

# Exploring Enforcement of Core International Labour Standards in Textile and Apparel Industries in Ethiopia: An Appraisal of Practice at Hawassa Industrial Park

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## Abstract

*With a view to win the fierce competition for Foreign Direct Investment (FDI) nations have been proactively crafting possible attractive conditions that would usher foreign investment. The race for attracting international investors has the knock-on effect of lessening minimum labour conditions standards. Despite the government's commitment to attract investments, the emerging industrial parks are now being under scrutiny for abuse of fundamental workers' rights. This article assesses enforcement of protection of core labour rights in Hawassa Industrial Park (HIP). The article is qualitative in approach and doctrinal in form. The Study reveals that the general working conditions in the Park is exploitive and deviate from the ILO (International Labour Organization) standards.*

**Keywords:** core labour standards, ILO, working conditions, FDI, and Hawassa Industrial Park

## 1. Introduction

This article sheds light on the protection of core labour rights in the Ethiopian industrial parks with a specific reference to Hawassa Industrial Park. Industrial Parks have been leading schemes of attracting foreign direct investment in developing countries.<sup>1</sup> Hawassa industrial park is a significant step towards industrialization in Ethiopia. The Park was built in 300 hectares of land,

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<sup>1</sup> Michael Akomaye, "Are the Rules for the Registration of Trade Unions in Cameroon Compatible with the ILO's Concept of Freedom of Association?" *The International Journal of Comparative Labor Law and Industrial Relations*, 25, (2009), at 349. "available at < <http://www.diva-portal.org/smash/get/diva2:899970/FULLTEXT01.pdf> > (last accessed Feb. 25, 2020).

and hosts mainly textile and apparel industries.<sup>2</sup> Though Industrial parks aim to enhance and sustain pro-poor growth by way of job creation, they often pose formidable challenge to the conventional labour administration system.<sup>3</sup> Violation of rights of employees is often claimed. This tarnishes not only the very purpose of industrial parks but also hoodwinks Ethiopia's international commitments. Ethiopia has international obligation to respect and promote rights of workers. The nation is a member of International Labour Organization (herein after ILO) and has ratified 23 ILO's conventions, including eight core conventions that recognize fundamental labour rights. In addition to the international commitments that Ethiopia has pledged to respect the rights of workers, protection of workers' rights is constitutionally guaranteed. Further, Ethiopia has taken positive step towards broad policy formulation that meant to strengthen respect to the rights employees in industrial sector. Despite national or international dictates for the respect of rights of employees, industrial parks including Hawassa often blamed for suppressive work environment. Core labour rights and privileges are often violated in Hawassa Industrial Park.

This article examines the protection of core labour rights in Hawassa industrial park by using mixed research methodology. Empirical data collected through field visit and structured questionnaire and semi structured interviews, and qualitatively analysed. Labour policies and governing domestic legislations are examined in light of relevant international standards and enforcement of core labour rights in the context of foreign direct investment (herein after FDI). The first two sections of the article deal with the general conceptual issues of core labour rights in the context of industrial zones. Section three examines the legal regime governing the protection of core labour rights in industrial park. Finally, section four assesses the practice of core international labour standards protection at Hawassa Industrial Park.

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<sup>2</sup> Helen Mato, "Ethiopia: Hawassa Industrial Park - a Journey towards Industrialization," *The Ethiopian Herald* 27, (Jul 2016).

<sup>3</sup> Jetu Edosa, "protection of core labor rights in ethiopian industrial development zones: the case of eastern industrialzone, " in Getachew Assefa *et al*, (eds). *Economic, Social and Cultural Rights in Ethiopia* (A.A.U. School of Law: A.A. 2016). 101-134.

