹²⁹ Hence, although the government is aware of the legal recognition of the rights to unionization and collective bargaining, it intentionally does not enforce the law in order to retain investors. The government's failure to reprimand investors for preventing their employees from exercising their freedom of association and right to collective bargaining is indicative of its reluctance to ensure the enforcement of the collective labour rights. Therefore, the non-enforcement of the collective labour rights by the government with the intent of not discouraging foreign investors is an indicator of the problem of race-to-the-bottom in the area.

iii. Forced and Child Labour and Discrimination

Ethiopian laws afford protection to individuals from forced labour. But, in fact, forced labour is generally a common problem in Ethiopia. In relation to FDI, however, there are no extensive studies on the

¹²⁵ *Id.*, p. 132.

¹²⁶ *Ibid.*

¹²⁷ *Ibid.*

¹²⁸ Paul M. Barrett and Dorothee Baumann-Pauly, *Supra* note 116, p.13.

¹²⁹ Jetu Edosa, *Supra* note 110, p. 131.

existence of forced labour practices. Be this as it may, there are indicators of the existence of forced labour in relation to FDI, particularly in industrial parks. For instance, in the Eastern Industry Zone, a study found that there are workers who are mandatorily required to perform overtime work by their employers and a refusal to undertake an overtime work could potentially result in disciplinary measures and dismissals.¹³⁰

Even though child labour is one of the serious societal problems in Ethiopia,¹³¹ there are generally no reports of child labour cases in relation to FDI in Ethiopia. Perhaps, this is because most jobs created by FDI require some level of maturity. Hence, foreign investors could believe that it is inappropriate to hire children for different reasons. In this regard, it has been reported that the minimum age for employment in the Hawassa Industry Park is 18 years of age, which is checked as part of the screening of employees prior to hiring them.¹³²

In relation to discrimination in employment in general, there are studies that evidence discrimination in employment in Ethiopia. There are, however, no adequate FDI-specific studies. A study conducted on the Eastern Industry Zone showed that there are generally no discriminations in wages and age among workers.¹³³ Yet, it was reported that there is a preference to employ more women than men, as some employers believe that women are passive in raising questions in relation to working conditions and men are mostly rebellious.¹³⁴ Similarly, some discriminatory practices were observed in the Eastern Industry Zone on the basis of marital status, as could be demonstrated

¹³⁰ *Id.*, pp. 127-128.

¹³¹ Arch Puddington, *The Global State of Workers' Rights: Free Labor in a Hostile World*, (Freedom House), (2010), p. 23.

¹³² Paul M. Barrett and Dorothee Baumann-Pauly, *Supra* note 116.

¹³³ Jetu Edosa, *Supra* note 110, p. 129.

¹³⁴ *Ibid.*

from the general preference of employing single men and women than married ones.¹³⁵

It does not seem that the government intends to encourage FDI by promoting forced labour and discriminations in employment. It is, however, more likely that the government's failure to deal with these employment-related problems in FDI through conducting labour inspections, as required by the Labour Proclamation, and enforcing the Proclamation may have been motivated by its desire to "incentivize" foreign employers by easing their operational burdens, a manifestation of the race-to-the-bottom.

iv. Inspection of Working Conditions in Ethiopia

One of the most important mechanisms of ensuring the respect and enforcement of worker's rights is through conducting inspections on working conditions by a government body. Labour inspection has been defined as "a public function of labour administration that ensures the application of labour legislation in the workplace."¹³⁶ With respect to the importance of labour inspection, it has been observed that:

"labour inspection is the most important instrument of state presence and intervention to design, stimulate, and contribute to the development of a culture of prevention covering all aspects potentially under its purview: industrial relations, wages[,] general conditions of work, occupational safety and health, and issues related to employment and social security."¹³⁷

Recognizing the indispensability of labour inspection, the Ethiopian government has provided the required framework rules for labour

¹³⁵ *Ibid.*

¹³⁶ International Labour Office, *Labour Inspection: What It Is And What It Does, (A Guide For Workers)*, p. 8.

¹³⁷ *Ibid.*

inspection in the Labour Proclamation. The Proclamation empowers the Minister of Labour and Social Affairs and the regional labour bureaus to assign labour inspectors to undertake the tasks of labour inspection.¹³⁸ The responsibilities of labour inspectors in Ethiopia are, among others, following up the implementation of the labour laws, such as through conducting onsite inspections, studies and taking appropriate measures for ensuring compliance with the laws.¹³⁹ Inspectors are also empowered to enter into workplaces and collect evidence and, up on finalizing their evaluations, to instruct or order employers to take actions for complying with the laws, such as alteration of working conditions.¹⁴⁰ Furthermore, labour inspectors have the authority to institute proceedings against employers that violate the Labour Proclamation.¹⁴¹

In practice, however, there are a number of challenges in labour inspections in Ethiopia, including labour inspections conducted on foreign investors. Among the most crucial challenges in labour inspections are inspectors' lack of adequate knowledge and skills (including on the required legal procedures) and courts' reluctance to entertain cases filed by inspectors on the ground of inspectors' lack of jurisdiction, an approach that is contrary to the Labour Proclamation.¹⁴² Understaffing of the labour inspection department has also been identified as another problem in Ethiopia.¹⁴³ The other problem in relation to inspection is the intervention of government bodies in measures taken by labour inspectors.¹⁴⁴ In this respect, it has been found

¹³⁸ Article 178(1), the Labour Proclamation.

¹³⁹ Article 177, the Labour Proclamation.

¹⁴⁰ Articles 178(3) and 179, the Labour Proclamation.

¹⁴¹ Article 188, the Labour Proclamation.

¹⁴² Jeff Wheeler and Keith Goddard, Assessment of Ethiopia's Labor Inspection System, (Bureau of International Labor Affairs, U.S. Department of Labor), (2013), pp. 27-28.

¹⁴³ *Ibid.*

¹⁴⁴ *Id.*, p. 11.

that there were occasions in which “officials from other ministries, such as the Ministry of Trade and Industry, become involved in cases pending in court, asserting that the inspectorate should withdraw charges because public knowledge of the alleged violations may interfere with investment strategies.”¹⁴⁵ This clearly demonstrates, as Mehari rightly observed, “the ambivalent position of the Government in the sense that the desire to enforce labour rights from the side of the inspection service was in conflict with the desire to encourage investment even at the expense of labour rights...”.¹⁴⁶

Specifically, the absence of proper labour inspections has been observed in the Ethiopian industrial parks, which are centres of foreign investment. A study showed that labour inspections have not been conducted on the working conditions in the Eastern Industry Zone for many years by the Ministry of Labour and Social Affairs, the government body responsible for supervising and dealing with labour matters in industrial parks. It also revealed incidents of denial of access to the Eastern Industry Zone to labour inspection officers.¹⁴⁷ Another related problem observed in the Hawassa Industry Park is the inadequacy of labour experts who are assigned to handle labour matters in proportion to the huge number of employees.¹⁴⁸

The above evidence are indicators of the Ethiopian government’s reluctance to strictly inspect and evaluate the working conditions in the jobs created by foreign investors, as demanded by the labour law, in order to ensure that workers’ rights are enforced. It, thus, shows the practices of the government that tilt towards promoting and retaining

¹⁴⁵ Jeff Wheeler and Keith Goddard, *Supra* note 142, p. 11.

¹⁴⁶ Mehari Redae, *Supra* note 110, p. 160.

¹⁴⁷ Jetu Edosa, *Supra* note 110, p. 127.

¹⁴⁸ Paul M. Barrett and Dorothee Baumann-Pauly, *Supra* note 116, p. 16.

foreign investors over adequately protecting the rights of workers, propensities that indicate a race-to-the-bottom.

7. FDI Promotion and Enforcement of Labour Standards: lessons for Ethiopia

FDI matters for Ethiopia, so does the enforcement of labour standards. Thus, Ethiopia should strike a balance between its interest of attracting and retaining FDI with its other interest of enforcing labour standards in order to improve the living standards of its workforce. In fact, the right to development, as laid down in Article 43 of the Ethiopian Constitution, demands such a balance. As guidelines to Ethiopia's economic objectives, which include FDI and labour policies, the Constitution obliges the government to formulate policies that help the Ethiopian people benefit from the country's resources and to ensure that they have equal economic opportunities for improving their economic conditions and to promote equitable distribution of wealth among them.¹⁴⁹

In order to have a balanced approach to FDI and labour laws, Ethiopia can take lessons from the UNCTAD Investment Policy Framework for Sustainable Development¹⁵⁰ and adopt its FDI policy accordingly. The Policy Framework, among others, contains 10 Principles for Investment Policymaking.¹⁵¹ The most relevant of the Principles is Principle 4 that requires that foreign investors should have balanced rights and obligations. Thus, they should not only seek promotions and

¹⁴⁹ Article 89(1) and (2), the Constitution.

¹⁵⁰ UNCTAD, Investment Policy Framework for Sustainable Development, (2015).

¹⁵¹ These are policy coherence (Principle 1), public governance and institutions (Principle 2), dynamic policymaking (Principle 3), balanced rights and obligations (Principle 4), right to regulate (Principle 5), openness to investment (Principle 6), investment protection (Principle 7), investment promotion and facilitation (Principle 8), corporate governance and responsibility (Principle 9) and international cooperation (Principle 10).

protections from host states, but they must also discharge the obligations imposed on them on the basis of a host states' regulations.¹⁵² For this purpose, a state should exercise its right to regulate, as Principle 5 requires.¹⁵³ In addition, Principle 1 advises states to integrate their various policies affecting investment in order to have "a coherent overall approach to make them conducive to sustainable development and to achieve synergies". Accordingly, Ethiopia should have an integrated policy that promotes and protects FDI without unduly harming the interests of its workers. The Ethiopian government should strongly believe that focusing on FDI without paying attention to and improving employees' working conditions ultimately harms the Ethiopian economy.

Balancing the interests of FDI promotion and workers' protection demands that Ethiopia should refrain from engaging in race-to-the-bottom with regard to its regulations, including labour laws, as forms of regulatory incentive to foreign investors. The UNCTAD Investment Policy Framework advises countries not to provide regulatory incentives, such as race-to-the-bottom on labour standards.¹⁵⁴ Accordingly, Ethiopia should ensure that the labour law is complied with by employers, including through undertaking labour inspections. In this manner, Ethiopia can ensure that it is compliant with its international obligations arising from the ILO conventions it ratified and other important instruments, such as the ILO Declaration of Fundamental Principles and Rights at Work.

In order to attract foreign investors, instead of providing regulatory incentives, Ethiopia should focus on utilizing fiscal incentives, such as tax holidays, and/or financial incentives, such as the provision of loans,

¹⁵² Investment Policy Framework for Sustainable Development, *Supra* note 150, p. 33.

¹⁵³ *Ibid.*

¹⁵⁴ *Id.*, p. 62.

on the basis of adequate studies and supervisions. These forms of incentives have the advantages of attracting investment without violating the rights of workers.

In addition to the binding rules, it would also be of paramount importance to encourage foreign investors to carry out their corporate social responsibilities based on voluntary schemes. Pursuant to Principle 9 of the Investment Policy Framework, the Ethiopian government must promote corporate social responsibility. Companies operating in Ethiopia should be encouraged to use non-binding instruments that cover the rights of workers, such as the OECD Guidelines for Multinational Enterprises. The compliance of foreign investors with voluntary codes of conduct covering worker's rights, apart from assisting in the enforcement of labour standards, would help investors build their images for customers.¹⁵⁵

With respect to the development of the skills of workers, the experience of Singapore could be exemplary for Ethiopia. In Singapore, the education system was organized in a manner to respond to the changing demand for labour by foreign investors, mostly with the participation and facilitation of the investment body (the Economic Development Board).¹⁵⁶ During its initial labour-intensive industrialization stage, the focus of the Singaporean education system was on basic trainings at primary and secondary levels.¹⁵⁷ Following the expansion of capital-intensive industries, this focus changed to technical and university education.¹⁵⁸ In this way, it has been stated that

¹⁵⁵ International Labour Organization, *Supra* note 4, p. 22.

¹⁵⁶ UNCTAD, "How to Integrate FDI and Skill Development: Lessons from Canada and Singapore", Best Practices In Investment For Development, Case Studies In FDI Investment Advisory Series, Series B, No. 5, (2011), p. 31.

¹⁵⁷ *Id.*, p. 27.

¹⁵⁸ *Ibid.*

Singapore has succeeded in FDI-related skill development. Ethiopia should learn from this experience of aligning educational policies to investment policies and work for the development of the skills of its nationals, thereby increasing their efficiency and enabling them to earn improved income from employment. Such approach is also what Principle 1 of the UNCTAD Investment Policy Framework recommends.

8. Conclusion and Recommendations

Ethiopia has laws that aim at promoting FDI and protecting the rights of workers. The latter serve as the regulations imposed on FDI. As far as the declaration of the applicability of labour laws to foreign investors is concerned, the Ethiopian investment law requires that foreign investors should comply with the labour law in the course of their investment activities. This is generally in line with the purposes of labour regulations, which principally aim at ensuring that the rights of workers are respected and enforced. As such, the problem of race-to-the-bottom on labour standards for promoting FDI does not exist at the legislation level in Ethiopia.

However, as shown above, there are evidences, although not comprehensive, that evince the existence of a race-to-the-bottom in the application of labour laws on foreign investors, particularly with respect to worker's freedom of association, right to collective bargaining and the amount of wages. Anti-unionization and collective bargaining practices of employers and extremely low wages in industrial parks have been found. The Ethiopian government also has used the excessively low wages of employees as Ethiopia's comparative advantage. Some discriminatory practices have also been observed in some foreign investments, such as preferences to hire women and single workers, which are not consistent with the Ethiopian labour law. The government's approach that constitutes a race-to-the-bottom in this

regard takes the form of not strictly conducting labour inspections and enforcing the labour standards.

There are cases in which some government bodies go to the extent of intervening in the process of labour inspections with the goal of not discouraging investors, a typical manifestation of a race-to-the-bottom on labour standards. Hence, this article modestly shows that race-to-the-bottom in relation to labour standards is an existing menace, not an impending or illusory one, which must be addressed by the government.

Thus, in order to achieve a sustainable development, Ethiopia should have a policy that balances the need for attracting and retaining FDI with the need for adequately protecting the rights of workers. It must be clear that the focus on mere increase in FDI and employment does not necessarily bring about sustainable development, since the creation of employment opportunities does not guarantee decent working conditions for workers. For this purpose, it is recommended that Ethiopia adopt an investment policy on the basis of the UNCTAD Investment Policy Framework for Sustainable Development. Accordingly, Ethiopia should have the policy stance that foreign investors must comply with the labour law. In particular, the 10 Principles for Investment Policymaking should guide Ethiopia in devising the right policies on investment. Specifically, Principles 1 (policy coherence), 4 (investors' balanced rights and obligations) and 5 (right to regulate) provide the bases for Ethiopia to properly exercise its regulatory power in order to adopt and enforce labour standards and devise coherent policies on investment.

The concerned authorities should also undertake proper labour inspections of the working conditions of workers. Additionally, there should not be interventions in the enforcement of the labour law by the authorities in other sectors. This is because, if the government does not

enforce labour standards, as many employers do not have the incentive to voluntarily comply with them, working conditions will remain poor, thereby resulting in poverty and marginalization. The practice of not enforcing the labour law also defeats the principal objective of the Ethiopian investment law, which is improving the living standards of the people. Undertaking proper labour inspections demands from the government, not only the willingness to conduct inspections, but also adequate number of inspectors with the required knowledge and skills.

In addition, other measures should be taken by the Ethiopian government in order to protect the rights of workers without undermining the need for attracting and retaining FDI. The government should, in line with the UNCTAD Investment Policy Framework for Sustainable Development, abandon using regulatory incentives (such as race-to-the-bottom on labour standards), as they promote foreign investment at the expense of the rights of workers, and instead utilize fiscal and financial incentives. It is also recommended that the government should encourage foreign investors to adhere to non-binding instruments on the conduct of investors, such as the OECD Guidelines for Multinational Enterprises and the ILO Declaration of Fundamental Principles and Rights at Work.

From the vantage point of foreign investors as well, the Ethiopian government should address the problem of inefficiencies of workers, which is the common concern employers flag to justify the low wages they pay to their employees. In this regard, the experience of Singapore in linking the demand for labour by foreign investors and its education system, in which the focus of the education system changes depending on the demand in the market, could be a good lesson for Ethiopia. Therefore, the Ethiopian education system, particularly at technical, vocational and university levels, should be able to supply workers that have the practical experience and knowledge for the job opportunities created through FDI. In other words, as Principle 1 of the UNCTAD

Investment Policy Framework advises, the Ethiopian educational policy must be aligned to the needs of its investment policy. This is, however, without losing sight of the obligation of foreign investors to train their Ethiopian employees and contribute towards the transfer of knowledge and skills. Additionally, it is recommended that Ethiopia should swiftly prescribe the minimum wages envisaged in the new Labour Proclamation, in order to protect workers from the deterioration of their living standards. Nonetheless, this measure must be taken on the basis of proper studies, since the introduction of unreasonably high minimum wages could discourage investors from hiring many workers and force them to relocate their investments to other countries.

Finally, Ethiopia should also welcome the signing of BITs that prohibit engaging in race-to-the-bottom on labour standards for promoting FDI and that encourage corporate social responsibilities, such as the BITs it signed with Brazil and the Belgian-Luxembourg Economic Union, as they provide the normative basis to resist pressures to provide regulatory incentives and could ultimately lead to the improvement of labour standards.

Introducing Statutory Minimum Wage into the Ethiopian Private Sector: A Contradiction between Labour Rights and Promoting Investment?

Gebreamlak Yaebeyo*

Abstract

This manuscript is principally aimed at scrutinizing the desirability of having a statutory minimum wage in the Ethiopian private sector along with its impacts on labour rights and attracting FDI. It also investigated the extent of complementarities between investment and labour policies in Ethiopia. To this end, it reviewed and analyzed qualitative secondary and primary sources of information and data coupled with three benchmarked African countries' experiences - South Africa, Kenya and Malawi - on the subject. Ethiopia has been concluding webs of reciprocal bilateral investment agreements to allegedly cater for investment. However, it has been critiqued for over privileging investors by subjecting workers to the manipulation of abusive investors. There was no legislatively fixed minimum wage in the private sector either. This has, in turn, provoked different debates in favour and against its introduction. The study reveals that countries with better labour and/or overall human rights protection attract more FDI than those with controlled, abusive and unregulated minimum wages. Besides, prior empirical works from elsewhere indicate that FDI is driven by a broad variety of perceptions, variables and goals of the host State and Ethiopia cannot be an exception to this. The study also shows that Ethiopian investment and labour policies and the institutional frameworks do not provide a clear sense of direction for reconciling investment and labour disputes. Thus, this article suggests the need for revisiting the labour and investment regimes to strike the balance between protecting labour rights and the need for investment promotion. This can be done by designing more nuanced and unifying provisions in the labour and/or investment regimes. At the same time, as the current labour legislation of Ethiopia empowers the Council of Ministers to set up a 'Wage Board', it is imperative to introduce what the country is set to achieve through the instrumentality of this Board.

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1. Introduction

While there has been a rise in precarious jobs due to increased informality and outsourcing before the global financial crisis, the ILO estimates that the overall share of workers in vulnerable employment has reached over 50.1 per cent of the world's labour force.¹ In many countries, real wages for working people are falling or remained stagnant, albeit there is increase in labour productivity.² Given this reality, governments across the world are waging a fierce battle to attract investment by providing a range of incentives for investors believing that investment would contribute to economic development while not all of it would do so.³ Nowadays, almost 3271 BITs are in place worldwide.⁴

The commodification of domestic labour is intensified today in a neoliberal context, where colonial and modern modes of labour organization and subjectivities coexist.⁵ The question as to whether to treat labour as a mere commodity as opposed to treating it as an

¹ UN'S Economic and Social Council, E/2012/xx, "promoting productive capacity, employment and decent work to eradicate poverty in the context of inclusive, sustainable and equitable economic growth at all levels for achieving the Millennium Development Goals", Report of the Secretary-General, (2012) p.9

² *Ibid.*

³ Fikremarkos Merse (ed.), "WTO accession: Assessing the benefits and costs for Ethiopia", **Ethiopian Business Law Series**, Vol. 2, (2008), Addis Ababa University printing press, editor's note, at p. vii.

⁴ UN Conference on Trade and Development (UNCTAD), Investment Policy Hub: International Investment Agreements Navigator (Available at <http://investmentpolicyhub.unctad.org//IIA0> (Accessed on 03 May 2019).

⁵ Österreichische Zeitschrift für Soziologie, *Commodification of domestic labour: The culture of servitude and the making of the Chilean nation*, Volume 43, Issue 1, (March 2018), p. 49.

extension of labourers' dignity, has been asked for long.⁶ True to form, the Philadelphia Declaration is an important milestone as it unequivocally provides that labour is not a commodity.⁷ This kind of value is reaffirmed in the landmark *ILO Declaration on Social Justice for a Fair Globalization*⁸, but the problem does not cease to exist there.

The utility of minimum wages as a policy tool needs to be tested and, in that sense, it might help guide the considerable theoretical and empirical underpinnings of the current controversy. More nuanced design and consistent implementation of labour and investment policies are important for determining their combined impacts upon productivity. Bringing the cardinal question of economic efficiency through investment and social protection to the center stage is also another task of no less importance. It stands to reason the interaction between labour rights and investment law as fundamental areas of concern about the quality of jobs which is in fact, under threat.⁹

It is an open secret that developing a balanced system of investment and labour issues has given rise to a raging controversy for either regime cannot successfully serve the interest of the other without any quibble. Specific treaty languages aimed at investment protection and liberalization may be pursued at the expense of the internationally recognized labour rights.¹⁰ The power and importance of trade unions

⁶ Pocock B, Prosser R and Bridge K, *The return of 'labour-as-commodity? The experience of casual work in Australia*, (2005), p. 459.

⁷ ILO Declaration of Philadelphia, Declaration Concerning the Aims and Purposes of the International Labour Organization, (1944), Article I (a).

⁸ See generally ILO Declaration on Social Justice for a Fair Globalization adopted by the International Labour Conference, (10 June 2008), Geneva.

⁹ UN'S Economic and Social Council, cited above, note 1, at p.5.

¹⁰ UNCTAD, *World Investment Report: Reforming International Investment Governance*, (2015), p. 121.

and collective agreements have reduced.¹¹ In particular, it does seem clear that the less-skilled, weakly unionized or non-unionized workers are at greater risk in the new global environment. Besides, developmental states were characterized by weakening labour unions and movements.¹²

What is more touching is that many Sub-Saharan African countries including Ethiopia are tied in the chicken-egg cycle of poverty, population growth, instability and marginalized roles in a steadily globalizing economy.¹³ The people belonging to these groups of countries are languishing in perpetual poverty. To get out of this quagmire of poverty, they need to embark upon creating a conducive policy environment for investment. While foreign direct investment (henceforth, FDI) flows into Africa have a small size and account for only a small share of flows into developing countries, their relative importance is quite high.¹⁴

In Ethiopia, there has not been minimum wage law for the private sector, so far. Accordingly, the labour market does not appropriately inform the current system of wage determination mainly at the low level of wages allocation. As part of the solution, it has been argued that introducing minimum wage could be appropriate policy leverage to the working poor.¹⁵ Of course, the country has recently enacted its

¹¹ Chris King-Chi Chan, *The Challenge of Labour Union in China: Strikes and the Changing Labour Regime in Global Factories*, PhD Thesis, Warwick University, Department of Sociology, (2008), p. 19

¹² Yoonkyung Lee, *Varieties of Labour Policies in Northeast Asian Democracies: Political Institutions and Union Activism in Korea and Taiwan*, Vol. 46, No.5, (2006), p.723.

¹³ Elias N. Stebek, "Dwindling Ethiopian Forests: 'The 'Carrot' and 'Stick' Dilemma", **Mizan Law Review**, Vol. 2 No.2, (2008), p.31.

¹⁴ Farhad. N, Alberto. Pand Ali. Y, *Low wages or skilled labour? Prospects for FDI in developing countries*, (1999), University of Glasgow, p 4.

¹⁵ See Mihreteab G/Meskel, *Safeguarding Labour Rights in FDI in Ethiopia: Introducing Minimum Wage as Part of the Solution*, (2011), (unpublished material)

labour law anew. The current labour proclamation dedicates a single, but overloaded provision which states that a Regulation of the Council of Ministers shall determine the powers and responsibilities of a Wage Board.¹⁶ It also prescribes that the Board shall comprise representatives of the government, employees and trade unions together with other stakeholders.¹⁷

Although no minimum wage has been fixed by the legislature still, the Board is entrusted to periodically revise minimum wages based on studies which take into account the country's economic development, labour market and other conditions.¹⁸ Up until the Board becomes institutionalized and operational, wages will remain to be exclusively determined through contractual agreements in the labour market. As workers are presumed to be weaker than employers in bargaining and bidding, an unregulated labour market is more likely to cause flagrant violation of labour rights. Justice is only applicable when both parties are acting justly — if one of the parties behaves unjustly, then unjust wages result.¹⁹

Regulated minimum wage appears to be a bone of contention across the globe. In Ethiopia, studies on the labour market in general and the wages system, in particular, have been extremely limited. This is particularly true of employment wages structure in the private sector.²⁰ A wide range of rationales have been put forth to justify legislating minimum wages and, to some extent, the motivation for the policy

¹⁶ Labour Proclamation, 2019, Article 55(2), Proclamation No.1156, **Federal Neg. Gaz.**, 25th year, No. 89, Addis Ababa, Ethiopia.

¹⁷ *Ibid.*

¹⁸ *Ibid.*

¹⁹ Karen Moustafa Leonard, "The Minimum Wage: Ethics and Productivity", **Journal of Collective Negotiations**, Vol. .32, No. 1, (N.d), P. 77.

²⁰ See Alemu Lambamo Hawitibo, "Economy-Wide Implications of Minimum Wages in Ethiopia: A computable General Equilibrium Analysis", **The International Journal of Economics and Business Studies**, Vol. 5, No.2, (2015), p.15.

shapes labour regulations in each country.²¹ The controversy has been a core element of public policy for more than a century.²² There is no consensus on the outcome of minimum level of wage on FDI inflow either. The discourse is better captured as follows:

"...The intensity of the political debate surrounding the minimum wage - on both sides of the issue is out of proportion to its real importance in the economy; whereas opponents tend to exaggerate its adverse employment effects, while proponents tend to exaggerate its effects on poverty." ²³

Conflicts might ensue in the course of promoting investments and the policy space of the host countries. The latter may run short of clearly infusing the labour rights into the management of economic activities such as investment. In the context of international investment, social clause issues arise due to investment-labour linkage.²⁴ Intending to take on board the rights and interests of workers, there is an urgent need for better and extensive protection of labour rights. In Ethiopia, there is no clear policy framework to neatly reconcile the probable inconsistency between investment and labour regimes. This might be regrettable from the perspective of workers who are subject to deplorable working conditions. Particularly, the policy tradeoff between competitiveness for investment and social sustainability in the labour market requires drawing proper synchronization.

²¹ Ximena Del Carpio and Laura Pabo, *Minimum wage policy: Lessons with a focus on the East ASEAN region*, (2014), World Bank, p.7.

²² David Neumark and William L. Wascher, *Minimum wages*, (2008), The MIT Press Cambridge, Massachusetts London, England, p.1.

²³ Card and Krueger, "Minimum Wages and Employment: A Case Study of the Fast-Food Industry in New Jersey and Pennsylvania," ***American Economic Review***, Vol. 84, No. 4, (1994), p. 7.

²⁴ Asif Salahuddin, "Infusion of Social Clauses into Global Trade Agreements: How Necessary Are They?," ***University of Asia Pacific Journal of Law & Policy***, (N.d) p.1.

This article, therefore, attempts to analyze the extent of in(congruities) between the investment and labour policies and institutions of Ethiopia. It further examines the relevance of minimum wage law in investment attraction. Within this context, it deals with a couple of questions: i. Whether introducing minimum wage could spur further investment or not? ii. Are the legal and institutional frameworks of investment and labour matters in Ethiopia complementary to address labour and investment concerns? To address these questions, the study reviews existing literature and policy documentation through desk reviews. It also employs the experience of three African countries-Kenya, South Africa and Malawi. These countries are pertinent for the subject under consideration as they have minimum wage legislation and similar socio-economic, geographical locations; labour market and institutional features. The study analyzes the sources of data and information by way of descriptive inference.

2. Understanding Human Rights and Labour Market in light of FDI

The link between labour rights and FDI is filled up with complexity. Both terms are ambiguous in their own right, as the nature of the causal relationship between the two is not easy to determine.²⁵ This complexity has not, however, prevented scholars from being categorical in their assessments.²⁶ This section, consequently, raises the range of issues regarding the relationship between human rights and investment in general and the human right mechanisms that can limit the adverse effects of FDI in particular. It will approach these issues from the numerous strands of literature written from developing countries'

²⁵ Bjørn Letnes, FDI and Human Rights: An Ambiguous Relationship, **Forum for Development Studies**, (2002), Vol.1, p.33, (Available at DOI: 10.1080/08039410.2002.9666186).

²⁶ *Ibid.*

perspective. Regarding the human rights dimension, this work essentially takes into account the human rights that are inherently implicated by investment, mainly socio-economic rights. At this juncture, FDI would mean an investment made to acquire a lasting interest by an entity resident in one economy in an enterprise resident in another economy.²⁷ To that end, the investment should allow the investing entity to exert direct control over the management of assets in the invested firm.²⁸

Moving on to the nexus between human rights and FDI, we start with the two commonly contrasting theories: the “conventional wisdom” and the “alternative perspective”. The former characterizes FDI and human rights as inherently contradictory wherein a repressive polity may connote a low-priced, stable, well-controlled society that is attractive to investors, particularly in the developing world.²⁹ In particular, those from the Global Research and Neo-imperialist tradition have argued that FDI has historically been associated with negative developments that undermine human rights.³⁰

Conversely, the Neo-classical and Neo-fundamentalist scholars argue that FDI is an engine of economic growth and a champion for human

²⁷ See OECD, “Benchmark Definition of FDI”, Third Edition, (1996), Paris and International Monetary Fund, Balance of Payments Manual: Fifth Edition (BPM5), (1993), Washington, D.C.

²⁸ The Impact of FDI on Wages and Working Conditions, OECD-ILO Conference on Corporate Social Responsibility, (2008), Paris, p. 3.

²⁹ Shannon Lindsey Blanton and Robert G. Blanton, “Human Rights and Foreign Direct Investment: A Two-Stage Analysis”, *Business and Society*, Vol. 45, No 4, (2006), University of Memphis, Sage publications, p. 466. See also John Gerard Ruggie, *Business and Human Rights: The Evolving International Agenda*, [the American Journal of International Law](#), Vol. 101, No. 4, (2007), Cambridge University Press, pp. 819-840 (Available at: <https://www.jstor.org/stable/40006320>).

³⁰ Bjørn Letnes, FDI and Human Rights, cited above, note 25, p. 33.

rights.³¹ Such an alternative theory assumes that respect for human rights may encourage FDI. Accordingly, without losing sight of the various influences coming from political and macroeconomic factors, countries having a comparatively good human rights record from the onset are selected for, and more likely to attract a larger amount of FDI than those which are complicit in human rights abuses, or those claiming to have controlled labour cost.

The quality of labour has its implications for the prospective role of human rights. Specifically, the "citizen voice"³² is skewed in favour of human rights. Apart from the intrinsic normative value of human rights, there may be a "business case"³³ or else, corporate social responsibility policies for respecting human rights. In principle, countries that respect human rights pose less risk to FDI and are more likely to have the skilled labour market increasingly desired by foreign investors. A survey conducted by the Ashridge Centre for Business and Society reveals that 36% of the largest 500 companies abandoned proposed investment projects for human rights concerns.³⁴

Furthermore, empirical evidence shows that FDI is more attracted to countries with high labour standards. Given this, a plethora of pioneers is choosing to implement robust human rights due diligence, based on the notion that this is the way of the future. The crux of the argument goes; respect for human rights is conducive to FDI. In this connection, the main determinant of workers well-being in the labour market

³¹ *Ibid.*

³² Pritchett, and Kaufmann, D. *Civil liberties, democracy, and the performance of government projects, Finance and Development*, (1998).pp. 35, 26-29.

³³ Vogel, D., *The market for virtue*, (2005), Washington DC: Brookings Institution.

³⁴ *Ibid.* One would equally argue that China has been and continues to be a country scoring high in both outward and inward investment over the years, while still scoring low in human rights terms.

becomes the social responsibility of foreign investors.³⁵ In opposition, other recent empirical works indicate the opposite alleging that human rights issues are overly abstract to consider them as part of an investment choice.³⁶

The impact of FDI on labour markets has been of growing concern, particularly, for source countries.³⁷ The deterioration of labour market conditions for unskilled workers in many OECD countries during the 1980s and 1990s was a primary catalyst for the concern.³⁸ At the same time, the empirical effects of FDI on labour markets are difficult to measure.³⁹ Consequently, whether FDI is initiated by high production costs at home and attracted by abundant unskilled labour and relatively low labour costs abroad or whether it contributes to income inequality at home and abroad is difficult to resolve empirically.⁴⁰

From this general situation, one can deduce that the study of FDI generally can involve changes in competitive conditions in commodity markets as well as endowment effects.⁴¹ Besides, there may be fundamental changes to labour market institutions and how wage and employment are fixed. Research demonstrates that there is a direct

³⁵ Ute, S. A, "Liberalization, Labour Law and Gender: The Protections of Temporary Workers under the Ethiopian Labour Law," **Law, Social Justice and Global Development**, (2013), p. 4.

³⁶ Robert M. Stern, Recent Labour Standards and International Trade, Research seminar in international economics School of Public Policy, Discussion Paper No. 430, (January 16, 1998), the University of Michigan (Available at <http://www.spp.umich.edu/rsie/workingpapers/wp.html>.)

³⁷ Noel Gaston and Douglas Nelson, Integration, FDI and Labour Markets: Microeconomic Perspectives, (26 June 2001), Murphy Institute of Political Economy, Tulane University, New Orleans.

³⁸ *Ibid.*

³⁹ *Id.*, P. 1.

⁴⁰ *Ibid.*

⁴¹ *Ibid.*

relationship between the financial performance of a business and treating its employees with respect and dignity.⁴²

Now, let us in a few words, recount how the sensitivities of labour rights are accommodated in the various investment treaties. In recent years, States have been increasingly proactive in promoting and protecting labour rights through investment arrangements.⁴³ It does not need further proof that careful drafting of labour exceptions in investment agreements could serve this purpose.⁴⁴ There are also growing International Investment Agreements (hereafter, IIAs) which fueled the inclusion of labour provisions.⁴⁵ Often, investment chapters in larger economic agreements and BITs are nearly identical in coverage and scope.⁴⁶ There can be a lot of variation between the contents of different investment agreements, and also between the implementation mechanisms used by different actors.⁴⁷ These agreements are primarily focused on the protection of investments and did not mean for addressing labour or employment matters.⁴⁸

The UNCTAD *World Investment Report* 2015 shows that nearly 40 percent of IIAs concluded in 2014 (12 out of 31) refer to the protection of labour rights and, out of the 76 BITs that were signed between 2010

⁴² Australian Human Rights Commission, Human rights in investment, the value of considering human rights in ESG Due diligence, (April 2017), p. 2. (Available at www.humanrights.gov.au/EYwww.ey.com)

⁴³ ILO, Studies on Growth with Equity, Assessment of Labour Provisions in Trade and Investment Arrangements, (2016), p. 20. See also Kucera, D. S. "Core labour standards and FDI", *International Labour Review*, Vol. 141, Nos. 1–2, (2002), pp. 31–69.

⁴⁴ *Id.*, p. 21.

⁴⁵ UNCTAD, cited above, note 10, p.121.

⁴⁶ *Id.*, p. 15.

⁴⁷ *Id.* p. 8.

⁴⁸ Monica Barrios Gonzalez, Investors versus people: The public nature of international Investment Law, why do we need human rights in international investment law? (November 2016), p. 26.

and 2014, an increasing share includes labour provisions. The majority of these agreements are North-South treaties, but about one-third of the BITs signed with labour provisions are between South-South partners.⁴⁹ In other IIAs, a large proportion of which are investment chapters in trade agreements or economic partnership agreements, labour provisions are also increasingly being included.⁵⁰

3. Overview of the Design of Labour Standards in Investment Treaties

This section is a sequel to the importance of coherence in achieving the objectives of labour provisions in investment treaties. The inclusion of labour provisions into the latter raised many concerns about their overall impact on investment, productivity and market structure. Today, there is a protracted stalemate between rich and poor countries over the question of minimum labour standards in developing economies.⁵¹

As a caveat, it has been maintained that harmonization of labour standards would remedy the gross violations of labour rights, but it may have a negative implication against investment decisions and activities.⁵² One may tend to argue that investment and labour frameworks can be harmonized through accommodation, convergence, and interpenetration schemes. Labour provisions in investment arrangements have become increasingly comprehensive, with parties

⁴⁹ ILO, Studies on growth with equity, cited above, note 38, p. 26.

⁵⁰ *Ibid.*

⁵¹ Ajit Singh and Ann Zammit, "Labour Standards and the 'Race to the Bottom: Rethinking globalization and workers' rights from developmental and solidarity perspectives", **Oxford Review of Economic Policy**, Vol. 20, No. 1, (Spring 2004), p. 85, Oxford University Press (Available at <https://www.jstor.org/stable/23606675>)

⁵² Compa, "Labour rights and labour standards in international trade", **Georgetown Journal of International Law**, (1993), (retrieved on 21st May 2019), Cornell University, Available at <http://digitalcommons.ilr.cornell.edu/articles/341/>, pp. 165-191.

usually committing themselves to maintain labour standards to ensure that domestic labour laws are enforced effectively.⁵³ The literature dealing with trade arrangements and labour emphasizes that the design of labour provisions gives centrality to market efficiency.⁵⁴ Likewise, as an investment is an economic activity aimed at maximizing profit, the design of labour norms needs to ensure efficiency. What is more, investment-related labour provisions consider any standard which addresses labour relations or minimum working conditions, mechanisms for monitoring or promoting compliance, and frameworks for cooperation.⁵⁵

In the great majority of investment agreements that include labour provisions, the parties commit not to lower their labour standards or derogate from labour law to boost competitiveness.⁵⁶ The ILO's *Declaration on Fundamental Principles and Rights at Work* is used as a baseline reference for labour standards in the majority of cases.⁵⁷ The Declaration is predicated upon the need for promoting strong social policies.⁵⁸ It recognizes the mandate of the ILO to set and deal with international labour standards to promote fundamental rights at work.⁵⁹ It stresses that labour standards should not be used for protectionist trade purposes.⁶⁰ This may also hold true for labour and investment frameworks.

⁵³ *Id.*, p.19

⁵⁴ ILO Studies on Growth with Equity, cited above, note 43, P. 170.

⁵⁵ *Ibid.*

⁵⁶ *Ibid.*

⁵⁷ ILO Declaration on Fundamental Principles and Rights at Work, Geneva, (June 1998).

⁵⁸ *Id.*, Preamble, paragraph 2.

⁵⁹ *Id.*, Preamble, Paragraph 6.

⁶⁰ *Id.*, Article 1(5).

The Declaration further states that the basic principles and follow-ups provided therein should not in any way call into question the comparative advantage of any country.⁶¹ The competition among countries to attract and retain FDI, principally through the provision of different incentives to foreign investors, has both opportunities and challenges to workers' rights.⁶² Cohering investment and labour provisions focusing on the "right to regulate" and ILO standards have become increasingly more progressive in extending to all labour rights the same mechanisms of enforcement initially applied in full only to some rights.⁶³ More importantly, no empirical evidence has proven that infusing labour provisions divert the flow of investment, hitherto.

The ILO adopted more than 180 Conventions and about 200 Recommendations meant for promoting opportunities for women and men to obtain decent and productive work, in conditions of freedom, equity, security and dignity.⁶⁴ These instruments may, similarly, help build clarity of purposes to mainstream labour clauses in to investment treaties, under appropriate circumstances.

4. Minimum Wage Legislation vis –a –vis Investment Promotion

4.1. Economic and Legal Foundations of Minimum Wage

4.1.1. Economic Policy Foundations

For the purpose of this paper, minimum wage is defined as the minimum amount of remuneration that employers legally have to pay

⁶¹ *Ibid.*

⁶² Bereket Alemayehu, FDI vis-à-vis Labour law in Ethiopia: Is race-to-the-bottom an existing, impending or illusory menace? A paper presented at Addis Ababa University, National Conference, (June 2019, (unpublished), p. 2.

⁶³ ILO Studies on Growth with Equity, cited above, note 43, p. 3.

⁶⁴ ILO, World Social Protection Report: Building Economic Recovery, Inclusive Development and Social Justice, (2014/15), p. 1.

to workers for the work performed during a given period, which cannot be reduced by collective agreement or an individual contract.⁶⁵ The main purpose of the legislation is to protect workers against unduly low pay.⁶⁶ According to the ILO (1992), the intended objectives of statutory minimum wages are to prevent the exploitation of workers by employers; to promote a fair wage structure; to provide a minimum acceptable standard of living for low-paid workers; and, eventually, to alleviate poverty, especially among working families.⁶⁷ These set of objectives are not uniformly applied in all countries and hence, the objectives differ greatly in the goals they want to achieve when establishing and modifying their minimum wages policies. It is submitted that minimum wages should be one element of policy direction to reduce poverty and provide a satisfactory standard of living to workers and their families.⁶⁸

As with many government policies, the minimum wage has several positive and negative economic effects.⁶⁹ This is not an easy balance to strike hence, legislatures and public policymakers at various levels must tread carefully, lest they wind up hurting the constituents they are aiming to help.⁷⁰ On the one hand, the minimum wage is regarded as a major means of boosting welfare in many countries, especially in

⁶⁵ Beyza Sümer, Minimum Wage as an Ethical Issue, **European Journal of Multidisciplinary Studies**, Vol. 3, Issue 1 (2018), p.26 (available at http://journals.euser.org/files/articles/ejms_jan_apr_18_v7_i1/Beyza.pdf).

⁶⁶ *Ibid.*

⁶⁷ *Id.*, p. 13.

⁶⁸ Richard Anker, Estimating a Living Wage: A Methodological Review, Conditions of Work and Employment Series No. 29 (2011), ILO, Geneva, p. 16.

⁶⁹ Alemu Lambamo Hawitibo, Economy-Wide Implications of Minimum Wages in Ethiopia, cited above, note 20, p. 15.