## 2. The Development of Industrial Parks in Ethiopia

Industrial parks play pivotal role in economic development, job creation and attract FDI. In Ethiopia, the emergence of Export Processing Zones (herein after EPZs) as industrial development solution is a recent phenomenon, but the contribution appears high. Among others, industrial parks stimulated industrialization. The Eastern Industrial Zone (EIZ) in the town of Dukem is widely credited for the stimulation of the use of industrial parks as tool of industrialization.<sup>4</sup> The Dukem industrial zone was developed by the China-Africa Development Fund framework as one of the first six Chinese SEZs established in Africa.<sup>5</sup>

The Ethiopian government enthused by the Eastern Industrial Zone has established industrial park development as the main strategy to scale up the role of the manufacturing sector in attracting FDI.<sup>6</sup> Accordingly, through the establishment of Industrial Parks to accelerate the economic transformation and development, Industrial Park Proclamation No. 886/2015 was enacted<sup>7</sup> The Proclamation No.886/2015 has the following objectives:

- regulating the designation, development, and operation of industrial park;
- contributing towards the development of the country's technological and industrial infrastructure;
- promoting private sector participation in manufacturing industries and related investments;
- improving the competitiveness of the country's economic development; and creating ample job opportunities and achieving sustainable economic development.<sup>8</sup>

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<sup>4</sup> Gifawosen Markos, *Labor Rights, Working Conditions, and Workers' Power in the Emerging Textile and Apparel Industries in Ethiopia: The Case of Hawassa Industrial Park*, (Nov, 2019, Kasseler Online Bibliothek Repository &Archiv), P. 32.

<sup>5</sup> In 2000, at the Forum on China-Africa Cooperation (FOCAC) meeting in Beijing, China agreed to share with African countries its experience in the field of investment promotion related to the establishment and management of special economic zones (SEZs). In the meantime, the proposal for the development of seven SEZs was approved by the Chinese government in six African countries including one in Ethiopia. The Eastern Industrial Zone (EIZ) in the town of Dukem, the first of its kind for Ethiopia, was built through the China-Africa Development Fund as part of "China Goes Global Policy". *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> Industrial Parks Proclamation No. 886/2015, *Fed. Neg. Gaz.* 21<sup>st</sup> year No. 39 9 April (2015), A.A.

<sup>8</sup> *Id.*, Art. 4.

Further, the Proclamation authorizes private companies like publicly held companies, private enterprises, or by private entrepreneurs to develop industrial parks as organization for profit.<sup>9</sup>This presumably elevates the sustainability of industrial parks in Ethiopia. The public private initiative mechanism of developing industrial parks is in place for the establishment of IPs/SEZs: the first mechanism is fully developed by the federal or regional government, secondly, by Public-Private Partnerships (PPP) with the Industrial Parks Development Corporation (IPDC) and thirdly, by private developers only. Industrial parks in Ethiopia can also be categorized based on their focus sector including textile and garment, leather and shoes, agro-processing, pharmaceutical, and IT parks.<sup>10</sup>

Ethiopia's Growth and Transformation Plans envisioned industrialization through industrial parks. In accordance with the first Growth and Transformation Plan, popularly known as GTP 1 five industrial parks were launched: in Addis Ababa (two: Bole Lemi and Kilinto Industrial Parks), in Hawassa, in Dire Dawa, and in Kombolcha (one each)<sup>11</sup> In the Second Growth and Transformation Plan (GTP 2) more industrial parks were set up in Mekelle, Bahir Dar, Jimma, and Adama.<sup>12</sup> Further, several private foreign-owned industrial zones have been established.<sup>13</sup> The first and largest one of the private industrial zones is the Chinese owned Eastern Industrial Zone (EIZ) in Dukem. Other private industrial zones include the Lebu Industrial Zone, which is owned by Huajian Group, and the Mojo Industrial Zone, owned by Taiwanese George Shoe and CCCC Arerti IP of construction sector located in Amhara Regional State.<sup>14</sup>

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<sup>9</sup> *Id.*, Art. 2 Sub- art. 10.

<sup>10</sup> *Id.*, Art. 2(1).

<sup>11</sup> FDRE Ministry of Finance and Economic Development, "Growth and Transformation Plan (GTP) (Draft)2010/11-2014/15" (Addis Ababa: 2010), p.30.

<sup>12</sup> Xiaodi Zhang, et al, *Industrial park development in Ethiopia Case study report* (2018). P46, available at <<https://www.unido.org/api/opentext/documents/download/10694802/unido-file-10694802>>, last accessed (Feb 10,2020).

<sup>13</sup> Ermias Wedajo Azmach, *Regulating Industrial Parks Development in Ethiopia: A Critical Analysis*, (2018), p39,available at <<http://www.scirp.org/journal/blr>>. last accessed (Feb 10, 2020).

<sup>14</sup> FDRE Ministry of Finance and Economic Development, *supra* note 11.

## 2.1 Brief Sketch of Hawassa Industrial Park

Hawassa Industrial Park ((HIP) is located in the city of Hawassa, a city of about 450,000 residents, and located 275 Km south of Addis Ababa.<sup>15</sup> The Park is a nation-level textile and garment industrial park in Ethiopia, which is characterized by zero-emission commitment.<sup>16</sup> It represents the highest level of African textile apparel industrial park in the viewpoints of speed of construction, size and planning standards.<sup>17</sup> Constructed by China Civil Engineering Group Co., Ltd. (CCECC), the first phase of the park was started in 2015 and completed in nine months, with a total area of 2.3 square kms and a construction area of 230,000 square meters, including 37 standard sheds, living facilities and other supplementary facilities.<sup>18</sup>

As of January 2020 reports of the Park, 21 foreign companies from countries such as USA, UK, India, Taiwan, Belgium, Spain, France, India, Sri Lanka, Indonesia, China, and Hong Kong operate in the park has created direct employment opportunities for 30,701 people for local workers though, to some extent there is disparity of the total figure of employees reported by different concerning institutions.<sup>19</sup> While the Industrial Development Park has reported employment of 301,701 job seekers, the SNNRS Labour and Social Affairs Office reported more than 35,000 employees got employment opportunity in the Park.<sup>20</sup> Whatsoever, the fact is the Park has achieved the promised job creation.

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<sup>15</sup> Gifawosen Markos *supra* note 4, p. 37.

<sup>16</sup> FDRE Ministry of Finance and Economic Development *supra* note 11, p. 28.

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> Interview with Mengistu Yimer, Investor Relationship Head, Hawassa Industrial Park Development Corporations, at his office Hawassa 13 January, 2020.

<sup>20</sup> Interview with Yohanes Ezo Adulo, Claims Follow-up and Support Officer, at Directorate of Harmonious Industrial Relations in SNNPRS Bureau of labor and social affairs, (Hawassa 14 January 2020 at his office).

### 3. ILO Core Labour Standards and Industrial Parks

Generally, labour conditions in industrial parks is an issue because of numerous reports exhibit poor labour conditions that are specific to the nature of the fact that industrial parks most often host labour intensive industries.<sup>21</sup> The International Labour Organization (ILO) has adopted 189 conventions that outline international labour standards in a wide variety of areas, such as minimum wage requirement, limit on working time, occupational health and safety standards, employment policy, and basic working conditions for specific categories of workers.<sup>22</sup>

These fundamental rights codified in the conventions are: freedom of association, the right to collective bargaining, elimination of all forms of forced or compulsory labour, abolition of child labour, and the elimination of discrimination in respect of employment and occupation. However, categorizing such labour rights is highly criticized in the academic literature in which the validity of picking certain labour rights as fundamental rights while excluding the more traditional and important socio-economic rights, such as the right to minimum wage and occupational health and safety are under question.

The ambition for quick expansion of industrial parks in the developing countries has its own negative consequences. Among other things, the competition for investment has prompted national governments to lessening the legal protection for workers. In bid to attract more investors and fetch FDI, nations have tempted for less regulation, low minimum wage, and weak union system. Numerous studies conducted under the sponsorships of ILO and International Confederation of Trade Union (ICTU) have found that governments of industry zones have failed to enforce labour legislations with resultant widespread violations of workers' rights.

For effective enforcement of ILO laws in member States, the conventions should be domesticated through ratification in each signatory.<sup>23</sup> With regard to eight core standards, however, ratification

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<sup>21</sup> Mulu Beyene, *Labor Conditions in Export Processing Zones and the Role of the ILO: Focus on Freedom of Association*, University of Oslo (Sep.01,2013), available at: < <https://www.duo.uio.no/bitstream/handle/10852/39031/Thesis.pdf?sequence=1&isAllowed=y> > last accessed (Feb 11, 2020).