⁷⁰ Steve P. Calandrillo and Taylor Halperin, "Making the Minimum Wage Work: An Examination of the Economic Impact of the Minimum Wage", **Stanford Journal of Business and Finance**, Vol. 22, No.2, (2017), p.180 (Available at <https://digitalcommons.law.uw.edu/faculty-articles/124>)

developing countries.⁷¹ As such, it has been developed as social protection to rectify the failure of free markets in some circumstances. Quite the reverse, a poorly designed minimum wage policy can put workers' well-being at risk and undermines effective implementation encouraging informality.⁷²

Philosophical bases for the origin of minimum wage legislation are implicit in the concepts of subsistence and natural wages evolved by classical economists.⁷³ Advocates of same argue that there is no perfect competition as the labour market is different from other markets and that it is humanitarian to protect the working poor.⁷⁴ This argument implies that government intervention is necessary for fixing a minimum support price of labour, equal to the level of subsistence in the form of minimum wages. To that extent, the minimum wage is regarded as a humanitarian or moral and ethical issue as the labour market has the highest asymmetries in the sense of material and financial proprietorship.⁷⁵ The whole point is that minimum wage is a successful economic policy that is consistent with economic justice.⁷⁶ In a way, it should not be analyzed with purely economic terms such as efficiency, cost-minimizing and profit-maximizing approaches. Some researchers suggest minimum wage to be treated within a moralistic framework without considering any macroeconomic implications.⁷⁷

⁷¹ *Id.*, P. 9.

⁷² ILO, Minimum Wage Policy Guide, (Available at www.ilo.org/minimumwage), p. 3.

⁷³ Vijay K. Seth, Economics of Minimum Wage Legislations — Lessons for Emerging Market Economies, (2017), p. 1. (Available at International, Management Institute SAGE Publications [sage pub.in/home](http://sagepub.in/home).Nav)

⁷⁴ *Ibid.*

⁷⁵ *Ibid.*

⁷⁶ Prasch and Sheth, “The Economics and Ethics of Minimum Wage Legislation”, **Review of Social Economy**, Vol 57, No.4, (1999), pp. 477-78.

⁷⁷ Beyza Sümer, Minimum Wage as an Ethical Issue, cited above, note 65, p. 34.

Opponents of minimum wage position rely on economic literature. They argue that markets are perfect, competitive and flexible; hence, the government should not intervene in the case of imperfections, which are seen as temporary.⁷⁸ The argument is based on mainstream economics such that minimum wage is an economic issue belonging to the labour market. Economists look for a pure capitalist approach, rejecting a wage floor altogether on the assumption that the unregulated marketplace will efficiently match job-seekers with job offers.⁷⁹ To them, in a free market economy, minimum wage contradicts with self-ownership and freedom of contract.⁸⁰ They attack minimum wages legislation claiming that the labour market will set wages equal to the social opportunity cost of labour.

In sum, the policy foundation of the minimum wage has proven elusive. Countries may find themselves in either of the two extremes or the mid-way between economic and ethical frameworks. As labour is not a commodity, the author argues that the moralistic side has to be given primacy during economic policymaking.

4.1.2 Legal Foundation

The regime of regulation and policy design of minimum wages has come from a variety of milestone legal documents. The ILO had long adopted Minimum Wage Fixing Machinery Convention, No.26 for the first time in 1928.⁸¹ With more than 100 ratifications, Convention No.

⁷⁸ *Id.*, p. 26.

⁷⁹ Tim Worstall, *Instead of \$15, or \$7.25, There Should Be No Federal Minimum Wage at All*, Slate (Aug. 15, 2015) Available at <http://www.forbes.com/sites/timworstall/2015/08/07/instead-of-15-or-7-25-there-should-be-no-federal-minimum-wage-at-all/#cfdac71854d>.

⁸⁰ Beyza Sümer, *Minimum Wage as An Ethical Issue*, cited above, note 65, P. 27.

⁸¹ The Convention covered a few categories of workers, though. It was also accepted by few countries. Its applicability depends only on some sectors and occupations with exceptionally low pays and where collective bargaining did not exist.

26 remains to this very day, one of the most widely ratified ILO Conventions. It is complemented by Recommendation No. 30, which calls for the participation of women in wage-fixing bodies and for strong enforcement measures to protect law-abiding employers from unfair competition. Later in time, the post-World War II era became a turning point to the development of minimum wage.⁸² The Maritime Labour Convention of 2006 provides that Seafarers' wages should be no less than the amount periodically set by the joint Maritime Commission, which meets at the ILO. The 2008 *ILO Declaration on Social Justice for a Fair Globalization* seeks to achieve an "improved and fair outcome for all" and recalled the ILO's obligation to promote the objectives of "full employment and the raising of standards of living, a minimum living wage and the extension of social security measures to provide a basic income to all in need".⁸³

There, we have also various human right treaties such as the Universal Declaration of Human Rights (UDHR); the International Covenant on Economic, Social and Cultural Rights, (ICESCR), the African (Banjul) Charter on Human and Peoples Rights and other regional instruments which accord an indirect form of recognition to minimum wage. The UDHR entitles everyone who works to have the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented by other means

⁸² In 1951, ILO came with another Convention namely, Minimum Wage Fixing Machinery (Agriculture) Convention No-99. It complements Convention No. 26 to enable to cover agriculture. In 1970, it adopted the Minimum Wage Fixing Convention, 1971 (No. 131), which is considered to offer broader protection than that envisaged by ILO Convention No. 26. By the end of 2015, Convention No. 99 had 54 ratifications. It is complemented by Recommendation No. 89. In 1946, a minimum wage was negotiated for the first time for seafarers at the ILO – a tradition that continues to this day. Then ILO comes up with additional Minimum Wages Convention 1970(No-131).

⁸³ ILO, Sectoral Activities Department, *Wages and Working Hours in the Textiles, Clothing, Leather and Footwear Industries*, (2014), Geneva, p 13.

of social protection."⁸⁴ Likewise, the ICESCR recognizes the right of everyone "to enjoy just and favourable conditions of work which ensure in particular, remuneration which provides all workers, as a minimum, with fair wages and equal remuneration for work of equal value without distinction of any kind".⁸⁵ It also recognizes decent living for everyone and their families.⁸⁶ By the same token, the Banjul Charter states that every individual shall have the right to work under equitable and satisfactory conditions, and shall receive equal pay for equal work.⁸⁷

4.2 Minimum wage Stipulation: Any Relevance to investment attraction and Workers Protection?

As labour standards may vary across nations depending on their level of development and a host of political, social, and cultural conditions and institutions, minimum wage rates can also vary accordingly to attract FDI.⁸⁸ As for the impact of minimum wages on FDI attraction and protecting workers, there are a host of questions and contradictions that pervade the legal literature to date. As a result, the link between FDI and wages and particularly, minimum wages cannot be precisely drawn as positive or at worse, neutral.⁸⁹ The discussions below will briefly narrate some of the concerns that boil down to the nexus of minimum wages, workers' protection and FDI.

⁸⁴ UDHR, United Nations General Assembly, Resolution 217, (1948), Article 23(3).

⁸⁵ ICESCR, General Assembly resolution 2200A (XXI), (1966), Article 7(a) (i), (ii).

⁸⁶ *Ibid.*

⁸⁷ African [Banjul] Charter on Human and Peoples' Rights, OAU, (June 27, 1981), Article 15.

⁸⁸ Robert M. Stern, *Recent Labour Standards and International Trade*, cited above, note 36, p. 5.

⁸⁹ Ramya M. Vijaya, "FDI and Wages: A bargaining Power Approach," *Journal of World-Systems' Research*, Vol. 8, No.1, (2007). P. 93.

To begin with, the minimum wage is an acceptable minimum condition of work to protect workers from, particularly low pay. When there exists minimum wage law, investors are obliged to hire and pay not less than the minimum amount of wage set by the government and failure to comply with it would amount to far-reaching consequences. Although mandatory and enforceable statutory minimum wages are important benchmarks to protect workers, exaggerated quantum of minimum wages to please workers could be FDI unfriendly. Investors may be motivated to invest in countries with no, or relatively lower minimum wages. This is because most labour-intensive foreign investments particularly, investments in the manufacturing sectors, are more likely to be attracted by lowering labour standards.⁹⁰

On the other hand, critics argue that minimum wages impede employers from assigning the appropriate wage level to each worker based on their skills, productivity, and experience.⁹¹ In this case, labour is deemed to be a special factor of production which can be motivated and unmotivated depending on the treatment and payment it receives from the employers, and having minimum wage laws would affect such flexibility.

At this point, the distinction between low wages and minimum wages has to be maintained. Minimum wage is often used as a policy tool to avoid extremely low wages amounting to ‘race-to-the-bottom’. The UNCTAD advises countries not to make use of as race-to-the-bottom mechanisms on labour standards.⁹² BIT provisions addressing labour standards and specifically prohibiting race-to-the-bottom can also have the effect of contributing to the progressive improvement of labour

⁹⁰ David Kucera, “*Core labour standards and foreign direct investment*”, International Labour Review, Vol. 141, No. 1-2, (2002), p. 31.

⁹¹ Ximena Del Carpio and Laura Pabo, *Minimum wages policy*, cited above, note 21, p. 38.

⁹² UNCTAD, Investment Policy Framework for Sustainable Development, (2015).

standards.⁹³ When applied to minimum wages, countries which introduce desperately low minimum wages to attract and retain FDI have to equally see to it the accusations that would come from workers' side.

However, economic studies reveal that many multinational companies do practically go for investing in countries with weak or weakly enforced labour standards.⁹⁴ In particular, Developing Countries are making their wage rates more flexible so that they can successfully attract investments in the global market. They use their abundant and unemployed labour forces as a competitive advantage by providing firms with the opportunity to quickly reallocate labour either through hiring, firing, or adjusting the hours that employees work.⁹⁵ But still, excessive protection of workers is reckoned to affect performance negatively as institutions limit businesses in making market-based decisions.⁹⁶ Yet again, as it has been dealt with in section 2 of this paper, there are empirical works which show that foreign investors do not necessarily favour countries with weak labour standards.⁹⁷

It has been submitted that more than 80 per cent of FDI is directed to industrialized countries.⁹⁸ Likewise, 2016 and 2017 UNCTAD ranking

⁹³ Bereket Alemayehu, FDI vis-à-vis Labour law in Ethiopia, cited above, note 62, p. 11.

⁹⁴ William W. Olney, "*A Race to the Bottom? Employment Protection and Foreign Direct Investment*", (2013), p. 30.

⁹⁵ Robert G. Blanton and Shannon L. Blanton, "*Labor Rights and FDI*, cited above, note 37, p. 267.

⁹⁶ Getachew Minas and Yared Berhe, The Impact of Ethiopian Labour Laws on Business Efficiency and Competitiveness, (Private Sector Development Hub/Addis Ababa Chamber of Commerce and Sectoral Associations), (2011), p. 6.

⁹⁷ David Kucera, "*Core labour standards and FDP*", International Labour Review, Vol. 141, No. 1-2, (2002), p. 33.

⁹⁸ Graham, Edward H. and Krugman, Paul R.: *FDI in the United States*, Washington, D.C.: Institute for International Economics, (5 May 2007), Xiii, p. 161.

clearly shows the top twenty host economies for FDI selection are largely directed towards developed countries out of which the United States, China, Netherlands, Singapore and Brazil take the leading figure, respectively.⁹⁹ These countries have high wages and high skill-intensity industries.¹⁰⁰ Developed markets dominate the FDI Confidence Index, but investors point to a variety of rising political and economic risks within these markets.¹⁰¹

In her 'Foreign Investment and Human Right' Article, Debora acknowledges the historical shift and attributes it to a parallel shift in the composition of FDI from the primary to the secondary and tertiary sectors.¹⁰² She further argued that it is not the change in composition per se, but in the motives and interests of transnational corporations (TNCS) that is held to explain this shift.¹⁰³ Apart from this, the revolution in information technology has aided this positive shift through what Spar labels the 'spotlight phenomenon', where media attention forces TNCs to reconsider practices that might violate human rights, for the sake of bottom-line interests.¹⁰⁴

Recently, research was conducted to examine the determinant factors of FDI inflow and potential factors that hinder it in Ethiopia. The

⁹⁹ UNCTAD, *Global Investment Trends and Prospects*, (2018), p. 4.

¹⁰⁰ Noel Gaston and Douglas Nelson, *Integration, FDI and Labour Markets*, cited above, note 37, p. 23.

¹⁰¹ Paul A. Laudicina, Erik R. Peterson, and Courtney Rickert McCaffrey Facing a Growing Paradox, *The 2019 A.T. Kearney FDI Confidence Index*. The A.T. Kearney FDI Confidence Index is an annual survey of global business executives that ranks markets that are likely to attract the most investment in the next three years.

¹⁰² Debora Spar, "Foreign Investment and Human Rights, Challenge, Vol. 42,(1999),No. 1, pp. 55.

¹⁰³ *Ibid.*

¹⁰⁴ Debora Spar, "The Spotlight and the Bottom Line," *Foreign Affairs*, Vol. 77, No.2, (1998), p. 7.

study was carried out taking a sample of foreign firms based in Addis Ababa and the nearby cities, and public servants of Ethiopian Investment Commission (henceforth, the EIC). It shows that the main determinants of FDI are domestic and regional markets seeking, political and social stability and investment incentives.¹⁰⁵ Indeed, exchange rate volatility, corruption, and lack of clear policies and regulatory impediments were identified as the main factors that have the potential to deter foreign investment in Ethiopia.¹⁰⁶

Overall, the most sensible conclusion that can be drawn from recently conducted research works regarding FDI and minimum wages relationship is that the former is a heterogeneous activity which may be driven by a broad variety of macroeconomic, financial and social stability factors of host States.¹⁰⁷ This, partly, implies that taking minimum wage legislation alone to determine FDI attraction is myopic at best. All at once, the author argues that minimum wage is essential to protect workers' rights. Since investors have a better bargaining capacity than workers, they may be tempted to pay whatever amount of wages they wish to. This results in the payment of excessively low wages to workers and thereby defeat what minimum wages laws are meant to achieve. The question is, how low the minimum wage should be to make sure that it provides a decent way of living for the workers? The simplest answer would be, the minimum wage should not be fixed at either of the extremity.

¹⁰⁵ Henok Gebremedhin Teka, Determining factors of FDI inflow in Ethiopia - A firm-level investigation, Catholic University of the Sacred Heart, (14. May 2014), Munich Personal RePEc Archive,

¹⁰⁶ *Ibid.*

¹⁰⁷ See, for example, Dunkin, Cameron Chinese FDI and Zambian Development: A Critical Evaluation of its Relevance through key Socio-Economic and Political Indicators, Thesis (MA), (2012), Stellenbosch University, p. 1. Available at <http://hdl.handle.net/10019.1/20234>

5. Labour and Investment Framework Linkages in Current Ethiopia

As a prelude, Ethiopia has gone extra-miles by putting in place immense investment promotion and protection schemes to attract FDI.¹⁰⁸ In particular, the country foresees trade partnerships and negotiation with selected market destinations to create new market opportunities and increase FDI flow.¹⁰⁹ Accordingly, it has become a preferred destination for FDI and an emerging hub for manufacturing in Africa due to its favourable market factors¹¹⁰: 54 million active labour force, duty-free, quota-free access to the USA and EU markets through, respectively, African Growth and Opportunity Act (AGOA) and Everything But Arms (EBA); Duty-free, quota-free access to Japan, Canada, China, Turkey, Australia and New Zealand – covering substantially all export goods from Ethiopia. Ethiopia's memberships to COMESA treaty along with the untapped natural resource potential are some of the factors for attracting FDI.¹¹¹

The economic diplomacy of the country contributed to attracting FDI and enhancing the participation of the Diasporas in investment activities in the country.¹¹² As a result, save for 2018, there has been a

¹⁰⁸ In this regard, one should note the distinctions between investment promotion and investment protection. The former encourages investment through the instrumentality of various rule-based incentives and of privileges whereas the latter guarantees investment from various risks including but not limited to expropriation, discrimination and so forth.

¹⁰⁹ Ministry of Finance and Economic Development, FDRE, Growth and Transformation Plan I Report, (2010), Addis Ababa, Ethiopia.

¹¹⁰ See the website of Ethiopian Investment Commission, Industrial parks in Ethiopia: Incentives and packages, (April 2017), p. 3.

¹¹¹ *Ibid.*

¹¹² Ministry of Finance and Economic Development, FDRE, Growth and Transformation Plan I Report, (2015), p. 19, Addis Ababa, Ethiopia.

constant surge of FDI into Ethiopia over the years.¹¹³ Bilateral relations with neighbouring countries and other African countries, relations with permanent members of the UN Security Council, the EU and of its member countries, Middle East, Asia and Oceania have been strengthened during the GTP I period.¹¹⁴ Ethiopia is also a signatory of Multilateral Investment Guarantee Agency and has concluded Bilateral Investment Promotion and Protection Treaties (hereinafter, BITS) with 30 countries.¹¹⁵

In the domestic sphere, it passed many laws to regulate investment activities. The legal regimes governing investment in today's Ethiopia include Investment Proclamation No.769/2012 and its (Amendment) Proclamation No. 849/2014; Investment Incentives and Investment Areas Reserved for Domestic Investors Regulation No. 270/2012 with (Amendment) Regulation No. 312/2014 and Export Trade Duty Incentive Schemes Proclamation No. 768/2012. Fairly applicable are the Industrial Parks Proclamation No. 886/2015 along with Regulation No. 417/2017 thereto. All of these norms are there to regulate, protect and entice FDI in the country.

To balance the countervailing interests of promoting investment and protecting labour rights, one expects a clear sense of direction and coherence across the national investment and labour policies. At this juncture, labour rights refer to a limited number of rights within the market place which when translated, amount to the broader regime of human rights. These include individual and collective labour rights

¹¹³ The United Nations Conference on Trade and Development, World Investment Report 2019, "Country fact sheet: Ethiopia"(Available at https://unctad.org/sections/dite_dir/docs/wir2019/wir19_fs_et_en.pdf)

¹¹⁴ *Ibid.*

¹¹⁵ EIC, Ethiopia's Investment opportunities, incentives and Policies, p. 12.

which pertain to¹¹⁶: the right to work; protection from occupational accident and health; limiting the maximum working hours; protection during a suspension; protection from compulsory labour, employment termination without good cause and discrimination; the right to organize and bargaining and the right to strike.

Ethiopia has also introduced many legal frameworks that protect workers' rights. These include: the FDRE Constitution¹¹⁷ and the diverse labour laws which include the Labour Proclamation No.1156/2019, the Right to Employment of Persons with Disability Proclamation No. 568/2008, the 1960 Ethiopian Civil Code, the Building Proclamation No. 624/2009) and Regulation No. 243/2011 along with Directive No. 5/2011. More importantly, the country has ratified the Maritime Labour Convention by the International Labour Convention Ratification Proclamation No. 1063/2017 and the core ILO Conventions.¹¹⁸ Ethiopia has also designed the National Social Protection Policy and Strategy along with the Occupational Health and Safety Directive to provide adequate measures of social security.

As far as the investment-labour links are concerned, the labour proclamations apply to all forms of investment and the investment

¹¹⁶ መላሪ ረዳኢ፣ ኢንቨስትመንት እና የሰራተኞች መብት በኢትዮጵያ፡- አንጻጻፍ ስጋቶች እና ተስፋዎች, (public Lecture, powerpoint), (2017,), Mekelle University, School of Law, slide.3.

¹¹⁷ Constitution of the Federal Democratic Republic of Ethiopia, 1995, Article 42, Proclamation No. 1, **Federal Negarit Gazeta**, Extraordinary Issue, 1st Year, No. 1, 21 August, Addis Ababa, Ethiopia.

¹¹⁸ These are: the Forced Labour Convention, 1930 (No. 29), the Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87), the Right to Organize and Collective Bargaining Convention, 1949 (No. 98), the Abolition of Forced Labour Convention, 1957 (No. 105), the Equal Remuneration Convention, 1951 (No. 100), the Worst Forms of Child Labour Convention, 1999 (No. 182), the Discrimination (Employment and Occupation) Convention, 1958 (No. 111) and the Minimum Wage Convention, 1973 (No. 138) and ILO Convention on Occupational Safety and Health No 155 (1981).

proclamation makes a cross-reference to other laws as well.¹¹⁹ Again, paragraph 3 of the preamble to the 2019 Labour Proclamation recognizes the need for reformulating the previous labour law to create a favourable environment for investment by further imposing various obligations on employers (investors) in the substantive provisions. These obligations range from ensuring health and safety at workplace, harmonious industrial relations and minimum workplace standards, to addressing workplace vulnerability which implies investors' liability upon default.¹²⁰

The labour proclamation further states that any investor shall have the obligation to observe the laws of the country in carrying out his investment activities.¹²¹ This requirement among others, obligates investors to watch out the labour rights as sanctioned in the various ILO legal instruments, national constitution and ordinary laws. In a more specific plane, the investment law provides for the likelihood of suspension and/or revocation of an investment permit.¹²² The grounds for taking such a measure are violation by investors of the Proclamation and Regulations as well as Directives issued to enforce the same¹²³ followed by specific lists warranting such a corrective measure.¹²⁴

Under Article 19(2) of the Proclamation, infringing labour rights are not specifically included as a ground of suspension or revocation nor do we find labour standards to gauge the impacts of the investment

¹¹⁹ Investment Proclamation, 2012, Article 38, Proclamation No. 769 /as amended by Procl.No.894/2014/, **Federal. Neg. Gaz.**, year 22, No. 52, (2012), Addis Ababa, Ethiopia.

¹²⁰ Labour Proclamation No. 1156, cited above, note 16, Articles 92-93.

¹²¹ Investment proclamation No 769/2012, cited above, note, note 119, Article 38.

¹²² *Id.*, Art 19.

¹²³ *Id.*, Art.19(1).