<sup>22</sup> Peter Bakvis and Molly McCoy, *Core Labour Standards And International Organizations: What Inroads Has LaborMade?*, available at: < <http://www.fes.de/gewerkschaften> > last accessed (Apr 21, 2020).

<sup>23</sup> *Id.*

is not a requirement.<sup>24</sup> Further, ILO by the Declaration on the Fundamental Principles and Rights at Work in 1998 called upon member states to comply with the four principles, regardless of whether they were ratified or not.<sup>25</sup> While each of the Core Labour Standards (CLS) corresponds to one or more ILO conventions, a member State is expected to comply with the dictates of core standards, even if the conventions are not ratified.<sup>26</sup>

However, the fact that a country has ratified a convention does not necessarily prove its compliance, the standards enshrined therein should be enforced.<sup>27</sup> Despite ratification of core labour rights, report of the Worker Rights Consortium in 2018 shows workers in industrial zones of Ethiopia are generally unable to effectively exercise their labour rights.<sup>28</sup> The Confederation of Ethiopian Trade Unions report also indicates employers in industrial parks violate rights of labour which recognized in accordance with the Ethiopian labour law.<sup>29</sup> As noted during field visit at the Hawassa Industrial Park there is widespread violation of the rights of workers which is also contrary to the rights envisioned in the FDRE Constitution. Additionally, when things went to the level of intolerable stage, employees of the Hawassa Industrial Park openly protested against apparent violations calling for strike in March 2019, which demonstrates the rampant violations of labour rights in the premises of the Park.<sup>30</sup>

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<sup>24</sup> *Id.*

<sup>25</sup> ILO Declaration on fundamental principles and rights at work available at: < <https://www.ilo.org/public/english/standards/relm/ilc/ilc86/com-dtxt.htm> > last accessed (Apr 21, 2020).

<sup>26</sup> Core Labor Standards Hand Book, available at: < <https://www.adb.org/sites/default/files/institutional-document/33480/files/cls-handbook.pdf> > last accessed (Apr 25, 2020).

<sup>27</sup> *Id.*

<sup>28</sup> Snetsehay Assefa Tegegn, “etal.” Workers’ rights consortium report, Grim Conditions and Miserable Wages Guide Apparel Brands in their Race To The Bottom, available at: < [https://www.workersrights.org/wp-content/uploads/2019/03/Ethiopia\\_isa\\_North\\_Star\\_FINAL.pdf](https://www.workersrights.org/wp-content/uploads/2019/03/Ethiopia_isa_North_Star_FINAL.pdf) > last accessed (Apr 21, 2020).

<sup>29</sup> *Id.*

<sup>30</sup> Hannah Abdulla, *Workers’ Strike at Ethiopia’s Hawassa Industrial Park*, 15, Mar,2019, available at ; < [https://www.just-style.com/news/workers-strike-at-ethiopias-hawassa-industrial-park\\_id135778.aspx](https://www.just-style.com/news/workers-strike-at-ethiopias-hawassa-industrial-park_id135778.aspx) > last accessed(Feb 10, 2020).

## 4. The Core Labour Rights: What it is and how it is practiced?

### 4.1 Freedom of association and collective bargaining

The notion of freedom of association may be connoted in both human rights discourses and in regulation of industrial relations.<sup>31</sup> In relation to human rights, it goes with the freedom of assembly and related rights,<sup>32</sup> however, in the context of labour relations, freedom of association applies to both workers and employers, and considered as one of the most important labour rights. Its importance lies in its contribution to the enjoyment of other rights by strengthening the worker's bargaining power in advancing their respective interests.<sup>33</sup>

To employees, freedom of association and collective bargaining is one of the fundamental labour standards that would enable workers to establish trade union and participate in strikes as well as collective bargaining without interference.<sup>34</sup> Collective bargaining is crucial to negotiate for the betterment of working conditions, including negotiation for wage advancement.<sup>35</sup> According to Organization of Economic Cooperation and Development (OECD), ensuring standards of freedom of association and collective bargaining can counterbalance the negative consequences of unfavourable working conditions.<sup>36</sup> However, freedom of association is among the rights which are frequently violated.

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<sup>31</sup> Peter Bakvis and Molly McCoy *supra* note 22, p.23.

<sup>32</sup> *Id.*

<sup>33</sup> *Report of the Committee of Experts on the Application of Conventions and Recommendations, Report III ILO (Part1B)*, 2012a available at: < [https://www.ilo.org/ilc/ILCSessions/previous-sessions/101stSession/reports/reports-submitted/WCMS\\_174843/lang--en/index.htm](https://www.ilo.org/ilc/ILCSessions/previous-sessions/101stSession/reports/reports-submitted/WCMS_174843/lang--en/index.htm) > last accessed (Feb 10, 2020).

<sup>34</sup> Robert Sarna, *The impact of Core Labor Standards on Foreign Direct Investment in East Asia*, The Japan Institute For Labor Policy And Training( Oct, 2005), available at ; < <http://www.jil.go.jp/profile/documents/Sarna.> > last accessed (Feb 10, 2020).

<sup>35</sup> *Id.*

<sup>36</sup> Mulu Beyene *supra* note 21 p. 24.



Further, the freedom of association is one of the bills of rights recognized in international human right instruments.<sup>37</sup> ICCPR and UDHR provide that everyone has the right to form and join trade unions.<sup>38</sup> This includes non-restriction in freedom of association, prescribed by law.<sup>39</sup>

The ILO Constitution under its preamble declares freedom of association as one of the standards which needs urgent improvement.<sup>40</sup> Institutionally, the Committee on Freedom of Association was established in 1951 for the purpose of examining complaints regarding violations of freedom of association.<sup>41</sup> The ILO Committee on Freedom of Association plays a vital role in the enactment of Freedom of Association and Protection of the Right to Organize Convention No 87, the Right to Organize and Collective Bargaining Convention No 98, and the ILO Declaration on Fundamental Principles and Rights at Work.<sup>42</sup> The two major conventions on freedom of association sub classed into: right to organize, collective bargaining and the right to strike.<sup>43</sup> To make this discussion complete, a brief summary of each of these Conventions appears imperative.

**i) Freedom of Association and Protection of the Right to Organize (Convention No. 87)**

The convention underlines the fact that freedom of association is considered as a means of improving general working conditions.<sup>44</sup> The convention under its article 2 allows workers and employers the right to join organizations of their choice without seeking prior authorization. This right not only enables the right holders to join a union of ones choice, but also set up a new union.<sup>45</sup>

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<sup>37</sup> UDHR Art. 20, 23; ICCPR 22(2).

<sup>38</sup> *Id* Art. 23

<sup>39</sup> *Id*.

<sup>40</sup> The Constitution of the International Labour Organization, Part XIII of the Treaty of Peace of Versailles, June 28, 1919, Available at ;< <https://www.loc.gov/law/help/us-treaties/bevans/m-ust000002-0241.pdf>> last accessed (Feb 10,2020).

<sup>41</sup> Mulu Beyene *supra* note 21, p. 24.

<sup>42</sup> Lance Compa,“ *Workers’ Freedom of Association and the United States : the Gap Between Ideals and Practice*”, (2003),Available at ;< <http://digitalcommons.ilr.cornell.edu/cgi/viewcontent.cgi?article=1377&context=articles>> last accessed (Mar 10, 2020).

<sup>43</sup> Mulu Beyene *supra* note 21, p. 25.

<sup>44</sup> Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87), Entered into force 04 Jul 1950,adopted in the general conference held at San Francisco by the governing body of the International Labor Organization in its 31st Session on 17 June 1948

<sup>45</sup> Freedom of Association: Digest of Decisions Digest of decisions and principles of the Freedom of Association Committee of the Governing Body of the ILO, (2006).