¹²⁴ *Id.*, Art 19(2).

activities. In a way, the investment proclamation has relaxed labour regulation. Accordingly, we can argue that there is no room for investors' liability against the infraction of labour rights. On the other hand, if one reads this provision into Article 38 and of 19(1) of the same proclamation, it could make sense of holding abusive investors particularly, transnational corporations accountable.¹²⁵ In the same way, the Industrial Parks Proclamation acknowledges that the Labour Proclamation be applicable in any industrial park.¹²⁶ Without prejudice to this rule, it also allows signing employment contracts that take into account the industrial park's peculiar feature.¹²⁷

Another area of intersection between investment and labour regimes is related to dispute resolution mechanisms. Viewed from this angle, the labour proclamation has sections governing the resolution of labour disputes. It contains an illustrative listing of what constitutes individual and collective labour disputes.¹²⁸ Technically speaking, one would argue that the conventional provisions of the labour proclamation would apply to an employer (investors) and labour disputes. In the realm of industrial parks, MOLSA is entrusted with the responsibility to establish the rules and procedures on labour issues in consultation with the Ministry of Industry based on tripartite modality details specified in the Regulation.¹²⁹ In spite of that, the writer argues that the nature,

¹²⁵ See also Mizanie Abate Tadesse, "Transnational Corporate Liability for Human Rights Abuses: A cursory review of the Ethiopian Legal Framework," **Mekelle University Law Journal**, Vol. 4, (June 2016), p. 62.

¹²⁶ Industrial Parks Proclamation, 2015, Article 28(1), Proclamation No 886, **Federal Neg. Gaz.**, No.39, 21st year, Addis Ababa, Ethiopia.

¹²⁷ *Id.*, Article 28(2).

¹²⁸ Labour Proclamation No.1156, cited above, note 16, Articles 139 [1], (a-f) and 143[1], (a-h), respectively. Accordingly, labour dispute can be resolved at regional first instance court, labour division of the regional appellate court, or labour division of the Federal High Court, where the issue relates to whether the dispute is an individual or collective nature and if not resolved at regional courts.

¹²⁹ Industrial Parks Proclamation, 2015, Articles 2 (25), 28 (3), cited above, note 126.

scope and implications of the labour disputes arising from an investment are somehow different from those of ordinary labour disputes which in turn require articulating special procedures.

The GTP II aspires for the establishment and implementation of Labour Affairs Administrative Information System at federal, regional and city administration levels. It also sets out the main strategic directions of the Labour Affairs Sector's Development Plan which are aimed at closely monitoring working conditions based on protection to secure peaceful industrial relation at workplaces and expanding occupational safety and health services, strengthening bilateral and multilateral cooperation and social consultation systems and building institutional capacity.¹³⁰

More importantly, some of the BITs recently signed by Ethiopia lend themselves to addressing labour concerns by prohibiting contracting parties from engaging in race-to-the-bottom regarding their regulations (including labour laws) in the name of attracting investment.¹³¹ Typical examples of BITs of this kind are those concluded between Ethiopia and the Belgian-Luxembourg Economic Union and Brazil.¹³²

Getting back to the institutional levels of synchronization, the Social Protection Policy defines the responsibilities of the government at the

¹³⁰ Ministry of Finance and Economic Development, FDRE, Growth and Transformation Plan II, (2014/5-2019/20), p. 218, Addis Ababa, Ethiopia

¹³¹ Bereket Alemayehu, FDI vis-à-vis Labour law in Ethiopia, cited above, note 62, p. 16.

¹³² *Id.* For example, Article 6 of the BIT between Ethiopia and the Belgian-Luxembourg Economic Union recognises the right of each Contracting Party to establish its domestic labour standards and to ensure that its legislation provides for labour standards consistent with the internationally recognised labour rights. It further recognises the inappropriateness of encouraging investment by relaxing domestic labour legislation by imposing an obligation on each Contracting Party to strive to ensure that it does not waive or otherwise derogate from, or offer to waive or otherwise derogate from, such legislation as an encouragement for the establishment, maintenance or expansion in its territory of an investment.

federal, regional, and local levels in managing the social protection system to progressively fulfill the constitutional rights of citizens. It is accompanied by certain organs of labour administration such as the Ministry of Labour and Social Affairs (MOLSA), Regional Labour and Social Affairs Bureaus and the Ministry of Construction. The last entity is responsible for ensuring public and workers' safety at construction sites. The Labour Proclamation deals with labour inspection services. This is discernible from the wordings of Articles 177-183 of the Proclamation. These provisions generally govern the responsibilities of the labour inspectorate body to make sure that the employers (investors) are taking all necessary measures to ensure that workplaces are safe, healthy, and free of any danger to the security of workers. Despite this, these set of measures should be taken only where necessary to do away with unwarranted interferences.

Now, a word should be said as to the interface between the roles of MOLSA and the EIC in administering and enforcing labour and investment matters. The former is mandated for enforcing workers and public safety and health in workplaces, both private and state-owned. It is also empowered to put in place an integrated labour administration system to follow up, coordinate and enforce labour laws and policies; to enhance labour inspection services; and to issue directives necessary for: occupational safety and health; and the protection of working environment; standards of working conditions; giving work permits to types of works for foreigners and so forth.¹³³

As juxtaposed to this, the EIC is vested with the power to issue investment permits during the pre-implementation phase, or before the company gets a business license.¹³⁴ For industrial park-based investors,

¹³³ Labour Proclamation No. 1156, cited above, note 16, Article 171 in tandem with 176(1), (2).

¹³⁴ Investment Proclamation No. 769/2012, cited above, note 119, Article 16(3), (1).

the EIC issues work permit before and after business license as part of the coordinated function of the one-stop-shop service.¹³⁵ To this end, the EIC works in collaboration with the Department of Immigration and Nationality Affairs and the MOLSA, the modalities of which shall be specified in the Regulations.¹³⁶ These nuances are important but no mandate has been given to oversee other labour safety and health inspection.

Another point of intersection has to do with the simplified service delivery procedures for investors' permits and incentives representing the competent executive organs i.e one-stop-shop service.¹³⁷ The writer is fearful that the latter may grant labour insensitive investment permits partly because for the EIC has a shortage of skilled labour for conducting social compliance in investment projects and lacks a structured approach to implementation of social requirements. There are no specific labour standards as well as grievance reviewing mechanisms to be uniformly applied across individual firms in the industrial parks.¹³⁸

In a nutshell, the normative and institutional interfaces mentioned above, are there to balance the policy of attracting FDI without sidelining workers' rights.

¹³⁵ Industrial Park Proclamation No. 886/2015, cited above, 126, Article 13(2).

¹³⁶ *Ibid.*

¹³⁷ Investment Proclamation No.769/2012, cited above, note 119, Article 30.

¹³⁸ The EIC is in the process of establishing a Labour Unit, which will be housed within each industrial park's OSS. The Labour Unit systemizes a mechanism of inspections to ensure that working conditions within each industrial park are of an internationally recognized standard. As part of the unit, the required labour inspectors will be hired.

6. Minimum Wage Legislation: Lessons and Controversy

6.1. Overview of Country Experiences

Based on evidence from around the world, countries can be grouped loosely into three groups according to their goals: the first group of countries aim to reduce poverty and inequality by increasing wages of low-income workers; the second group seek to promote productivity and growth; the third group look for addressing efficiency issues in the labour market that lead to negative consequences on employment and workers.¹³⁹ The impacts of the minimum wage policy on poverty, inequality, productivity, and efficiency are mixed and depend on the country context and how the policy is managed. Most developing countries have minimum wage laws which, in principle, guarantee low skilled workers.¹⁴⁰

In what follows, a brief discussion of the experience of three African countries namely, Kenya, South Africa and Malawi on minimum wages is presented.

To begin with Kenya, minimum wages are specified as part of a national wages policy put in place before independence.¹⁴¹ The legal framework governing minimum wages and the setting of conditions of employment emanates from part 6 of the Labour Institution Act. Section 43 provides for the establishment of two wages councils namely, the General Wages Council (GWC) and the Agricultural Wages Council (AWC). The GWC is empowered to appoint Wages Councils to set statutory working conditions and minimum wage floors in

¹³⁹ Devereux, S., 'Can Minimum Wages Contribute to Poverty Reduction in Poor Countries?' *Journal of International Development*, vol. 17, (2005), p. 899.

¹⁴⁰ Ayesha Shahid, "Silent Voices, Untold Stories: Women domestic workers in Pakistan and their Struggle for Empowerment", PhD Thesis, (2007), Warwick University School of Law, p. 263.

¹⁴¹ Andálon M and Pagés C, 'Minimum wages in Kenya' DP No. 3390, The Institute for the study of labour (2008), p. 2.

different occupations. The AWC sets statutory minimum wages orders for agricultural workers. The law also provides that the Cabinet Secretary may establish a Sectoral Wages Council (SWC) in addition to the GWC for any category of employees that he/she, with the consultation of the National Labour Board, feels is inadequately covered by collective agreements and that it may be expedient to set minimum wages and other conditions of employment in such sectors.¹⁴²

The latest general wages and agricultural wages regulations were passed on 1st May 2015 through an announcement by the President.¹⁴³ The enforcement of minimum wage laws is done through the Labour Institutions Act and the inspection department of the Ministry of Labour, Social Security and Services.¹⁴⁴ The law provides that the rate of remuneration and conditions provided by a certain wages order are the utmost minimum an employer can offer an employee falling under such an order.¹⁴⁵ An employer who fails to comply with the provisions of a wage order commits an offence and the court, on finding the employer guilty, may impose penalties in addition to requiring the payment of the difference between the amount that ought to have been paid and that which was paid. Additionally, a labour officer may institute such proceedings on behalf of the employee.¹⁴⁶

By the same token, Malawi has set minimum wages for many reasons, but primarily to improve the living conditions of workers. There is no separate legislation on minimum wages, though. It is one of the provisions under the Employment Act.¹⁴⁷ Since minimum wage in

¹⁴² Section 43(2), Labour Institutions Act (Act No. 12 of 2007).

¹⁴³ Legal notice No. 116, no 117 of 2015, Labour Institutions Act (No. 12 of 2007).

¹⁴⁴ *Id.*, Section 35(1).

¹⁴⁵ *Id.*, section 48.

¹⁴⁶ *Id.*, section 49.

¹⁴⁷ Malawi, Employment Act Articles 54 and 55.

Malawi does not vary by region, they are declared at the national level for two sectors - a) Urban sector b) Rural sector. Legal minimum wages are declared daily. Since enactment of the Regulation of Minimum Wages and Conditions of Employment Act in 1964 and ratification of the International Labour Organization Minimum Wages Fixing Machinery Convention in 1965 by the Malawi Government, Malawi has adopted the policy of Minimum wages fixing and continued setting and enforcing various rates of minimum wage to protect vulnerable employees from being subjected to low wages in various workplaces.¹⁴⁸

The Ministry of Labour shall fix minimum wages for any group of wages earners, in consultation with organizations of workers and employers relevant to the group of wages earners.¹⁴⁹ According to the Employment Act, fixing, revision or modification of any procedure for setting minimum wages, shall be done by the Ministry in consultation with the representatives of workers and employers.¹⁵⁰ The Ministry shall, in consultation with representatives of workers and employers, reconsider the level of minimum wages at least once every three years or if the inflation rate has gone up to 20%.¹⁵¹ In prescribing minimum wages, the Minister, shall, as far as possible, consider – the needs of workers and their families, the general level of wages, the cost of living, social security benefits and the relative living standards of other social groups and economic factors, including the requirements of economic development, levels of productivity and any effect the wage might have on employment.¹⁵² The existence of employment relationships between

¹⁴⁸ Kalani Mbeye Malema, "The problem of Non-compliance with Minimum Wage in the Public Service Organizations in Malawi versus Government as a Role Model Employer," **International Journal of Science and Research**, Vol. 6, Issue 4, (2017), p. 841 (available at www.ijsr.net)

¹⁴⁹ *Id.*, Article 54(1).

¹⁵⁰ *Id.*, Articles 54 (1), (4) & (5).

¹⁵¹ *Id.*, Article 54 (4).

¹⁵² *Id.*, Article 54(3).

Public Works Program (PWP) parties, the government and beneficiaries are clearly evident and well supported by ILO - R198.¹⁵³ As such, literature review indicates that the Malawi Government implements PWP under the Malawi Social Action Fund and Local Development Funds as an employment opportunity for the vulnerable poor Malawians.¹⁵⁴

The Employment Act shall be enforced by the Labour Officer acting subject to the directions of Labour Commissioner, who is responsible for effective administration and application of the Act.¹⁵⁵ Any employer who pays wages less than statutory minimum wages shall be guilty of an offence and liable to a fine of K50, 000 and to imprisonment for ten years.¹⁵⁶ It further states that any person alleging a violation of a provision of this Act may file a complaint with the District Labour Officer.¹⁵⁷ The trade unions can also represent a person having a dispute or alleged violation of a provision of this Act.¹⁵⁸

A person can also present a complaint to the Court.¹⁵⁹ The enforcement of, and compliance with, the set minimum wage are, however, not effectively done and thus, non-compliance remains an issue that needs a continued debate in Malawi and most other developing countries.¹⁶⁰ Thus, some researchers recommend adoption of combined enforcement approaches with the involvement of private partners and lobbying for negotiations with donors towards the

¹⁵³ *Id.*, 855.

¹⁵⁴ *Ibid.*

¹⁵⁵ *Id.*, Article 18(5).

¹⁵⁶ *Id.*, Article 55(2).

¹⁵⁷ *Id.*, Article 64(2).

¹⁵⁸ *Id.*, Article 64(4).

¹⁵⁹ *Id.*, Article 64(3).

¹⁶⁰ Kalani, Mbeye, Malema, "The problem of Non-compliance with Minimum Wage in the Public Service Organizations in Malawi, cited above, note 148.

incorporation of compliance conditions with minimum wage within their negotiated funding agreements by governments.¹⁶¹

Last but not least, the Republic of South Africa has recently introduced a National Minimum Wage Act in 2018 (hereinafter, NMW).¹⁶² The Act aims at eradicating poverty and inequality; promoting fair and effective competition in the labour market and labour market stability and to give effect to the constitutional obligation on the State and employers to promote and fulfill the right to fair labour practices.¹⁶³ The minimum wage is therefore seen as one of the tools to close the wage gap, including between the genders, and thereby to overcome poverty.¹⁶⁴ The Act regulates minimum wages under the provisions of Chapter two.¹⁶⁵ Wage is calculated based on the amount payable in money for ordinary hours at Rand 20 with certain exceptions thereto.¹⁶⁶

In a cruel irony, evidence internationally and in South Africa suggests that it is the most vulnerable workers who are most susceptible to possible negative consequences of a national minimum wage set at inappropriately high levels.¹⁶⁷ It is, therefore, important that the implementation of a national minimum wage should be undertaken in a cautious, balanced and evidence-based manner.¹⁶⁸ Minimum wages in

¹⁶¹ *Ibid.*

¹⁶² See generally the preambular paragraphs of the National Minimum Wages Act, **Government Gazette**, (November 09 20180), No.42060, Cape Town, Cap stead.

¹⁶³ *Ibid.*

¹⁶⁴ National Minimum Wages for South Arica, Recommendations on policy and implementation national minimum wage panel report to the deputy president, (2016), p.8 (Available at <http://www.treasury.gov.za/publications/other/NMW%20Report%20Draft%20CoP%20FINAL.PDF>)

¹⁶⁵ National Minimum Wages Act, See generally Section 4-6.

¹⁶⁶ *Id.*, Section 5(1) in tandem with schedule 1, Section 6(6), (1).

¹⁶⁷ National Minimum Wages for South Arica, cited above, note 165.

¹⁶⁸ *Ibid.*

South Africa are currently determined sectorally through collective bargaining agreements or via sectoral determinations set by the Minister of Labour on the recommendation of the Employment Conditions Commission.

As for the powers and function of the organs of administration, it is provided that the NMW Commission must, within 18 months of the commencement of this Act, conduct a review of the NMW contemplated in the schedule.¹⁶⁹ The Commission is composed of a chairperson appointed by the Minister of Labour; three members nominated by organized business; three members nominated by the organized community; three members nominated by organized labour; and three independent experts, who are knowledgeable about the labour market and conditions of employment, appointed by the Minister.¹⁷⁰

With this background, the following section deals with the notable issues which travel into the discourse of introduction of minimum wages laws into the Ethiopian private sector.

6.2. Debates surrounding the introduction of Minimum Wage Legislation in Ethiopia

6.2. 1. Arguments in favour of Minimum Wages

It has proven to be a hot spot that minimum wages enable to press ahead with multiple purposes. Although the institutional setup may vary from country to country, minimum wages exist in more than 90 per cent of the ILO member States.¹⁷¹ Given the ILO and the international community are increasingly moving for universalization of core labour

¹⁶⁹ *Id.*, See item 2(a) and (b) of Schedule 1.

¹⁷⁰ *Id.*, section 9.

¹⁷¹ Minimum Wage Policy Guide, cited above, note 72, p. 3.

standards where minimum wages can be one of those standards, Ethiopia cannot be an exception.

Firstly, Ethiopia has been extending relatively adequate and multifarious incentive schemes to investors. Because of this, the writer believes that workers' rights should not be left for negotiation. In fact, for those who cannot individually assert their rights, they can make use of the collective agreements and negotiations of industrial organizations or through strikes. But still, this mechanism is not free of problems. Collective agreements usually apply on a firm basis and hence, they do not cover workers from outside.

Secondly, although freedom of association is one of the core rights for all workers and opens more room for social dialogue and collective bargaining, a study shows that the role and number of workers' associations are declining over time.¹⁷² The available worker's associations exist primarily in public and recently privatized companies, with few in private manufacturing companies.¹⁷³ As is clear to everyone, there are massive unskilled and unutilized skilled labour forces as the youth who graduated from universities, technical and vocational training centers are unable to get jobs. These social problems combined will deprive workers of their capacity to negotiate with the employer if wages were to be determined by individual contracts; abundant supply of labour force means easy substitutability of labour; someone will come and fill the vacancy. Then, employment contracts become 'take it or leave it' options for the unskilled worker. A personal observation of the wages of labourers on the part of the writer reveals that there is wages discrimination in the construction sectors for daily labourers between men and women. They earn 150 and 70 Birr,

¹⁷² World Bank, Environmental and social systems assessment for the economic opportunities program-for-results/investment project financing, (May 2018), p. 63.

¹⁷³ *Id.*, p. 18.

respectively. Consequently, devising a legislation-based standard minimum wage could mitigate the unwarranted flow of workers from the public to the private sector; it would also serve for evidentiary purposes in respect of calculating wages-related disputes and to estimate taxes to be levied upon employees working in the private sector.¹⁷⁴ It would also serve as a social security scheme.¹⁷⁵

Thirdly, advocates of statutory minimum wage also ignited a debate into promoting macroeconomic productivity by disciplining the pseudo-markets. Such markets are characterized as being disguised and inefficient ones which create large profit margins owing to extreme exploitation.¹⁷⁶ Regulated minimum wages forces these firms either to raise their level of productivity or to exit there from, leaving their former share of the market to more efficient firms.¹⁷⁷ Either possibility can increase productivity in formerly inefficient firms or a shift of production to the already more productive firms.¹⁷⁸ The exponents of minimum wages further argue that it helps marginal workers by forcing their inefficient employers either to rationalize or to be driven out of business by more efficient competitors paying higher wages.¹⁷⁹ Given the aforementioned, Mizane Abate had to say that the Ethiopian labour

¹⁷⁴ Interview with Ato Asfaw Gidey, Senior lecturer of employment laws, Mekelle University, School of Law, (June 20, 2019).

¹⁷⁵ *Ibid.*

¹⁷⁶ U.S. Congress, Minimum Wage Restoration Act: Hearings before the Senate Committee on Labour and Public Welfare, (1987), see also R. Taggart, *Hardship: The Welfare Consequences of Labour Market Problems*, (1982).

¹⁷⁷ *Ibid.*

¹⁷⁸ There are two scenarios in which a statutory minimum wage may act: the first, in which an efficient firm takes advantage of a weak labour force, and the second; in which an inefficient firm sustains itself by squeezing employees rather than through entrepreneurial efforts at technical improvements.

¹⁷⁹ "If those companies can't afford to pay a decent wage, it is too bad." *Amendment of the Fair Labour Standards Act of 1938: Hearings before the Senate*. See generally Kaufman & Foran, *The Minimum Wage and Poverty: Towards freedom*, p. 156.

proclamation has an apparent weakness for its failure to fix the minimum wages as a minimum labour condition.¹⁸⁰ In his view, in a country where urban unemployment is very high, leaving minimum wages to be fixed by the market does not make sense.

Fourthly, proponents of minimum wages argue that the latter has a direct impact on poverty reduction as long as workers in the formal economy earning the minimum wages and their families belong to the poorest groups of the population.¹⁸¹ The point is, in an economy characterized by a chronic tendency to create substandard working conditions, a measure designed to ensure minimum standards remains useful. This argument would be equally relevant to the Ethiopian economy where a good number of the population lives below the poverty line, hitherto. In practical terms, investors have access to massive labour and they might not be committed to treat and pay fair wages to employees. Despite this, the country has been time and again advertising itself as having industrious and trainable labour force to improve the leverage for attracting FDI. Hailemariam Desalegn, ex-prime minister of Ethiopia, claimed that Ethiopia outsmarted the rest of Africa in attracting foreign firms by keeping her labour costs low.¹⁸² In the course of making his official statements, the Premier undermined the extent of legally recognized minimum wages requisite for the effective utilization of labourers.

Fifthly, the Minimum Wage Introduction Benefit Recommendation No.135 provides that minimum wage fixing should constitute one element in a policy designed to overcome poverty and to ensure the

¹⁸⁰ Mizanie Abate Tadesse, “Transnational Corporate Liability for Human Rights Abuses, cited above, note125, p. 65.

¹⁸¹ *Id.*, at p. 97.