In accordance with article 5 of the Convention, unions set up by the workers can also form a federation of union or join federation and confederation, which may also have rights to associate with international organizations of employees and employers,<sup>46</sup> and also the right to draw up their constitutions and rules, to elect their representatives in full freedom, to organize their administration formulate their programs.<sup>47</sup> Further, article 3(2) of the Convention stipulates that state authorities are warned to refrain from interference and restrict or hinder exercise of the aforementioned rights and privileges.<sup>48</sup> Moreover, the union leaders have extended protection from express or subtle intimidation, demotion, expulsion, or harassment that would impede the free functioning of unions. The protection not only demands the government not to interfere or obstruct the free formation and functioning of unions, but also stands against similar acts of interference by employers.<sup>49</sup>

## ii) **The Right to Organize and Collective Bargaining Convention No. 98**

Collective bargaining is an essential element of freedom of Association, basically serving as a means whereby workers union/s and employer/s organizations would freely negotiate and agree on various terms of employment.<sup>50</sup> The ILO Convention No.98 and its accompanying recommendation detail its confines and extend the provisions enshrined under Convention No. 87. This convention gives workers a special protection against acts of discrimination at their workplaces. Article 1 of this Convention protects workers against acts of anti-union discrimination, including dismissal because of union membership or participation in the union activities.<sup>51</sup>

The convention requires employers not to interfere in the administration of union. It goes to the extent of prohibiting employers from financial support or other form of gratitude with the intention of controlling the activities of union.<sup>52</sup> However, all forms of support is not prohibited. A support

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<sup>46</sup> *Id*, Art. 5.

<sup>47</sup> *Id*, Art. 3(1).

<sup>48</sup> *Id*.

<sup>49</sup> *Id*.

<sup>50</sup> Mulu Beyene *supra* note 21, p. 26.

<sup>51</sup> The Right to Organize and Collective Bargaining Convention No. 98 was adopted in the general conference of the ILO convened at Geneva by the body of the ILO office in its thirty second session on 8 June 1949.

<sup>52</sup> *Id*, A rt. 2

with the positive effect of enabling the Union is acceptable. The convention recommends governments to adopt appropriate measures that would facilitate voluntary negotiation between employees and employers by using collective conventions.<sup>53</sup> These two conventions, freedom of association and protection of the right to organize and the right to organize and collective bargaining are intertwined and respect to these rights is crucial in enforcement of rights of workers.

The right to strike is the third important constituent of Freedom of Association. ILO Conventions and Recommendations do not specifically spell out the right to strike – attempts to codify the right to strike as one of the pillars of the conventions did not succeed. Consequently, owing to both inadequate legislative protection and lack of enforcement mechanisms, freedom of association of employees in industrial zones of numerous nations around the world remained problematic.<sup>54</sup>

Needless to say, workers in industrial zones are entitled to form or/and join unions, collectively bargain and strike, as other workers. Though, there are exceptional situations in which the right to strike can be banned legitimately concerning workers in ‘essential’ services through wrong interpretation countries limit the right to strike in industrial zones.<sup>55</sup> In this regard the strict interpretation that the ILO experts Committee adopted for a service to qualify as ‘essential’ and thus be subject to a justified ban means that taking industrial action is a legitimate action in industrial zones too.<sup>56</sup> The restrictions on the right in industrial zones take many forms. Whereas some of them are typical to EPZs, others are equally applicable to non-EPZs industries as well. Focusing on the obstacles distinct to EPZs, three broad forms can be identified, viz: legal exemption, weak law enforcement, and systematic exclusion.<sup>57</sup>

The right to freedom of association is set forth in the Ethiopian Constitution, which also recognizes it both as a general human right and particularly in relation to workers. The Constitution declares that every person has the right to freedom of association for any causes or purpose.<sup>58</sup> The only

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<sup>53</sup> Saul Kinley, and Jhon Mowbray, *The International Covenant on Economic, Social and Cultural Rights, Commentary Cases, and Materials*, Oxford University Press, UK, 2004, p. 605.

<sup>54</sup> Jetu Edosa *supra* note 3, p.119. <sup>55</sup>Mulu Beyene *supra* note 21 p. 29. <sup>56</sup>*Id*, p. 30.

<sup>57</sup> *Id*, p. 31.

<sup>58</sup> FDRE Constitution Proc. No.1/1995, *Federal Negarit Gazette*, Year 1, No 1, Addis Ababa, 21 August 1995, Art. 31.

exception stated in this regard is that the association should not have the purpose of violating the law or should not be formed for illegal activity to subvert the existing constitutional order.<sup>59</sup> The Constitution according to article 42 specifically guarantees factory and service workers, farmers, farm labourers, other rural workers' and government employees to have the right to form associations to bargain collectively with employers or other organizations to improve their condition of employment.<sup>60</sup> It also stipulates the right to express grievances, including the right to strike.

In line with the international instruments and the FDRE Constitution, the Ethiopian Labour Proclamation guarantees freedom of association by allowing employees and employers to set up an organization that represents their interest.<sup>61</sup> The Proclamation considers number of employees to set up union – the law requires at least ten employees.<sup>62</sup> Further, unions get expedited registration process.<sup>63</sup> This appears another incentive for setting up unions. The Proclamation also regulates the content and process of collective bargaining as well as collective agreements between workers' unions and employers' associations.<sup>64</sup> The Proclamation further requires collective bargaining and collective agreements to cover employment relationships and work conditions, such as workers' participation in matters regarding promotion, wages, transfer, reduction and discipline, and work condition includes protection of occupational safety and health, and the manner of improving social services.<sup>65</sup> In accordance with Article 135(2) the purpose of collective agreements is providing conditions of work and benefits more favourable compared to labour law. But if the law is more favourable prevails over the collective agreement.<sup>66</sup> The right to strike allows workers to exercise to strike as means to express grievance.<sup>67</sup>

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<sup>59</sup> *Id.*

<sup>60</sup> *Id.*, Art. 42.

<sup>61</sup> Labor Proclamation No 1156/2019, *Federal Negarit Gazett*, 25<sup>th</sup> year, No 89, Addis Ababa, 5<sup>th</sup> September 2019, Art. 113.

<sup>62</sup> *Id.*, Art. 114.

<sup>63</sup> Jetu Edosa *supra* note 3, p. 118.

<sup>64</sup> Labor Proc. *supra* note 61, Art. 125

<sup>65</sup> *Id.*, Art. 130.

<sup>66</sup> *Id.*, Art. 135.

<sup>67</sup> *Id.*, Art. 158.

## 4.2 Freedom from Forced Labour and FDI

In 21<sup>st</sup> century it may appear awkward to talk about forced labour, but given unfair and suppressive work environment, inequality of contracting parties, and absence of best options to sustain life often may force a person accept unfair and exploitative terms. As pointed out at the outset competing to win scarce FDI supply, leaders often advertise the availability of abundant cheap labour. Investors venture with this mindset to exploit the abundant cheap labour. This mindset dictates investors to set suppressive labour plan that leaves no room to respect labour rights. Is the absence of option or availability of a worst option indirect force? It is undoubtful to take use of such subtle pressure as force and compulsion, as the labourer carries out the work voluntary.

What is the extent of prohibition of forced labour and how international instruments and domestic legislations regulate it? As a general principle, forcing a person to work a job that he/she does not wish to perform is strictly forbidden. In this regard, forced labour resembles to slavery, and is virtually avoided in early 20<sup>th</sup> century.<sup>68</sup> The 14th session of the International Labour Conference adopted a Convention Concerning Forced or Compulsory Labour (No. 29), that prohibits forced labour.<sup>69</sup> The convention calls on member States to undertake measures to suppress the use of forced or compulsory labour in all its forms. As the nature and motives of forced labour varies, it is hard to find out consensus on acts constituting forced labour. The convention defines forced labour as all work or service which is drawn from any person under the threat of penalty and for which the aforesaid person has not offered himself voluntarily.<sup>70</sup> Literally, thus expression forced labour is compelling someone to work against his/her will under the fear of penalties. Thus, what characterizes forced or compulsory labour is the nature of the relationship between the person performing the work and the person demanding the work.<sup>71</sup> The exercise of coercion and the denial of freedom are the central elements of forced or compulsory labour.<sup>72</sup> Even if the Convention was adopted several years ago, forced labour is still a common issue that affects the world.