¹⁸² Ayele Gelan, (PhD), Economic commentary: Ethiopia’s low wage is a curse, not a blessing, Addis Standard, English private magazine, (25 April 2018), Jakenn Publishing P.L.C., Addis Ababa, Ethiopia.

satisfaction of the needs of all workers and their families. In that case, the fundamental purpose of minimum wage fixing should be to give wages earners necessary social protection as regards minimum permissible levels of wages. Regrettably, empirical works show the low nature of wages in Ethiopia.¹⁸³ In response, investors contend that the foremost reason for this meagre amount of wages is attributable to the lack of efficiency and productivity of Ethiopian employees.¹⁸⁴

Sixthly, in the light of the GTP II, Ethiopia remains committed to sustaining inclusive and pro-poor development strategy over the coming years to further address the poverty and employment generation challenges facing the country.¹⁸⁵ At the same time, it also states that greater attention will be given to attracting high quality and high impact foreign direct investment in the future.¹⁸⁶ This, in turn, indicates the resilience of the country towards better quality investment. In this regard, Mizanie seems to be interested in introducing minimum wages by stressing that the Ethiopian government is reluctant to introduce minimum wages for fear that the measure may scare away investors.¹⁸⁷ He offers no alternative arguments detailing his argument, though.

¹⁸³ Birhanu Fikade, "*Int'l trade union denounces exploitative wages in Ethiopia*", the Reporter, (17 January 2018). Available at <https://www.thereporterethiopia.com/article/intl-trade-union-denounces-exploitative-wages-ethiopia>

¹⁸⁴ Paul M. Barrett and Dorothee Baumann-Pauly, *Made in Ethiopia: Challenges in the Garment Industry's New Frontier*, (Stern Center for Business and Human Rights, New York University), (2019), p. 12.

¹⁸⁵ GTP-II cited above, note 130.

¹⁸⁶ *Ibid.*

¹⁸⁷ Al Jazeera, *Ethiopia, Booming Business, underpaid worker*, available at <http://uk.news.yahoo.com/ethiopia-booming-business-underpaid-workers112201324.html# wXcxhTr> (Quoted in Mizane Abate, cited above, note 118).

Unfortunately, many workers see overtime work as an opportunity as it will come with additional money. The employer may reduce the normal wages of the employee to save money to secure extra hours of work from the latter. Thus, the working poor would be susceptible to exploitative practices. As a result, the masses would become low-cost labour pool for, and the dumping grounds of (even abusive) investments in various quarters.

Thankfully, the Head of Ethiopia's state-run investment body declared the government's desire to settle minimum wage issues among others, to protect the interests of workers.¹⁸⁸ Similarly, the Commissioner of EIC, Abebe Ababayehu while speaking to a private channel, Business Safari TV during the European Union – Ethiopia Business Forum that took place between 14 –15 May, 2019 in Brussels, Belgium added that his outfit was currently working with the relevant ministry and other agencies in efforts to achieve that goal.¹⁸⁹ He also stressed on how to balance the provision of the competitive labour force and a decent standard of living for Ethiopian workers. With this and many other pressing concerns, the current labour law has been enacted afresh after four months. The labour law contemplates a Wage Board which will be in charge of periodically revising minimum wages based on studies.¹⁹⁰

Now, let us pay a fair amount of attention to the arguments against the stipulation of minimum wages.

¹⁸⁸ See <https://www.africanews.com/2019/05/24/ethiopia-needs-minimum-wage-law-to-protect-workers-investment-chief//> Accessed on 29 October 2019.

¹⁸⁹ *Ibid.*

¹⁹⁰ Labor Proclamation No 1156/2019. Cited above, note 16, Article 55(2).

6.2.2. Counter Arguments

Prior research works have come up with the following main conclusions regarding the outcomes that are central to policy debates about minimum wages:

Firstly, stipulating minimum wages reduces employment opportunities for less-skilled workers. This argument comes from the neoclassical theorists. According to this theory, imposing wage floor leads to job destruction and that mandating a price floor above the equilibrium wage would lead to an excess supply of workers. In consequence, more people would be willing to work at the higher rate in a limited and very selective labour market; but employers could only employ some people at higher wages and would likely choose the best ones. They argue that there is an inverse relationship between minimum wages and employment.¹⁹¹ The effect of minimum wage policy on employment is mixed, as the results depend on employer compliance and numerous other factors.¹⁹² Again, most critics of neoclassical theory tend to argue that even though employment losses are possible, but they are by no means certain.¹⁹³

Most economists agree that raising the minimum wage will lead to at least some increased unemployment among low paid workers.¹⁹⁴ Because they do not believe that the imposition of a minimum wage increases productivity, opponents of the minimum wage foresee lay-offs as employers' only option for offsetting higher wage costs. They

¹⁹¹ Pelican Institute for Public Policy, Minimum wages, Available at <https://pelicaninstitute.org/five-problems-with-raising-the-minimum-wage/> (Accessed on 28 May 2019).

¹⁹² Ximena Del Carpio and Laura Pabo, *Minimum wages policy*, cited above, note 21, p. 40.

¹⁹³ *Id.*, P. 10.

¹⁹⁴ Roberts & Bowers, "Patching the Crack in the Floor: Strategies for Expanding the Minimum Wage," **CLEARINGHOUSE REV.**, Vol.22, (1988), p. 23.

note that as an anti-poverty measure, the statutory minimum wages are inefficiently over-inclusive and under-inclusive.¹⁹⁵ It may be argued that very high minimum wages would be counterproductive if the worker cannot get hired at all.

In the Ethiopian public sector, the salary scale applicable to civil servants is determined from time to time by considering the Government's financial capability, the general living conditions of the society, price levels and other relevant factors.¹⁹⁶ The Civil Servants Law also states that all positions of equal value shall have an equal salary.¹⁹⁷ The Federal Public Service Agency, while revising the salary scale of federal civil servants in 2015, has set a minimum wage for 'custodial and manual workers' abbreviated in Amharic as **ጥ/ጉ (ጥበቃና ጉልበት ሰራተኞች)** to 860.00 Birr. In this regard, Mehari argues that before setting out a minimum wage in the private sector, we need to revise the public sector's minimum wages as most private employers pay higher than the public service. Thus, the entire wage system in the civil service system needs to be revamped beforehand. The author argues that failure to do so would obliterate the bargaining margin of professional labourers otherwise.

Second, as minimum wages no longer guarantee a "living wage," increments are necessary in order to restore a full measure of dignity to all minimum wage workers.¹⁹⁸ Opponents respond by offering similarly

¹⁹⁵ Michael Kaplan, "Is labour a Widget: A Comparative Study", *Tul. L. Rev.*, Vol. 59 (1990), pp. 1517, 1543.

¹⁹⁶ Federal Civil Servants Proclamation, 2017, Article 7(1), Proclamation No. 1064, *Federal Neg. Gaz.*, 24th year No. 12, Addis Ababa, Ethiopia.

¹⁹⁷ *Id.*, Article 8.

¹⁹⁸ Smith & Vavrichcek, "The Minimum Wages: Its relation to incomes and poverty", *Monthly Lab. Rev.*, (June 1987), pp. 24-26.

uncontested evidence¹⁹⁹- the vast majority of the poor do not earn the minimum wage,²⁰⁰ while the vast majority of minimum-wage workers are not poor,²⁰¹ they contend that lack of employment rather than low wages is the primary cause of poverty. As a labour market instrument, a “minimum wage” has an important role to play in improving the living standards of wage earners and their families; it is also an important indicator of economic progress and social justice.²⁰² Seen from the Ethiopian perspective, there are no clear research findings so far, but the writer argues that the realistic characterization would not have been different from the above.

Thirdly, opponents also tend to argue that low labour cost does not mean profitability. Employers and their associations are mindful that the cheap labour is not a guarantee for competitiveness and profitability.²⁰³ A profit-maximizing employer may choose to pay wages above market wages to incentivize good workers to stay at the firm and maximize their productivity levels to yield better profit margins for their employers. This is known as the efficiency wage, and it is almost always above a person's reservation wage, above the statutory minimum wages, and above the competitive wages.²⁰⁴ In Ethiopia, most workers are paid diametrically low wage for a reason having to do with their

¹⁹⁹ See House Committee on Ways and Means, Background Material and Data on Programs Within the Jurisdiction of the Committee on Ways and Means, 100th Cong., 2nd Session, (1988), p. 431.

²⁰⁰ Marc Linder, “The Minimum Wage as Industrial Policy: A Forgotten Role”, **Journal of Legislation**, Vol. 16 No. 151, (1989-1990) p.152, (Available at the University of Iowa’s Institutional Repository, college of Law publications, slib-ir@uiowa.edu.)

²⁰¹ *Id.*, P. 154.

²⁰² Report of the Expert Committee on Determining the Methodology for Fixing the National Minimum Wage, (January 2019), preface, Ministry of Labour and Government of India, preface, p. V.

²⁰³ መላሪ ረዳኪ፣ ኢንቨስትመንት እና የሰራተኞች መብት በኢትዮጵያ፡- አንጻጻፍ ስጋቶች እና ተስፋዎች, cited above, note 116, p. 22.

²⁰⁴ U.S. Congress, Minimum Wage Restoration Act, cited above, note 176

inefficiency, but it has been submitted that employers cannot turn away from the responsibility of making the latter efficient as long as the former is bound to sufficiently train their employees to increase the latter's efficiency.²⁰⁵

As has been mentioned in the introductory section of this article, the 1944 Philadelphia Declaration of the ILO enunciates that labour is not a commodity. Treating labour as such would undermine its value, be governed by the economic forces of demand and supply just as any other generic marketable good is.²⁰⁶ However, treating it as a non-commodity would necessitate government intervention to protect labourers' rights for the work of a labourer ties to his dignity and is an expression of himself.²⁰⁷

Thus, one can see a valid reason to conclude that labour should be incentivized at various stages of production and supply chains to avoid the materialization of the saying "they pretend to pay us and we pretend to work." This would be a legitimate means to avoid a disingenuous, hypocritical and patronizing treatment of workers by the employers. In practice, a developing body of literature also shows that in today's world, companies have begun to worry about their goodwill as a result of which they are practically seen to have entered into several voluntary undertakings in the form of corporate code of conduct and corporate social responsibility.²⁰⁸

²⁰⁵ See, for example, Investment Proclamation No 769/2012, cited above 119, Article 37(2).

²⁰⁶ Marx K, *Outlines of the critique of political economy*, Vol. 28, International Publishers, New York, (1986), p. 80.

²⁰⁷ See, for example, ILO constitution's preamble, (1919). It makes two major claims: (1) that universal peace can be established only if it is based upon social justice, and (2) that the failure of any nation to adopt humane labour standards may be an obstacle in the way of social justice improvements in other nations.

²⁰⁸ መላሪ ረዳኢ፣ ኢንቨስትመንት እና የሰራተኞች መብት በኢትዮጵያ፡- አንዳንድ ስጋቶች እና ተስፋዎች, cited above, note, 116, p. 21.

As things stand today, in Ethiopia, abusive employers would not reduce their productivity; some low- skilled employees would keep working without protesting abuses. As the economic capacity of individual employers is low, not all private employers would have the financial capability to hire labourers at the prescribed legal minimum. Personal communication with Mehari Redae, a prominent employment law scholar in Ethiopia, reveals that most of the workers in Ethiopia are affiliated to individual employers. To him, the stipulation of minimum wages without fixing the minimum number of workers for a person to be treated as an employer would be equally harmful to the employer (emphasis added).

Fourthly, many countries would eventually set minimum wages and, if that person could not get employed on the basis of that legal minimum, they extend economic assistance using their unemployment fund. For them, minimum wages are regarded as a policy component of a welfare State.²⁰⁹ What is more, social protection coverage and benefits continue to expand, as reflected in the groundbreaking ILO Recommendation concerning National Floors of Social Protection (No. 202), adopted in 2012.²¹⁰ However, countries such as Ethiopia have not been able to set unemployment scheme, so far. As such, it would be difficult to meaningfully enforce it. Today, all countries in the world have a social security system.²¹¹ There is growing evidence that labour market regulations impose employment costs beyond the minimum wages.²¹² Effective enforcement requires expanding the powers of the responsible agency, which includes allocating resources for labour inspectors to audit employers and impose penalties to enforce the

²⁰⁹ Andre Blais, Jean-Michel Cousineau and Kenneth Mc Roberts, “Determinants of Minimum Wage Rates”, *Public Choice*, Vol. 62, No.1 (July 1989), p. 15.

²¹⁰ *Ibid.*

²¹¹ ILO, World Social Protection Report 2014/15, cited above, note 64.

²¹² Ximena Del Carpio and Laura Pabo, *Minimum wages policy*, cited above, note 21, p. 66.

minimum wage law, and in many cases, their powers are outlined in the legislation.²¹³

In some countries, the minimum wage policy affects non-wages benefits (social insurance, pensions, among others), which affects a wider group of workers and hurts overall worker welfare.²¹⁴ Thus, a minimum wage increase might hurt not only low-skilled and low-wage workers but also more highly skilled workers employed on formal contracts.²¹⁵ From this, Ethiopia may not at this point in time, easily afford to bear these other labour costs. Besides, minimum wage increases can pass on to consumers through higher prices, thus resulting in higher inflation and trade-offs. This would be the case in Ethiopia as there is a critical problem of market failure and weak end-user regulation in respect of the private sector.

Last but not least, international evidence on the impact of minimum wages on poverty is mixed.²¹⁶ It indicates that an increase in the minimum wage can help a subset of poor families escape poverty, but it can also push many non-poor families into poverty since some workers in non-poor families may lose their jobs in the wake of a minimum wage increase.²¹⁷

²¹³ *Id.*, p.78.

²¹⁴ *Id.*, p. 61.

²¹⁵ *Ibid.*

²¹⁶ Rutkowski, "The Minimum Wage: Curse or Cure?", **Human Development Economics, Europe and Central Asia Region**, (2003), the World Bank.

²¹⁷ It is maintained that governments should consider a more appropriate tool for addressing issues of poverty and inequality, such as direct cash transfer systems. These transfers could be financed by a progressive tax system in which the marginal tax rate increases with the individual's level of income, which can also help to reduce inequality. However, a minimum wage that did not significantly contribute to the elimination of such jobs would be superfluous and so low that, hence, hurts the very people it is supposed to protect.

7. Concluding Remarks

There have been burgeoning discords in protecting labour rights and promoting investment across national legal systems. This study examined the desirability of introducing statutory minimum wages in the private sector in Ethiopia against its compatibility on protecting labour rights and promoting FDI. As it has been canvassed in the substantive discussions, Ethiopia has recently taken a legislative measure towards introducing minimum wages law. The article reviewed the various arguments in favour and against legislatively regulated minimum wages in today's Ethiopia.

The proponents of minimum wage law partly assert that minimum wage enables to offset the disequilibrium that inheres in the bargaining power of workers and employers. The present work also made an analytical overview of minimum wage from the vantage point of employment opportunity; productivity; income equality; ease of proof of wage-related disputes as well as poverty reduction. On the contrary, the antagonists vehemently argue that Ethiopia should not introduce minimum wage legislation in the private sector before and until the salary base in the public sector is given a face-lift. They further contend that labour is not a commodity and hence, productivity, efficiency and growth are not necessarily enhanced through statutory minimum wages. They argue that minimum wage becomes more effective in welfare states while Ethiopia is not. They further express their worries that the private sector is not capable of shouldering the increased minimum wage-related costs and hence, such a law would rather aggravate inflationary pressures on unskilled labour forces.

Undeniably, the author is aware of the alternative way-outs for regulating labour market than stipulating minimum wages legislation such as collective bargaining, strike, unionization, voluntary compliance

and labour inspection services, but these measures are far from being complete to protect the working poor at this time in point.

The study further examined the probable links between FDI and minimum wages. In this regard, it reveals that the association of FDI attraction with a low level of a minimum wage as a comparative advantage is critiqued to be empirically unfounded and a regulatory incentive amounting to race to the bottom. Against this perspective, Ethiopia cannot successfully attract FDI by simply capitalizing on a low amount of minimum as the empirical works carried out elsewhere have shown that FDI is attracted and promoted using multiple factors than wage rates *per se*. The study also assessed the congruity of Ethiopian investment and labour policies and institutions. The findings in this direction demonstrate that although there are certain attempts, neither regime provides a clear sense of synchronization nor cross-referencing provisions about the mechanisms of reconciling disputes arising from investment and labour frameworks.

By way of recommendation, this article suggests the need for overhauling the labour and investment policies coupled with revitalizing the existing investment and labour related institutions. This can be done by creating effective institutional interfaces for administering investment and protecting labour rights anew. By doing so, Ethiopia should develop well-considered and well-designed policies capable of balancing the need for promotion and attraction of FDI and protection of workers' rights. Eventually, the writer urges the Council of Ministers to bring the Wage Board in to reality so that the latter can assume its responsibility soon. Upon getting material existence, the Board can take account of the international trends and the eclectic experiences of South Africa, Kenya and Malawi to adopt and enforce minimum wage legislation.

Global Labour Flexibilization Conditionality: Implications for Ethiopian Labour Law Regulatory Space

*Jetu Edosa**

1. Introduction

Economic globalization as the increased integration of national economies through various form of capital mobility has brought new opportunities and challenges for workers around the world.¹ On the one hand globalization is viewed as a force for economic and social progress explained in terms of new technologies and its resultant efficiency for national economies, corporations and employees. In this way, advocates of globalization contend that the force of economic globalization provides incentives for countries to promote a spirit of entrepreneurship capable of responding to employers' need to react quickly to changing market conditions, and to employees' need for personal growth and professional development.² On the other hand, economic globalization is critiqued as a threat that essentially enabled markets rather than people to determine how the world's resources will be used and distributed.³ Specifically, viewed from the impacts on employees' rights, it is widely criticized that economic globalization creates competitive pressure that leads employers to ignore or fail to

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¹ Eddy Lee, *Globalization and Employment: Is Anxiety Justified*, 135 *International Labour Review*. 485 (1996).

² Lance A. Compa, *Trade liberalization and labour law*. (International Society for Labour & Social Security Law (2006) 2. Available at: <http://digitalcommons.ilr.cornell.edu/conference/6/>

³ Jackie Smith, *Economic Globalization and Labor Rights: Towards Global Solidarity*, 20 *Notre Dame Journal of Law, Ethics & Public Policy* (2006) 874.

comply with labour standards in efforts to cut costs.⁴ In other words, in order to globally compete with foreign competitors in the international markets, firms or multinational corporations may attempt to cut costs by paying lower wages, hiring child labour, and imposing unsafe working conditions on their workers.⁵

Furthermore, economic globalization is also undermining the capacity of nation-states to regulate their own domestic economies because of two major factors. First, global economic institutions such as the World Bank and IMF coerce states through labour conditionalities as a string attached to loan provisions for developing and least developed countries (global south proper).⁶ On top of the already diminished regulatory capacity of countries due to multilateral trade and investment treaties, the loan conditions enforced by the World Bank and IMF on developing countries prevent governments from regulating wages and enforcing worker rights to mention few.⁷ Second, developing countries lure for hard currency in the form of foreign direct investment (FDI) is creating a practical limitation on the ability of one nation to regulate its domestic labour affairs in a world where labour and capital move freely across national borders.⁸ It goes without saying that corporations prefer

⁴ Eddy Lee, *supra* note 1 at 495. See also Olney, William W., A race to the bottom? Employment protection and foreign direct investment, 91(2) *Journal of International Economics* (2013) 191. See also Berg, J.; Cazes, S. Policymaking Gone Awry: The Labour Market Regulations of the Doing Business Indicators, 29(4) *Comparative Labour Law & Policy Journal* (2008) 349–382.

⁵ Michel Chossudovsky, *The Globalisation of Poverty: Impact of IMF and World Bank Reforms* (Zed Books, London, 1997) 77.

⁶ Robert G. Blanton, Shannon L. Blanton and Dursun Peksen, International Financial Institutions and Labour Rights: Rhetoric versus Reality. 24(1) *International Union Rights*, World Bank & IMF (2017) 6.

⁷ *Ibid.*

⁸ Georg Caspary and Susanne Berghaus, The Changing Nature of Foreign Direct Investment in Developing Countries: Evidence and Implications, 5 *Journal of World Investment & Trade* 683 (2004) 692.

to establish production facilities in countries with lower wage rates, lower labour standards and fewer labour rights.⁹ This means that developing countries are required to compete for global capital ‘runaway shop’ in the form of FDI by creating favourable legal environment that involves reform of old labour laws that constrain employers labour market flexibilities.¹⁰

The presence of economic globalization is also long felt in Ethiopia, which championed liberalization in trade and investment by promoting and attracting FDI to invest in industrial development zones with economic and non-economic incentives. More specifically, Ethiopia underwent a series of labour law reforms that culminated in the enactment of a new labour law in 2019. In view of this national trend, the paper attempts to examine the extent to which the imperatives of global labour conditionalities have made inroads in to the domestic labour law and policy regimes. In order to address this main research question, a doctrinal legal research method is employed to analyze data that has been collected from relevant sources such as books, peer-reviewed journal articles, World Bank documents and legal and policy documents regulating the labour market in Ethiopia. The data collected from both literature and legal sources were analyzed to show how the dictates of globalization such as the influence of the World Bank and IMF loan conditionalities that force developing countries to ensure flexibility of national labour law in certain areas of labour market regulation. The article then systematically identifies and highlights major substantive areas of labour law that is required to undergo

⁹ Mogab, J., Kishan, R., & Vacaflores, D.E., Labor Market Rigidity and Foreign Direct Investment: The Case of Europe. 13(1) *Applied Econometrics and International Development* (2013) 36.

¹⁰ Christine Breining-Kaufmann (2007) *Globalisation and Labour Rights: The Conflict between Core Labour Rights and International Economic Law*. (USA: Hart Publishing) 9.

reformulation through repeal or amendments within the national labour law and policy regulatory space.

It should be noted however from the outset that the argument advanced in this paper is not about assessing whether globalization has negative or positive effect on domestic regulatory space. Rather, the main purpose is to investigate the extent to which the labour law reforms in Ethiopia were influenced by the ‘dictates’ of the forces of economic globalization, while focusing on selected labour flexibilization conditionalities.

2. Imperatives of Economic Globalization: Labour Market Conditionalities

The purpose of this section is twofold. First, it tries to highlight the influence of economic globalization on labour and industrial relations in general. Second, it further identifies and discusses specific imperatives whereby economic globalization exerts its pressure on domestic labour regulatory space in the form of labour conditionalities. In this paper, the term ‘labour conditionalities’ refers to conditions of economic globalization that require liberalization or ‘flexibilization’ in the country’s domestic labour market regulation that have direct or indirect effects on contents and implementation of the state’s labour law and policy.¹¹

2.1. The Influence of Economic Globalization on Domestic Regulatory Space

Economic globalization which refers to the increasing integration of a country into the world markets for goods, capital, and labour pushes all countries towards economic liberalism based on the interests of a free

¹¹ See Teri L. Caraway, Stephanie J. Rickard and Mark S. Anner, International Negotiations and Domestic Politics: The Case of IMF Labor Market Conditionality. 66(1) *International Organization* (2012) 28.

market and minimal government interference, namely deregulation.¹² Domestically, such increasing exposure to international markets manifests in various ways: (1) rising volumes of exported and imported goods and services calling for trade liberalization across states borders; (2) an increasing mobility of labour, skilled and unskilled, across countries; and (3) the growing outflows of domestic savings into foreign investment in the form of FDI. Thus, the turning of the national economy into a globalized economy has an effect on governments' choice of set of feasible policies. The basic thought is that as countries go global, its economic development becomes increasingly determined by external economic drivers, and less and less by internal domestic policy choices.¹³ The main reason behind this state of affairs is that the development prospect of domestic economy increasingly depends mainly on international trade, FDI and international financial assistance from the International Financial Institutions (IFIs) such as the World Bank and IMF to mention the leading ones.¹⁴ These globalization actors directly or indirectly "force" countries to adopt measures that ensure structural adjustments of domestic economy explained in terms of economic competitiveness, market deregulation (that also includes labour market), and privatization of previously owned State enterprises.¹⁵ In more specific terms, one of the pressures from the driving actors of globalization that impacts a country's domestic regulatory and policy spaces is the

¹² Haroon Bhorat and Paul Lundall, *Employment and labour Market Effects of globalization: Selected Issues for Policy management*. Employment Strategic papers (University of Cape Town, 2004) 2. Available at http://ilo.org/wcmsp5/groups/public/---ed_emp/---emp_elm/documents/publication/wcms_114330.pdf.

¹³ *Ibid.*

¹⁴ See Teri L Caraway et al, *supra* note 11.

¹⁵ How IMF and World Bank Policies Undermine Labor Power and Rights' *Multinational Monitor* 22 (9): 7-13.

imperative of labour market deregulation.¹⁶ Hence employees and their trade unions are under enormous pressure from the pushes of labour law reform agenda often captured in the word ‘*flexibilization*’—referring to an expression for expanding employers’ power at the opportunity cost of reducing employees’ power.¹⁷ National governments will as a result lose significant discretionary decision-making power and influence over labour market regulatory spaces, which are normally considered as domestic matters.

2.2. Influence of Globalization on National Labour Law: a General Overview

In a globalised world, states are no longer in a position to zealously guard and protect employees’ rights and benefits through legislated standards and through collective bargaining under their domestic labour laws if over bargained by the deriving actors and forces of economic globalization. As indicated earlier, developing countries have accepted that in the world-wide competition for employment generation and investment, rewards will flow to countries whose labour law and policies can be described as ‘business friendly’.¹⁸ Thus globalization has changed the effect of the labour law regulatory space by placing groups of workers in different jurisdictions in competition with each other.¹⁹ Multinational corporations now can chose between investing their capital in their own countries using local workers and local suppliers and shifting production off-shore to foreign workers and

¹⁶ Antonia Ramos Yuste, David Foden, and Laurent Vogel, *Globalisation, Deregulation and Employment: A Contribution to the Debate*. Available at: <https://library.fes.de/pdf-files/gurn/00334.pdf>

¹⁷ Rajeev, M *Globalisation and labour market flexibility: a study of contractual employment in India*, 8(2) *International Journal of Development Issues* (2009) 168.

¹⁸ Lance A. Compa, *supra* note 2 at 7.

¹⁹ See Harry Arthurs, *Reinventing Labor Law for the Global Economy: The Benjamin Aaron Lecture*, 22 *Berkeley Journal of Employment & Labour Law* (2001) 282.

subsidiaries after evaluating the impact of labour laws on their investment return—in search of cheap labour and lower labour standards to cut labour costs.²⁰

The impacts of globalization on national labour law could be viewed from two vantage points. First, employees across the globe are effectively forced to compete for jobs as they are required to underbid their rivals in other countries by promising not only to be more productive, but also to work harder and more cheaply and to be less assertive about their labour rights.²¹ Such state of global condition put employees and their trade unions under pressure by diminishing their capacity to bargain for the protection of their rights and benefits under the existing national labour law.²² Second, the imperatives of globalization are likely to undermine national efforts of governments to put in place appropriate labour regulations for fear of turning FDI away. In this regard, the regulatory capacity of states in enforcing their domestic labour law may be diminished in two ways. First, global pressures may prevent countries to enforce national labour legislation that introduces, or raises, labour standards.²³ This situation makes national labour law enforcement impractical as it leaves non-compliance by the employers' unaccountable. Second, governments are required to undergo labour market deregulation by reforming national labour standards that are considered by investor employers and actors of globalization such as the World Bank and IMF as rigid labour law.²⁴ This situation again impacts the already extant national labour standards

²⁰ Katherine Van Wezel Stone, *Labor and the Global Economy: Four Approaches to Transnational Labor Regulation*, 16 *Michigan Journal of International Law* (1995) 990.

²¹ *Ibid* at 992.

²² *Ibid*.

²³ Ann Harrison and Jason Scorse, *The Impact of Globalization on Compliance with Labor Standards: A Plant-Level Study* (2003) 2.

²⁴ Robert G. Blanton *et al*, *supra* note 6 at 325.

in favour of employers by encouraging companies to lower labour costs and increase labour market flexibility while undermining labour conditions and the power of trade unions under the new labour law. In general, the impacts of globalization have shifted much industrial labour relations beyond the reach of national law further weakening the political legitimacy and practical effect of national labour law in favour of transnational economic realities.

3. Effects of Global Labour Conditionalities on National Labour Standards

3.1. International Financial Institutions' Labour Conditionalities: WB and IMF

As noted before, in addition to the inevitable impact of economic globalization on domestic labour law driven solely by states action to attract FDI through the promise of cheap and low labour standards, there are labour conditionalities that should be met by the developing countries to access loan from the IFIs such as the World Bank and IMF.²⁵ These labour conditionalities are conditions set by the IFIs through the auspices of structural adjustment programs that trigger or stipulate domestic labour market reform to influence domestic law and policy formulation process. Labour rights advocates have long been critical of neoliberal policy prescriptions to loans by IFIs, claiming that they harm the interests of workers because of their intrusive nature influencing domestic labour and policy space.²⁶ In this regard, there are empirical studies conducted on how IMF and World Bank interventions affect domestic policies, and can alter the balance of power between labour and capital. The finding of these studies show

²⁵ See Axel Dreher, IMF and Economic Growth: The Effects of Programs, Loans, and Compliance with Conditionality, 34 *World Development* (2006) 769.

²⁶ Robert G. Blanton *et al*, *supra* note 6 at 326. See also Randall W. Stone, The Scope of IMF Conditionality, 62(4) *International Organization* (2008) 598.

how the IMF and the World Bank programs that set labour conditionalities to access loans forced recipient countries to fulfill such conditions by reforming their domestic labour laws in a way that negatively affects the right of workers.²⁷ For instance, studies show that the adoption of IFI programs creates a political environment conducive to the weakening of labour rights, as they signal an endorsement of neoliberal economic norms and a weakening in the power of organized labour relative to corporate interests.²⁸ Similarly Burgess revealed how ‘enhancing labour flexibility—the ability of firms to alter work schedules and displace workers more quickly—is widely supported and recommended by IFIs.²⁹ Boyle and Kim also noted that the contrasting norms associated with IFIs reflect a fundamental tension that has existed throughout the history of the IMF and the World Bank.³⁰ This situation created the struggle between global norms and laws that call for greater respect for socioeconomic rights and neoliberal ideologies that embrace market-based policies and principles.³¹

Studies found out how WB and IMF conditionalities can have a profound impact on countries labour law and policy spaces and illustrate how economic practices—and the norms that they embody—diffuse globally affecting protective national labour laws.³² As a result,

²⁷ Robert G. Blanton *et al*, *supra* note 6 at 326.

²⁸ Noel Gaston, The Effects of Globalisation on Unions and the Nature of Collective Bargaining, 17(2) *Journal of Economic Integration* (2002)380.

²⁹ Burgess, Katrina, Global Pressures, National Policies and Labor Rights in Latin America. 45 (2) *Studies in Comparative International Development* (2010) 214-215.

³⁰ Elizabeth H Boyle & Minzee Kim, International Human Rights Law, Global Economic Reforms, and Child Survival and Development Rights Outcomes. 43 (3) *Law & Society Review* (2009) 462.

³¹ Justina A.V. Fischer, The choice of domestic policies in a globalized economy, *Working Paper No 2012/09*, (World Trade Institute, University of Bern: 2012) 18.

³² Robert G. Blanton, Shannon Lindsey Blanton and Dursun Peksen, The Impact of IMF and World Bank Programs on Labor Rights, 68(2) *Political Research Quarterly* (2015) 325.

the intrusive nature of IFI policy prescriptions that require national labour law and policy formulation process as well as the extent to which IFIs are perceived as embodying the neoliberal norms associated with the ‘Washington Consensus’, have made them a ‘ubiquitous target for protests within the global south’.³³

3.2. Substances of Labour Conditionalities

Labour conditionalities that should be taken in to account by countries in the reformulation of national labour law and policy are advanced as global imperatives to ensure global competitiveness of multinational corporations.³⁴ Engrossed in this concept is the need to create ‘investor-friendly’ business climate through labour law flexibilization which according to these global investors is essential to be competitive in the international markets.³⁵ With the help of IFIs, investors negotiate with countries to discard what is often called rigid labour law for want of ‘flexibilization’ of domestic labour regulation. Specifically, foreign investors and IFIs (mainly IMF and the WB) advance the argument that rigid labour regulation has negative implications for productivity and competitiveness.³⁶

Furthermore, the need for labour market flexibilization is presented as a viable policy option by these IFIs who often attempt to persuade developing countries with the argument that ‘productivity growth tends to be slower in economies with a high level of labour protection as overregulation discourages the creation of jobs and prevents workers

³³ *Ibid* at 327.

³⁴ Freyens, B, Measuring firing costs: The case for direct methods. 149(3) *International Labour Review* (2010) 290.

³⁵ Enderwick, P., Multinational corporate restructuring and international competitiveness, 32 *California Management Review* (1989) 44.

³⁶ Robert G. Blanton, Shannon L. Blanton & Dursun Peksen, International Financial Institutions and Labour Rights: Rhetoric versus Reality, 24(1) *International Union Rights* (2017) 7.

from shifting from low to high productivity jobs'.³⁷ As such developing countries are advised to deregulate labour market since employment protection impacts market entry and exit costs and the costs associated with workforce adjustments, as a consequence affecting the decisions of investors on entering and leaving markets.³⁸ National labour markets must therefore have the flexibility to shift workers from one economic activity to another rapidly and at low cost, and to allow wage fluctuations without much social disruption.³⁹ The efficiency and flexibility of the labour market are critical for ensuring that workers are allocated to their most effective use in the economy and provided with incentives to give their best effort in their jobs.⁴⁰ Thus the main focus despite widely held debates across countries is on finding a delicate balance between labour market efficiency through labour flexibilization and an adequate protection of workers.⁴¹

More importantly, the substances of labour conditionalities expressed in terms of labour flexibilization are reflected in the laws and policy frameworks that regulate: employee and employer relationships, wage determination flexibility, hiring and firing practices and redundancy costs to mention few. The substances of these labour conditionalities are taken as criteria to evaluate the extent to which national labour laws

³⁷ Martin, W. & Maskus, K., Core labor standards and competitiveness: Implications for global trade policy. 9(2) *Review of International Economics* (2001) 328.

³⁸ Javorcik, B Spatareanu, M, Do foreign investors care about labor market regulations? 141(3) *Review of World Economics* (2005) 375-403. See also S Scarpetta, Setting It Right: Employment Protection, Labour Reallocation and Productivity, *IZA Policy Paper No. 27*. (2011) 16-17.

³⁹ Di Tella R & MacCulloch R, The consequences of labour market flexibility: Panel evidence based on survey data, 49 *European Economic Review* (2005) 1225-1259.

⁴⁰ Mariya Aleksynska & Sandrine Cazes, Comparing indicators of labour market regulations across databases: A post scriptum to the employing workers debate, *Conditions of Work and Employment Series No. 50* (ILO) (2014) 4.

⁴¹ Per K Madsen, Flexicurity: A New Perspective on Labour Markets and Welfare States in Europe, 14 *Tilburg Law Review* (2007) 59.

are transforming from rigid to flexible that is used to rank countries for ease of doing business.⁴²

Until 2012, the World Bank addressed labour flexibility as one issues of annual *‘Doing Business’* report that offers a global assessment of labour regulation by ranking countries. In the same way the Employment Flexibility Index uses indicators covering three stages of employment: hiring, working hours, and firing redundancy rules which are measured to reflect flexibility of labour regulation.⁴³ The World Bank data on hiring indicators reflect the regulation of fixed-term contracts and the length of the maximum probationary period for permanent employees. The ability to use temporary work contracts increases labor market flexibility as it allows the employers to adjust their operations more effectively by replacing temporarily absent employees or filling seasonal work positions by temporary employees, meeting business-cycle fluctuations and short spikes in demand.⁴⁴ The World Bank also emphasizes that permitting fixed-term contracts for tasks of permanent nature ensures greater flexibility in meeting the demand for seasonal labor, temporarily replacing regular employees.⁴⁵ The length of the maximum probationary period indicator is reflected in the typical labour regulation provisions that grant a period of exemption at the beginning of employment. Such probationary periods may serve the interest of the employer since the longer the probationary period, the

⁴² Employment Flexibility Index 2019: *EU and OECD Countries* (Lithuanian Free Market Institute, 2018) at 3.

⁴³ *Ibid* at 4.

⁴⁴ OECD: ‘OECD Employment Outlook’. (OECD Publishing: Paris, 2002).

⁴⁵ The World Bank: ‘Doing Business 2017’. See also World Bank: World Development report 2019: the Changing Nature of Work’ which also advocates for ‘increased flexibility on labour market to adapt more easily to the rapid changes on labour market’.

greater the propensity of firms to hire and experiment with new workers and activities, which increases *hiring flexibility*.⁴⁶

The *working hours* indicators reflect the maximum number of working days per week; premiums for night work, overtime work or work on a weekly rest day as well as restrictions on such working time and the duration of paid annual leave for workers with different employment duration.⁴⁷ These three indicators define how easy it is to adjust or increase the number of hours employees work without incurring extra costs to employers.⁴⁸ Flexible working time, rest time and paid leave arrangements and regulations allow employers to promptly respond to labor market fluctuations, to efficiently manage short-term business fluctuations, thus improving the overall efficiency of business by increasing working hours of existing employees without hiring additional personnel.⁴⁹

The *redundancy rules* indicators reflect the basis for the termination of an employment contract which among others include obligations to notify (a third party in order to terminate a single redundant worker (or a group of workers); the obligation to reassign or to retrain a redundant worker and priority rules in cases of redundancies and reemployment. When estimating redundancy costs, the World Bank takes into account the average costs of notice periods and severance pay for workers with a year, five years and ten years of tenure.⁵⁰ The following table shows the substances of labour conditionalities as global policy prescriptions with resultant implications on national labour law and policy regulatory space.

⁴⁶ See Pries, M. Rogerson, R., Hiring Policies, Labor Market Institutions, and Labor Market Flows, 113 *Journal of Political Economy* (2015) 811.

⁴⁷ Employment Flexibility Index 2019, *supra note* 42 at 5.

⁴⁸ *Ibid.*

⁴⁹ *Ibid.*

⁵⁰ *Ibid.*

The below table shows indicators of Employment Flexibility Index covering labour conditionalities and their implications on National labour law.

Source: World Bank: 2017.

No.	Labour Conditionalities	Imperatives	Implications
1	Flexibility of wage determination	Calls for the need for wage fluctuation (preferably set by the employer)	Pressure on national labour and policy space not to set national minimum wage
2	Hiring and firing Practices	Calls to be flexibly determined by the employer	Impacts how country's formulate employment contract and probation period: temporary and permanent terms of employment contracts
3	Work hours	Calls for more work hours including rest and public holidays	Impacts the national labour regulation on weekly or monthly working hours flexibilities
4	Redundancy Rules	Calls for flexibility of advance notice requirements; severance payments; penalties for unlawful terminations	Impacts how countries formulate the requirements of notice; severance payments and penalties for 'unlawful' termination of employees

In general, in view of the influence of the World Bank 'Doing Business Report' rankings on the promotion of FDI, the imperatives of these labour market conditionalities inevitably find their place in the national labour law and policy reform of various countries. With those indicators globalization of labour law flexibilization in mind, the following section examines how the new labour proclamation, when compared to the old labour law, adapts itself to the influence of labour conditionalities.

4. Regulatory Implications for Ethiopian Labour Law and Policy Spaces

4.1. *Economic Liberalization and Industrial Labour Relations Law in Ethiopia*

The economic liberalization measures undertaken by the Ethiopian government since 1991 have encouraged investment that resulted in the expansion of industries capable of generating jobs.⁵¹ The recent proliferations of industrial development zones in various parts of the country are the clear national policy manifestations of economic liberalization that opens Ethiopian markets to foreign direct investments. In order to address the problems of labour market fluctuations, the national employment policy calls for the heightened role of the private sector in the labour market regulation through the provisions of labour services by employment agencies.⁵²

The industrial relations law in Ethiopia primarily emanates from the FDRE Constitution which among other things, grants rights to 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.⁵³ The employment relationships in the private sector were also regulated by proclamation 377/2003 until its replacement by the new labour proclamation No.1156/2019. The federal government recently amended replaced the old labour law with a new one in order to respond to the changing economic needs of the country and demands from employers and employees for labour market

⁵¹ See Getachew Minas & Yared Berhe The Impact of Ethiopian Labor Laws on Business Efficiency and Competitiveness, Addis Ababa Chamber of Commerce and Sectoral Associations (2011).

⁵² FDRE: The National Employment Policy and Strategy (2009) 37.

⁵³ Federal Democratic Republic of Ethiopia Constitution, Proclamation No.1, 1995. Art. 42.

flexibility and security, respectively. Accordingly, the new labour law highlights ‘the need to create favorable environment for investment and achievement of national economic goals without sacrificing fundamental work place rights.’⁵⁴ The new labour law reiterates the ‘need to create sustainable productivity and competitiveness through cooperative engagement.’⁵⁵

It should be noted that while it is difficult to find the IMF and World Bank programs that impose labour conditionalities as a condition to access its loans to Ethiopia, the presence of the later is largely felt through the finance of job creation and competitions projects in the contexts of industrial parks.⁵⁶ Such World Bank dictates of financing job creation and competitiveness projects can also be inferred from investment and industrial parks proclamation that is designed to regulate FDIs.

4.2. Labour Flexibilization Indicators under Ethiopian Labour Law

This section examines the provisions of both old and new Ethiopian labour Proclamations within the World Banks Employment Flexibility indicators by comparing the new and old labour laws focusing on hiring and firing rules, flexible wage determination rules, working hour rules and redundancy rules.

4.2.1. Hiring and Firing Rules

Whether Ethiopian labour law opted for flexible hiring regulation should be seen in light of the labour law provisions that regulate

⁵⁴ Labour proclamation No. 1156/2019, at preamble.

⁵⁵ *Ibid.*

⁵⁶ World Bank: Competitiveness and Job Creation Project in Ethiopia: Feasibility Studies for Industrial Zones (2013). Available at: <https://www.devex.com/projects/tenders/feasibilitystudiesforindustrialzones/134229>.

employment contracts and the length of the maximum probationary period for permanent employees. According to both the old and the new labour laws, a labour contract can be made for a definite or indefinite period or for a specific task.⁵⁷ The flexibilization of labour contracts in the industrial Parks is also addressed in such a way that 'labour contract may be negotiated between the employer and employee taking into account the Industrial Park's peculiar feature'.⁵⁸ A labour contract is presumed to be for an indefinite period unless specific conditions are met. It is therefore possible for employers to repeatedly recruit employees for a limited duration thereby avoiding the application of the higher protection standards provided to workers recruited with contracts for an indefinite period. Hence, under both the old and the new labour law regimes, employers can easily recruit on a temporary basis based on the generic list of situations in which employment for a limited period is admitted.

Similarly, the length of probation period which was 45 days under the old labour law is increased to 60 days under the new labour law.⁵⁹ Though this new probation period is up to the expectation of employers, such longer exemption period when compared to the previous one provides greater propensity for employers to hire and experiment with new workers and activities thereby increasing *hiring flexibility*. Therefore, the legal possibility of termination by mutual agreement; negotiated labour contracts and longer probation period (60 working days) could be manifestations of hiring flexibilization.

⁵⁷ Common arts 9 & 10 of Labour proclamation No. 1156/2019 and Labour proclamation No. 377/2003.

⁵⁸ Industrial Parks Pro. No 886/2015: Art. 28(2).

⁵⁹ Common arts 11(3) of Labour proclamation No. 1156/2019 and Labour Proclamation No. 377/2003.

4.2.2. Flexible Wage Determination Rules

One of the labour conditionalities on which IFIs attempt to convince developing countries is the adverse outcome of having a minimum wage law in national labour law regulatory space. It is argued that minimum wage regulation may create higher labour costs that make it difficult for young people, low-skilled workers and inexperienced individuals to enter the labour market.⁶⁰ According to the World Bank, a high minimum wage to average wage ratio discourages companies from hiring young people and women returning from maternity leave.⁶¹ Hence as indicated earlier, the World Bank labour regulation package for mandated wage reduction, minimum wage reductions or containment may find its influence as a labour conditionality to access IMF loan grant. So, countries fear to introduce minimum wage law because of such chilling effect on the business environment as it may discourage FDI.

In Ethiopia there is no minimum wage law in the private sector both under the old and the new labour laws. Under the new labour law, wage is defined as ‘the regular payment to which a worker is entitled in return for the performance of the work that he performs under a contract of employment’.⁶² Though Chapter one of Part III of the new Labour Law is titled ‘wage determination’, article 55 (2) of the same law postpones the determination of minimum wage law by the regulations of the Council of Ministers that gives powers and responsibilities to the Wage Board to be constituted of government, trade unions and other stakeholders’ representatives. The new law dictates that the Wage Board to be established by a regulation in the future will periodically

⁶⁰ Employment Flexibility Index 2019: *EU and OECD Countries* (Lithuanian Free Market Institute, 2018) at p.5.

⁶¹ G Lordan and D Neumark, *People versus machines: the impact of minimum wages on automatable jobs* (2017). Available at: <http://www.nber.org/papers/w23667>.

⁶² Labour Proclamation No 1156/2019, art. 53.

revise minimum wages based on studies which take in to account the country's economic development, labour market and other considerations. The legislator skillfully skipped the long overdue cry for the introduction of national minimum wage law in the private sector leaving the matter to be determined in the future. Consequently, one can argue that the determination of the amount of wages is left for the employer as the government opts for the containment of national minimum wage law once again.

4.2.3. *Working Hours Rule*

As noted before, flexible working hours provides an opportunity for employers to overcome labour market fluctuations as it provides the opportunity not to hire additional personnel. Accordingly, the new labour law has maintained the maximum working hours rules from the old law, as it requires employees to work only a maximum of 8 hours a day and 48 hours per week. So the maximum number of working days per week could be six days which could be distributed even over the weeks as the case may be. One of the slight changes made to the working hours rule is the increment of overtime work hours from 2 hours per day under the old labour law to 4 hours per day or maximum of 12 hours per week under the new labour law.⁶³ Thus the restriction on overtime work of an individual worker due to an urgent work for 2 hours a day or 20 hours a month or 100 hours a year is removed. There is no limitation on overtime work be it during weekly rest days or overnight times as long as the legally required overtime payment is settled.⁶⁴ So the length of overtime work hours could provide employers with the opportunity to respond to workplace eventualities

⁶³ *Ibid.*, Art. 66.

⁶⁴ *Ibid.*, Art. 68.

including the undertaking of urgent works which is for instance the case in Ethiopian industrial parks.⁶⁵

4.2.4. Redundancy Rules and Costs

Flexibility of redundancy rule allows companies to meet their operational needs by adjusting to changing economic conditions and technological developments and managing human resources accordingly. Hence, the World Bank redundancy rule is reflected by the flexibility of the employers to terminate employees without restrictions under the law. Such flexibilization among others relates to dismissal of redundant worker, notification requirements of dismissal and the flexibility to retain or reassign redundant workers without suffering additional redundancy costs which refers to termination costs, including the costs of notice periods and severance pay calculated in weeks of salary.

Under both the old and the new labour law, lawful dismissal requires a notice period of between one to three months, depending on the number of years of service of the employee.⁶⁶ If the lawful cause for contract termination is the cessation of enterprise operations or labour force reduction, the notice period is of two months.⁶⁷ The new law also maintained the requirements of notice period for the lawful dismissal of a worker with definite period of employment contract further maintain flexibility of fixed term contracts as negotiated terms rather than as the requirements of the labour law.⁶⁸ Similarly, if contract of employment

⁶⁵ Jetu Edosa Chewaka, Protection of Core Labour Rights in Ethiopian Industrial Development Zones: The Case of Eastern Industrial Zone, in Getachew Assefa & Muradu Abdo (Eds), *Economic, Social and Cultural Rights in Ethiopia* (2016) 127.

⁶⁶ Labour proclamation No. 377/2003, Art. 35(1) & Labour proclamation No 1156/2019, Art. 35.

⁶⁷ Labour proclamation No. 377/2003, art 35(1)(d) & Labour proclamation No 1156/2019, art.35 (1)d).

⁶⁸ *Ibid.*, common arts 35(3).

is terminated due to unlawful dismissal, permanent cessation of enterprise operations or labour force reduction, misconduct of the employer or disability, the employee is entitled to receive severance payments.⁶⁹ The amount of severance payment ranges between 30 days of salary for a year of service, increased by one-third per additional year of service, until a maximum of 12 months of salary.⁷⁰ If contract termination is due to the cessation of enterprise operations or labour force reduction, 2 additional months of salary are added to the said amount of severance payment.⁷¹ Non compliance with dismissal rules makes contract termination unlawful. Finally, a reduction of the labour force of at least 5 units makes it mandatory for the employer to consult trade unions or workers' representatives.⁷²

Generally, despite the requirements of redundancy rules and costs associated with it, data from a survey on the investment climate conducted by the World Bank in 2002 confirms that only 5 per cent of surveyed firms considered that labour legislation is an obstacle to doing business.⁷³

⁶⁹ Labour proclamation No. 377/2003 Art, 39(1) & Labour proclamation No 1156/2019, art, 39(1).

⁷⁰ Labour proclamation No. 377/2003 Art, 40 & Labour proclamation No 1156/2019, art, 40.

⁷¹ Labour proclamation No. 377/2003, Art 40(3). Labour proclamation No. 1156/2019, art, 40(4).

⁷² Labour proclamation No. 377/2003, 29(3) and Labour proclamation No. 1156/2019, art, 40(4).29(3).

⁷³ Maria Sabrina De Gobbi (2006), Labour market flexibility and employment and income security in Ethiopia: Alternative considerations. *Employment Strategy Papers*, International Labour Office, p. 30.

5. Concluding Remarks

This paper highlighted the major influence of economic globalization on labour and industrial relations in general and identified and discussed the effects of specific imperatives of economic globalization on domestic labour regulatory space in the form of labour conditionalities in particular. Like any other developing country, economic globalization in Ethiopia manifests itself in terms of free market system that champions FDI and international trade through various structural reforms.

Particularly, the availability of cheap labour in Ethiopia became one of the economic factors that attract foreign investors into industrial development zones hosting large number of workers from all over the country. Owing to the driving forces of economic globalization, Ethiopia underwent labour law reform that culminated in the enactment of a revised labour law in 2019. Though the enactment of the new labour law is long overdue, it attempts to overhaul the older labour law except in some specific areas that are of high interest to employees and employers.

This paper examined the effects of the imperatives of labour flexibilization conditionalities on Ethiopian labour regulatory space. Accordingly, the desire of the government to attract FDI by creating ‘favorable environment for investment and achievement of national economic goals without sacrificing fundamental work place rights’ is at the centre of the national policy objectives for the new labour law reform. Hence, the global imperatives that multinational corporations ‘race to the bottom’ in search of ‘business friendly environment’ has already found its normative basis in Ethiopian labour law regulatory space. So, one can argue that such considerations of global policy prescriptions in the current wave of labour law reform in Ethiopia

could be manifestations of the effects of the implications of economic globalization.

The paper further reviewed how loan conditionalities of IFIs create pressure on developing countries to limit their capacity to regulate labour within their jurisdiction. Particularly, the conditionalities of domestic labour market flexibilization as string attached to access to loan by developing countries are used for prescribing labour regulatory models by IFIs such as the IMF.

The World Bank's global labour regulation indicators to rank countries for ease of doing business could be one of such global imperatives. Based on such global imperatives the paper examined how the World Bank's employment flexibility indicators on hiring and firing rules, flexible wage determination rules, working hour rules and redundancy rules influenced the reform of labour law in Ethiopia. With regard to flexible wage determination, the appraisal of the new labour law clearly indicates the determination of the amount of wages is left for the employer as the government opted for the containment of national minimum wage law once again.

The legislator skillfully skipped the long overdue cry for the introduction of national minimum wage law in the private sector leaving the matter to be determined in the future. With regard to flexibility of hiring and firing rules, the new labour law preserved the same rules of the old labour law expressed in terms of the legal possibility of entering in to employment contracts for definite period of time through the negotiation of employees and employers. But, increase of overtime working hours and the removal of limitations on the overtime working hours for urgent works reveal trends of working hour flexibilization.

Labour Rights in Industrial Parks: Lessons for Ethiopia

Mehari Redae (PhD)*

Abstract

It is well known that Ethiopia's Growth and Transformation Plan (GTP) and economic development strategy claims to aspire for fast, sustainable and inclusive development. With this purpose in view, it, among other things, embarked upon massive industrialization process by establishing the so called "Industrial Parks".

Terms such as 'Export Processing Zones'; 'Free Zones'; 'Special Economic Zones' and 'Industrial Parks' refer to basically the same concept with slightly different objectives. They have become the most common instruments of industrial promotion policy in developing countries. Many developing countries see export promotion as an important policy instrument for economic growth. It is mainly for export enhancement that these locations have been established. Overall, their record, on the economic front, has been positive.

Other than economic growth, such enclaves have been entrusted with the responsibility of generating massive employment as well. Since, the industries operating therein have been mainly labour intensive manufacturing facilities; their mission of employment generating exercise has also been predominantly attained.

However, economic growth and employment generation, though necessary are not sufficient by themselves. In addition to these, how growth has been shared together with quality and sustainability of such employment are equally and crucially important. Leaving aside the issue of benefit sharing to other studies, in the quality of employment front, there are concerns that in such locations labour standards tend to be eroded and high turnover of labour have been registered, which militate against quality and sustainability of employment.

Employment devoid of dignity and decency is bound to cultivate demotivated (if not ill motivated) labour force that will possess a mindset of "they pretend to pay us we pretend to work." It is difficult to accomplish fast, sustainable and inclusive economic development with a labour force having such an adverse mental disposition. In fact, for the benefit of sustainability, wealth which is generated through economic growth needs

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to be equitably shared. Hence both sides of the equation (i.e. economic growth and labour protection) need to be regularly checked and monitored.

This paper will try to assess how other jurisdictions managed to regulate the issue of labour at the so called “Industrial Parks” and the challenge they encountered so that Ethiopia can learn and unlearn from their experiences.

1. Introduction

Ethiopia is one of the most populous countries in Africa. In terms of population size, with a population of more than 100,000,000 (one hundred million) it stands second in Africa, after Nigeria. Substantial majority of its people depend on agriculture and agriculture related activities. As a reflection of this, its export base has also been non-diversified and mainly primary and few agricultural products. It suffers from low industrial development and huge youth unemployment. It is thus one of the least developing countries. The Ethiopian government, however, aspires to attain a middle-income level economy in the near future.

Optimistically, in the last decade and half it is asserted that the country has registered a double-digit economic growth annually. Such assertion has been substantially verified by independent and international actors in the field of economics. Nevertheless, with a view to making the economic growth faster, sustainable and inclusive, there is a need to regularly revisit whether the economy has brought measurable gain to all economic actors.

In order to transform the economy towards industrialization and diversify the exportable products, the country has shown keen interest in establishing “industrial parks”. Recently, the government has established and inaugurated three industrial parks in Hawassa, Kombolcha and Mekelle at the cost of USD 246 million, 90 million, and 100 million respectively.¹ In fact, earlier than these, an industrial zone has been established and operating in Bole/Lemmi industrial area,

¹ Desta and Berhe (2017) *Manufacturing of Eco-friendly Textiles: A case Analysis of an Industrial park in Mekelle, Ethiopia* (available at: <http://www.aigaforum.com/article/2017/Mekelle-Industrial-park.htm> (visited on 10 October 2017).

around Addis Abeba. It is hoped that industrial parks will attract and retain foreign direct investment; industrialize the economy; increase foreign exchange earnings and generate meaningful employment. If successful, such outcomes will significantly assist in attaining the developmental aspiration of the Government.

Terms such as export processing zones²; free zones; special economic zones and industrial parks refer to same concept with variation in policy prescriptions but substantially similar objectives. They have become the most common instruments of industrial promotion policy in developing countries.

Until the 1980s the economic development paradigm of many developing countries had tilted towards the so called “import substitution”. Import substitution, whereby a nation manufactures locally those commodities that were formerly imported from overseas, proved to be protectionist by shielding inefficiency and hence incompatible, among other things, with the current global economic order. Particularly donor and lending institutions such as the International Monetary Fund and World Bank on whose handouts developing countries heavily rely on, made economic liberalization in general and trade liberalization in particular a pre-condition to obtain grant and/or loans therefrom. The World Trade Organization has had similar mind set as well from the perspective of trade liberalization.

As a result, many developing countries in Africa shifted towards the so called “export oriented” policy promotion as an important instrument for economic growth. Success in export oriented mode depends on being able to compete at export market. Competitiveness at export market, for its part, demands bulk production, quality product, cheaper price, secured international market linkage and timely delivery. However, these requirements demand modern technology; modern management technique and networking in international markets which are non-available or scarce in the context of African countries.

² For the benefit of consistency with Ethiopia’s designation of the location, this piece will utilize the phrase “Industrial Park”.

They thus should find these attributes from elsewhere if they are to succeed in international competition. The way out seemed to invite or attract foreign direct investment which mostly are endowed with these attributes. Nevertheless, mere call or invitation may not succeed in bringing in foreign direct investment unless the call is associated with incentives. Therefore, it is mainly with this purpose in view that these preferentially treated locations have been established.

In this piece, the existing literature on industrial parks with particular reference to their labour standards and labour management experiences of other jurisdictions in these locations will be examined in order to shed light on their successes and failures stories thereby customizing the former and refraining from repeating the latter in the Ethiopian context. Moreover, the current Ethiopian situation will be examined to determine where we are in this regard.

2. Industrial Parks and labour issues: Brief literature review

More often than not, in terms of labour, industrial parks are characterized by labour intensive undertakings with high concentration of female employees. Since one of their major objectives is employment generation, their labour intensiveness is consistent with an aspect of the policy goal. However, the fact that a higher share of female employment prevails in the Parks is not a matter of coincidence or favourable recruitment policy towards female employees of parks operators. It is rather associated with an economic rational and comparative advantage of women. Female labour force is more compliant and low paid than their male counterparts.³ Of course women, as well, are more suitable for the kind of tasks in the garment and textile sector in which the parks are mainly engaged. The nimble fingers and soft nails of female employees may be natural comparative advantage for employment in sewing and cutting job positions.

³ Elson, D. and Pearson, R. "Nimble fingers make cheap workers": An analysis of women's employment in third world export manufacturing" *Feminist Review* (1981) 7:87, [https:// doi.org/10.1057/fr.1981.6](https://doi.org/10.1057/fr.1981.6)

Generally, for the enterprises operating in the Parks to be internationally competitive, cost in general, and labour cost⁴ in particular needs to be kept conservatively low. In order to attain this, their recruitment range is towards low wage, flexible and unskilled or semi-skilled labour force together with compliant behavior. These attributes are to be obtained more in female labour force than otherwise. Nevertheless, it must be underlined that irrespective of whether it is by design or default, creating opportunity of gainful employment for female workers is an important measure from the point of view of female economic empowerment and their entry into formal labour market.

With a view to paving a way to foreign investment participation in the Industrial Parks, many countries have drawn up favourable policy framework and incentive schemes. Duty free imports of capital goods, soft loans and tax holidays have been some of the most usual incentive schemes. Besides these, countries compete among each other with the purpose of attracting and retaining investment through the so called “regulatory competition” where lax laws have been offered in the area of environment and labour. Our discussion in this piece will, however, limit itself to the labour aspect.

From labour relations point of view, there are those countries which designate industrial parks as “*labour law free parks*”. In this context, “*labour law free parks*” is meant the national labour law of the country will not be applied in such zones. The rationale behind this measure is, in the event of the non-applicability of labour law, the legal vacuum in employment relations will be filled by the principle of the so called “Freedom of Contract”.

Apparently, freedom of contract involves free bargaining of the parties (i.e. employer and employee). Nevertheless, it must be noted that such a bargaining will be between economic unequals, in the sense that the employee would be the weaker party in the bargaining process. Due to this power imbalance of the parties, the employer possesses unlimited

⁴ The fact that Industrial Parks are labour intensive implies that cost of labour is one of the major (if not the most) components in their cost break down.

power in hiring and firing; determining working hours, wages and other working conditions including issues of unionization. Indeed, in few locations employers establish dormitories meant for employees' residence within the premises of the enterprises. Such practice offers labour supervisors unlimited access to the employees including in non-employment related activities. Hence such employees have been designated as *dormitory employees* where their condition has been tantamount to domestic servant status.

In other countries, though they, in principle, made their labour law applicable including in industrial parks, certain aspect of the labour law, particularly laws of unionization were made inapplicable in these locations. In such an arrangement, they try to create *labour union free parks*. The reason for denying the right to organize was that if employees are allowed to form unions, unionization will pave the way towards collective bargaining thereby enabling the labour force to share profit and power with the employer. Empowering employees was considered undesirable as it was feared that it may result in flying away of investment. According to them, flying away of investment will naturally be associated with flying away of jobs and hence non-beneficial to employees as well. Nonetheless, it was mainly for purposes of "*employer friendly approach*" that such a measure has been introduced.

Other jurisdictions go to the extent of allowing unionization and collective bargaining but they deny the employees from calling upon strikes. They attempt to justify this approach in such a way that products originating from the industrial parks are too essential to the national economy and hence the country cannot afford to interrupt their production due to strikes. Therefore, they designated them as *strike free parks*. Incidentally, it is important to note that ILO allows member states to exclude the applicability of the law of strikes in "essential services", whose interruption is dangerous to safety, life or health of the public, provided that the essential services are narrowly defined. Nevertheless, for the ILO jurisprudence, it is the product or the service and not the location where it is generated that makes it "essential".

In others again, their labour law is declared to evenhandedly applicable all over the country's territory including the Industrial Parks. In this case, as far as the legal framework is concerned, none of their territory is a labour law free zone. This is mainly to appease labour associations and civil society organizations as many of these organizations have been critical of these locations. In practice, however, labour law enforcement has been deliberately ignored or delayed by denying access to agencies such as labour inspection services to these locations.⁵

More often than not, enterprises located in the parks have been well fenced with barbed wire and well trained security guards. It is difficult (if not impossible) to gain access to company premises without being authorized by the management team from inside. As a result, these locations in effect became *labour inspection free parks*. For instance Kenya until recently had adopted this approach. Thus, due to lack of inspection, whether the enterprises operating in the parks have complied with labour standards or not will not be reliably verified.

Although the intensity and degree of manifest dissatisfaction may vary from jurisdiction to jurisdiction, with labour standards being eroded in these locations, employees began to express their dissatisfaction thereby creating labour unrest. Frequent labour unrest was associated with serious operational gaps as a result of which many producers failed to meet shipment deadlines at their export destinations. Failure to keep promise of delivery adversely affected their reliability and predictability in international markets as international market is highly sensitive to shipment deadlines.

Furthermore, civil society organizations and various media outlets managed to detect and expose the erosion and violation of labour standard in these locations and campaigned for product boycott appealing to the moral conscience of end users arguing that such products are not produced in a "socially responsible" manner. More

⁵ Adelle Blackette (2001) "Global Governance, Legal Pluralism and the Decentered State: A Labour Law critique of Codes of Corporate Conduct", *Ind. J. Global Legal Studies*, Vol. 8. P. 2.

often than not the campaign succeeded in portraying negative image on them thereby adversely affecting their market share at export markets.

The position of the ILO, in this regard, is explicit in that “where governments of host countries offer special incentives to attract investment, these incentives should not include any limitation to labour standards...”.⁶ It is thus in contravention of such an express ILO position that ILO Member States enter into “*race to the bottom*” competition to attract and retain investment at the expense of fundamental labour rights.

By realizing the adverse impact of frequent labour unrest on their profitability and credibility many park operators began to concede towards compliance with the labour standards. The negative publicity campaign against labour standard violators together with ILO’s explicit position disapproving the practice helped in shaping the enterprises’ behavior towards compliance as well. Therefore, due to alleged “internal motivation” of park operators and external pressure of public and private actors, going back to labour standard compliance becomes the feasible route in many countries across the globe.

3. Labour standards in Ethiopia: the normative aspect

Historical documents register that ILO was established in 1919 while the then League of Nations which was the predecessor of the United Nations in existence. Ethiopia has been a member of the ILO since 1923; and hence the country is one of the oldest members of the Organization. It is documented that ILO was established, among other things, to promote “Social Justice” on the one hand and to militate against “Social Unrest” and “Social Dumping” on the other hand. In fact, such a commitment has been spelt out in the Preamble of the Constitution for its establishment. The Preamble prescribes that:

Whereas conditions of labour exist involving such injustice [social injustice], hardship and privation to large numbers of people as to produce

⁶ ILO (1996) Digest of decisions and principles of the Freedom of association Committee of the Governing Body of the ILO (Geneva: ILO), para:12.

unrest so great that the peace and harmony of the world are imperiled; and an improvement of those conditions is urgently required[social unrest]; (...);

*Whereas also the failure of any nation to adopt humane conditions of labour is an obstacle in the way of other nations which desire to improve the conditions in their own countries*⁷[social dumping];

Moreover, the Philadelphia Declaration of 1944 which is considered to be an integral part of the ILO Constitution re-affirmed the fundamental principles on which the Organization is based and, in particular that:⁸

- a) labour is not a commodity;*
- b) freedom of expression and of association are essential to sustained progress;*
- c) poverty anywhere constitutes a danger to prosperity everywhere;*

It is important to note that membership of the ILO has been made conditional upon formal acceptance of the ILO Constitution together with the Philadelphia Declaration. Thus, the aforementioned principles are binding on member states and on Ethiopia as well.

Ethiopia ratified 22 ILO conventions⁹ among which the eight “Core Conventions”¹⁰ are to be found. The Constitution of the Federal Democratic Republic of Ethiopia (the FDRE Constitution) stipulates

⁷ ILO (2004) *Constitution of the International Labour Organization and standing Orders of the International Labour Conference*, p.5 (Geneva: ILO).

⁸ *Ibid*; p.23

⁹ <http://www.ilo.org/iloex/cgi-lex/ratifce.pl?ETHIOPIA>(visited on 25 August 2017).

¹⁰ The eight Core ILO conventions that are also ratified by Ethiopia are: **Freedom of Association and protection of the Right to Organize Convention**, 1948 (No.87), ratified on 04 June 1963; **Right to Organize and Collective Bargaining Convention**, 1949 (No.98), ratified on 04 June 1963; **Forced Labour Convention**, 1930(No.29), ratified on 02 September 2003; **Abolition of Forced Labour Convention**, 1957 (No. 105), ratified on 24 March 1999; **Minimum Age Convention**, 1973 (No.138), ratified on 27 May 1999; **Worst Forms of Child Labour Convention**,1999 (No.182), ratified on 02 September 2003; **Equal Remuneration Convention**, 1951 (No.100), ratified on 24 March 1999; and **Discrimination (Employment and Occupation) Convention**, 1958 (No.111), ratified on 11 June 1966.

that “all international agreements ratified by Ethiopia are integral parts of the law of the land [Ethiopia]”¹¹. Since conventions are international agreements, by virtue of the stipulation of the Constitution, they are integral parts of the law of Ethiopia. Therefore, it is important to note that international agreements bring both international and national obligations.

In a domestic legal framework, the FDRE Constitution provides for relevant provisions for labour relations. The Constitution prohibits inhuman or degrading treatment whatsoever and forced labour.¹² It further provides for gender equality in all aspects of social life including in the labour market.¹³ From the perspective of collective labour rights also, the Constitution recognizes “every person’s right to freedom of association for any lawful cause or purpose”.¹⁴ Admittedly, this latter provision covers all possible forms of combinations of an economic, social, and political nature, ranging from the establishment of hobby clubs of any sort to consumers association, unionization, and political parties. Thus, the provision is not solely meant for industrial associations nor does it exclude them.

Nevertheless, the most specific and relevant provision for labour combination is Article 42 of the FDRE Constitution which stipulates the following:

1(a) factory and service workers, farmers and farm labourers, other rural workers and government employees whose work compatibility allows for it and who are below a certain level of responsibility, have the right to form associations to improve their conditions of employment and economic wellbeing. This right includes the right to form trade unions and other associations to bargaining collectively with employers or other organizations that affect their interests.

¹¹ *The Constitution of the Federal Democratic Republic of Ethiopia, 1995, Article 9(4).*

¹² *Ibid, Article 18.*

¹³ *Ibid, Article 35.*

¹⁴ *Ibid, Article 31.*

b) Categories of persons referred to in paragraph (a) of this Article have the right to express their grievances, including the right to strike. (underline added).

As can be observed from the underlined phrases above, this Constitutional provision explicitly enshrines the three collective labour right; namely: the right to unionization, the right to collective bargaining and the right to strike. It is interesting to note that ILO's jurisprudence is not as explicit as this constitutional provision in recognizing the right to collective bargaining and the right to strike. It is through purpose-oriented interpretation of the Committee on Freedom of Association of the ILO Governing Body that the right to collective bargaining was read in to "the right to form and join trade unions to protect one's interest". The Committee held that "the right to bargain freely with employers with respect to conditions of work constitutes an essential element in freedom of association¹⁵" (underline added).

Furthermore, it is through passage of time and along the line of purposive interpretation, that the scope of "the right to form union to protect one's interest" has been extended to cover the right to strike in its ambit. In this regard, the Freedom of Association Committee of the Governing Body of the ILO held that "the right to strike is one of the most essential means through which workers and their organizations may promote and defend their economic and social interests"¹⁶ (underline added).

As a result of this, according to the ILO jurisprudence, the right to collective bargaining and the right to strike are not expressly spelt out rights, they are rather implied rights. For purposes of the Ethiopian legal regime, however, these rights are not left to the mercy of implication; they are rather expressly and constitutionally recognized rights.

¹⁵ ILO (1996) Freedom of Association: *Digest of decisions and principles of the Freedom of Association Committee of the Governing Body of the ILO*, (Fourth revised edition) Paragraph:782.

¹⁶ *Ibid*, Para: 475.

The ordinary law which is the labour law of the country has also detailed provisions on labour relations through which labour rights have been protected. No termination of contract of employment without valid reason;¹⁷ prohibition of discrimination;¹⁸ protection from anti-union discrimination¹⁹ and provisions for safe and healthy working condition²⁰ have been incorporated in the law. Moreover, labour inspection service, Labour Relations Boards and Labour Divisions of the regular courts have been entrusted with the power of seeing to it that the protective provisions of the Labour Proclamation are complied with.

The Industrial Park Proclamation has also taken explicit position in the sense that it stated that the Labour Proclamation together with its amendments is applicable in any Industrial Park.²¹ From this point of view, in Ethiopia, at the normative level, it appears that there is neither labour law free zone nor union free zone. However, laying down labour protective provisions, though necessary, does not guarantee implementation of these rights. It is therefore necessary to look into their actual implementation on the ground.

¹⁷ Articles 24, 25, 27, 28 and 29 of the Labour Proclamation stipulate valid grounds to terminate a contract of employment. Any termination outside of these provisions may entitle the employee to reinstatement or payment of compensation for unlawful termination.

¹⁸ The Labour Proclamation prohibits discrimination among employees on the basis of sex, ethnic origin, religion political outlook or any other ground (Art. 14 (1). The phrase "... *any other ground*" is a catch all phrase that has the potential of including additional grounds of discrimination in its ambit.

¹⁹ There provisions in the Labour Proclamation which safeguard trade union leaders or union organizers from retaliatory measure by employers (Articles 14(1), 26(2) and 43(1) are some cases in point).

²⁰ Articles 92-112 of the Labour Proclamation mainly address issues of occupational safety and health at the level of prevention and remedial stages.

²¹ Industrial Park Proclamation No.886/2015, *Federal Negarit Gazette*; 21st Year, No.39(Addis Abeba:2015).

4. Situation Analysis

The narrative spelt out hereinabove shades light on the literature pertaining to labour standards in industrial parks and the relevant labour standards under Ethiopian legal system. The subsequent discussion will focus on evaluating the real situation of Ethiopian Industrial Parks in light of the literature and the norm in order to learn or unlearn therefrom thereby helping to improve working conditions in such enclaves.

Existing literature has recorded that industrial parks have been characterized by high concentration of female labour force in terms of gender mix. This holds valid in Ethiopian industrial parks as well, where the female labour force is higher²² in number thereby paving the way for gainful employment and their entry to formal labour market. Industrial park operators are of the view that female employees are more diligent, compliant and less confrontational than their male counterparts. Nevertheless, it must be noted that the preference is towards young and unmarried female employees rather than female employees *per se*²³ as a result of whom their visibility in the formal labour market diminishes as their age increases and their reproductive responsibilities kick in. Hence to be precise the labour force is mainly characterized by young, single female workers.

Due to this the working system proved unsuitable to combine productive and reproductive responsibilities of female employees. Moreover the types of job positions in which they have been engaged tend to be unskilled, low paying and temporary in nature. Thus sustainability of their engagement in the formal labour market is still of concern. Owing to mainly low wage and unbearable workload in the Parks, it has been recorded that the labour turnover is alarmingly

²² Jetu Edossa (2016) “Protection of core labour rights in Ethiopian Industrial Development Zones: the case of Eastern Industrial Zone”; in GetachewAssefa; Yonas Bermeta and Muradu Abdo (Eds): Economic and Social Rights in Ethiopia, P.129 (Addis Abeba: Ethiopia). Incidentally, the recently inaugurated Hawassa Industrial Park, which is the largest industrial park, is planned to employ 30,000 workers 24,000 of whom are expected to be women (Laureen Katiyo, *infra note* 33).

²³ *Ibid.*

high.²⁴ There are many instances where many of them relocated to serve as domestic servants. This implies that the working condition at the Parks has been worse than domestic service environment. Indeed, it has been recently reported that employees who work in Hawassa industrial park earn a monthly wage of no more than USD 26, an amount which is the lowest in the world. As a result the International Trade Union denounced exploitative wages in Ethiopia.²⁵

In terms of the legal framework pertaining to labour relations applicable in industrial zones, the experience of other jurisdictions has shown us that many countries have exempted these locations from their rigid and protective labour laws, thereby establishing *labour law free parks*. Such measures were taken as regulatory incentives with a view to offering investors the flexibility in hiring and firing labour, thereby according them with the power to freely determine working conditions in their respective enterprises. In a sense, it is a double standard approach where enterprises outside of the Park are within the ambit of the labour law while enterprises inside the Park are immune therefrom. These show the extra-mile other countries undertake in order to attract and retain investment at the cost of renouncing their regulatory power. On the other hand, the measure tended to show the leverage global capital has in shaping policies and legal frameworks in investment destinations.

In this regard, the Ethiopian government may be commended for adopting a bold stance in the sense that it explicitly declared that there

²⁴ The Federal Auditor General has recently (23 January 2019) issued a report on the issue of high turnover of employees citing the Bole Lemi industrial park as an example. In its report the Auditor General stated that 42.5% of the employees left the Park within three months in 2008 E.C. and 72.3% in 2009 E.C. and 98.9% in 2010 E.C. (Source: *Sheger FM 102.1 Radio News*)

²⁵ Paul M. Barrett and Dorothee Baumann-Pauly, *Made in Ethiopia: Challenges in the Garment Industry's New Frontier*, (Stern Center for Business and Human Rights, New York University), (2019), p. 12. See also; Birhanu Fikade, "Int'l trade union denounces exploitative wages in Ethiopia", *the Reporter*, (17 January, 2018). Available at <https://www.thereporterethiopia.com/article/intl-trade-union-denounces-exploitative-wages-ethiopia>

is no territory in its national boundary that is exempted from the coverage of its labour law. Article 38 of the Investment Law of Ethiopia requires investors to observe the laws of the country in carrying out investment activities.²⁶ More specifically, Article 28 of the Industrial Park Proclamation provides that “Labour Proclamation No. 377/2003 (as amended) shall be applicable in any Industrial Park.”²⁷ It further obliges enterprises to comply with employers’ obligations set forth in it [the Industrial Park Proclamation] as well as obligations contained in other applicable laws²⁸; presumably one of the applicable laws prescribing employers’ obligation would be the labour law. Therefore, unlike the practice in some other jurisdictions where industrial parks are immune from labour laws, Ethiopian labour law applies all over Ethiopian territory including at the industrial parks.

Be that as it may, it does not mean that Ethiopia is the sole country in prescribing the applicability of labour laws in industrial parks. On the contrary, there are countries which recognize the desirability of applying labour law provisions in industrial parks as well. They, however, withhold the implementation of part of it, particularly the so-called “*collective labour rights*” or any of them in the Industrial Parks. As indicated above, collective labour rights refer to three interrelated and interconnected rights of the labour force: the right to unionization; the right to collective bargaining and the right to strike. The main reason for denying collective labour rights is the perception that organized labour is much more demanding and confrontational. Hence, the motive in denying this bundle of rights is *investment friendly* mindset and meant to appease capital at the expense of labour.

The Ethiopian situation is far from this. Ethiopian labour law entitles ten or more employees in an enterprise to form a trade union.²⁹ Once a

²⁶ Investment Proclamation No.769/2012, *Federal Negarit Gazette*, 18th Year, No. 63.

²⁷ Industrial Parks Proclamation No.886/2015; *Federal Negarit Gazette*, 21st Year, No. 39, Article 28(1). Recently, Labour Proclamation No.377/2003 has been replaced by Labour Proclamation No.1156/2019.

²⁸ *Ibid*, Article 10(4).

²⁹ Article 113 of Labour Proclamation No.377/2003.

trade union is established and registered by an appropriate government organ, it obtains legal personality to operate and the employer is duty bound to bargain with such a trade union in good faith.³⁰ Moreover, the labour law has provisions which offer special protection to union leaders enabling them undertake their union related activities in full freedom.³¹ When it comes to the right to strike, though rigorous procedures are put in place, it is generally available except for narrowly defined so-called “essential services”³² enterprises. Thus, under Ethiopian law, strike is denied on the basis of the nature of service rather than based on the location where the service is to be offered.

However, when it comes to the practical utilization of the right to trade unionism, studies show that no single union has been established in any of the industrial parks.³³ In this connection Jetu³⁴ found that an attempt by employees of a certain company operating at an industrial park resulted in an outright dismissal of 42 union organizers and activists

³⁰ *Ibid*, Article 130.

³¹ Article 26(2) stipulates that the following shall not be deemed to constitute legitimate grounds for the termination of a contract of employment:

- a) his [the employee’s] membership in a trade union or his participation in its lawful activities;
- b) his [the employee’s] seeking or holding office as a workers’ representative;

If he is terminated because of these reasons, he is entitled for reinstatement (Article 43(1).

³² Article 136(2) of the Labour Proclamation. Some countries consider production in the industrial zones as an “essential service” alleging that it is essential for their industrial development thereby denying the right to strike in such locations.

³³ Jetu, *Supra note 21*; p.130. Although Jetu’s study is focusing on Industrial zone operated by private companies, it holds good in the public one’s as well. The President of the Confederation of Ethiopian Trade Unions also recently gave a media briefing affirming unionization has encountered serious challenge in the Industrial Parks. Nevertheless, it may be too early to speak about the situation of unionization at the Hawassa Industrial Park as it has gone operational only recently. Recently, records show that one trade union has been formed at Bole Lemmi industrial park.

³⁴ Jetu, *Supra note 21*, p.132.

without any remedy.³⁵ This is a mismatch between the law in paper and its impact in action. It is interesting to note that some enterprises outside of the parks which are engaged in similar business have been compliant in terms of allowing employees to unionize.³⁶ On the whole, the mindset at the industrial parks is, unions are viewed negatively and considered disruptive.³⁷

The other area which needs to be assessed as to practical compliance to labour standards is the enforcement aspect. Although issuance of law is necessary, it will not be sufficient to secure rights. The enforcement aspect is equally (if not more important) important in order to secure measurable gains therefrom. When it comes to ensuring compliance of labour standard, labour inspection service is an important institution to rely upon. The Ethiopian labour law entrusted detailed powers and responsibilities to this organ.³⁸ As far as the law is concerned, there is no any workplace in Ethiopia which is immune from labour inspection.

However, the inspection service in Ethiopia (both at federal and regional) has been under-staffed,³⁹ under-resourced and lacked the requisite skill. Furthermore, labour inspectors complained that

³⁵ The labour law entitles union leaders or organizers the right to reinstatement whenever they are dismissed because of their role in union activities (Article 43(1) of the labour law).

³⁶ MAA Garment and Textile Factory was established in 2004 in Mekelle. It is locally owned. It manufactures textile and garment products mainly for export market. It employees 1500 out of which 875 are women. One trade union is established in the enterprise in which all employees are free to join.(Source: Laureen Katiyo (2016) *Women Workers' Constraints in the Textile/Garment and Leather sector in Industrial Parks*; unpublished).

³⁷ *Ibid*, at p.12.

³⁸ Articles 177-182 of the Labour Proclamation.

³⁹ Records show that labour inspectors at the federal level totaled about 123 (16 female and 107 males). The ILO has estimated that the ratio of labour inspectors to workers should be about 1:40,000 in less developed countries [to which Ethiopia belongs]. It is estimated that Ethiopia has around 38 million work-forces (Wheeler and Goddard, 2013: infra note 40, p.22). In fact, the Regional labour offices have been notoriously ill-equipped and under staffed. Their major task has been to supervise occupational health and safety at workplaces though they have also been empowered to monitors compliance with labour standards.

“officials from other ministries, such as the Ministry of Trade and Industry, become involved in cases pending in court asserting that the inspectors should withdraw charges [against labour standard violating investors] because public knowledge of alleged violations [prosecutions] may interfere with investment strategies”.⁴⁰ This tends to show the dilemma

Ethiopian executive agencies found themselves in, in the sense that the desire to enforce labour standards from the side of the labour inspection service [MOLSA] on the one hand; and the motivation to attract investment even at the expense of labour rights as reflected by the Ministry of Trade and Industry on the other.

In this connection, in Oromia Regional State which is one of the largest regions in Ethiopia and that hosts significant number of industries, an informant from the Labour Office in the Region stated that the Regional office has only 52 labour inspectors (49 male and 3 female) who found themselves too overstretched to make any meaningful inspection service. According to the informant, not only the number of labour inspectors is very small in relation to the size of the Region, but also that their salary is very low as a result of which the staff turnover is very high.

Particularly, when it comes to inspection service within the premise of the industrial parks, it is not only the logistics and the human power which is challenging. Accessibility of the premises is also an issue. As it is well known, the industrial parks are well-fenced and well-guarded. The security at the gate has received stern warning that any visitor for whatever purpose needs a permit from inside in order to gain access to check in. Denial of access to the premises without permit from inside equally applies to labour inspectors although the law grants them unfettered access (regular or surprise visit) to workplaces during working hours.⁴¹

⁴⁰ Wheeler Jeff and Goddard Keith (2013) *Assessment of Ethiopia's Labour Inspection System* (Bureau of International Labour Affairs: U.S. Department of Labor); p.11.

⁴¹ Article 178(3) of the Labour Proclamation No.377/2003.

In fact, some foreign investors assert that they are within the federal jurisdiction as they invested in Ethiopia on the basis of invitations by federal authorities; they are federally licensed and federal tax-payers as well. Thus in their view, it naturally follows that it should be the federal labour inspectors rather than the regional ones who should inspect their premises. However, the Federal Ministry of Labour and Social Affairs is empowered only to inspect federally owned state enterprises while privately owned enterprises are to be inspected in the Regions where they operate. By default industrial parks proved to be “no man’s land”. In fact, the labour inspection service at the federal level is similarly ill-equipped and understaffed. Indeed, it could be safely argued that under resourcing the inspection service may be considered as a deliberate act by the government with a view to marginalizing the importance of the service.

5. Conclusions

The situation analysis referred hereinabove tended to show us that industrial parks in Ethiopia though not labour law-freezones are in effect trade union free and labour inspection free zones. Unionization is a fundamental right of workers denial of which is violation of basic rights. Not only that it is a violation of right but also that workers devoid of rights will be demotivated or ill motivated as a result of which productivity would be adversely affected. Hence, it is not beneficial to investment as well.

Social history testified that dictatorial administrative regime is bound to fail sooner or later while democratic governments are durable, peaceful, stable and prosperous. It is argued that this analogy squarely fits in to industrial relations as well. Dictatorial managerial technique is doomed to fail while “industrial democracy” is the proper route towards sustainable profitability and competitiveness. Employers and industrial park operators must be fully convinced that ‘motivation, productivity and innovation could be obtained only when employees are granted freedom of action and humane treatment.’⁴² Respect for labour rights

⁴² Tayo Fashoyin (2010) “Collective Bargaining and Employment Relations in Kenya”, *Working Paper* No.13 (Geneva: ILO), p.15.

offers such a freedom and humane treatment. In a sense it must be borne in mind that low labour cost does not necessarily lead to higher profitability because productivity may not be secured from demotivated labour. Even if profitability is ensured under strict cost minimization and rigid labour supervision, it would only be short-lived and devoid of sustainability.

Moreover, even though the labour law is technically applicable in industrial parks, monitoring whether labour standards have been complied with at these workplaces need to be neutrally, professionally and objectively verified. This measure requires well equipped professional and independent labour inspection service. However, the labour inspection system in Ethiopia, as indicated above, has been weak in many respects. Thus, regulatory compliance is mainly left to the discretion of the enterprises. Assigning labour standards to the mercy of voluntary compliance of the respective enterprises is unreliable way of ensuring implementation given their profit oriented goal.

It must be noted however that there is a source of optimism towards compliance in the current global economic order. Although the statist approach of law enforcement has been subjected to multiple challenges, the softer approach towards ensuring compliance is gathering momentum. In this regard the role of non-governmental organization, consumer societies, company code of conduct and the media need to be appreciated. Thus, the traditional state centered understanding of law enforcement needs to be rethought.

In another note, law formulation, though necessary is not sufficient to ensure compliance thereof. Although, as per the surface of the law, the industrial parks in Ethiopia are not labour law free zones, they proved to be *labour* law free zones in actual fact. Due to this, working condition at these locations has been subjected to fierce criticism. There are also practical resistances against the working environment from the labour force engaged in the sector. It must be noted that high labour turnover, labour unrest and frequent wildcat strikes in our industrial park are not healthy indications of industrial relations. Moreover, as indicated earlier,

international media outlets have already begun to disseminate news of serious concern pertaining to working conditions at our Parks. Sustainable and inclusive development is bound to fail in such cases. Hence, Ethiopia needs to address the issues of labour at the industrial parks before it is too late to act upon. Once negative publicity is portrayed against them by the national and international community it will be too late to fix.

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