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<sup>68</sup> Article 1 of the convention of 1926 a convention which was amended in 1953 (reproduced in United Nations TreatySeries UNTS).

<sup>69</sup> Forced Labor Convention, 1930 (No.29). Adopted: 28 June 1930 entered into force: 1 May 1932

<sup>70</sup> *Id.*

<sup>71</sup> Jetu Edosa *supra* note 3 p.118.

<sup>72</sup> *Id.*

The supplementary Convention on Abolition of Forced Labour No 105 which adopted in 1957 calls on member States to abolish and not to make use of any form of forced or compulsory labour, used as a means of political coercion, labour discipline, or racial, social, national or religious discrimination, nor as a method of mobilizing and using labour for purposes of economic development; nor as punishment for having participated in strikes.<sup>73</sup> The adoption of the ILO Declaration on Fundamental Principles and Rights at Work in 1998, and its follow-up procedure renewed the interest of the international community to prohibit forced labour wherever and in whatever form it may be practiced.<sup>74</sup> Despite the concerted efforts, the recent ILO estimation indicates that 24.9 million people are victims of forced labour globally, trapped in jobs into which they were coerced or deceived and they face a challenge to quit from job.<sup>75</sup> Even worse, although the ILO has yet to systematically document it, working conditions in industrial zones can be assimilated to forced labour according to the report of ICTU.<sup>76</sup> Excessive overtime is tied to the nature of numerous manufacturers in EPZs, especially in apparel and footwear, which require rigid shipping deadlines and have seasonal demand peaks.<sup>77</sup> This structural problem has made it difficult for even the most focused efforts to control compulsory overtime. Various studies have shown the existence of a direct relationship between low wages and workers motivation to work overtime.<sup>78</sup> By paying low wages, even below the minimum wage, employers influence the workers' by placing them in situations whereby working overtime becomes the only means to increase their total income.<sup>79</sup>

In Ethiopia, the FDRE Constitution prohibits forced or compulsory labour.<sup>80</sup> It promotes the right to freely choose one's work as an essential part of being human and guarantees to every Ethiopian

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<sup>73</sup> Abolition of Forced Labor Convention, 1957 (No. 105) Adopted: 25 June 1957 entered into force: 17 January 1959.

<sup>74</sup> ILO Global estimates of modern slavery: forced labor and forced marriage (2017), Available at: <[https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/documents/publication/wcms\\_575479.pdf](https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/documents/publication/wcms_575479.pdf)> last accessed (Feb 09, 2020).

<sup>75</sup> *Id.*

<sup>76</sup> *Id.*

<sup>77</sup> International Labor Organization (2014). “*Trade Union Manual on Export Processing Zones*,” (Geneva: ILO Publications).

<sup>78</sup> Jetu Edosa *supra* note 3, p. 119.

<sup>79</sup> *Id.*

<sup>80</sup> FDRE Constitution *supra* note 58, p. 18(3).

citizen the right to freely engage in economic activity and pursue a livelihood of his/her choice anywhere within the national territory, and the right to choose his or her means of livelihood, occupation, and profession.<sup>81</sup> Furthermore, Article 42(2) of the Constitution congers on works, “the right to reasonable limitation of working hours, to rest, to leisure, to periodic leaves with pay, to remuneration for working in public holiday’s time as well as healthy and safe work environment.”<sup>82</sup> The Constitutional prohibition of forced and compulsory labour are further concretized in the labour proclamation and the Criminal Code to ensure their implementation.<sup>83</sup> The labour proclamation requires that employment contracts are based on the full consent of the worker and the employer. It also strictly provides workplace labour conditions by setting minimum working hours, safety and occupational health conditions including the time, place and mode of wage payment, which discouraging forced labour in private employment.<sup>84</sup> In addition the Labour Proclamation establishes the labour inspection service authorized for the unconditional inspection service of workers’ labour conditions and the overall observance of labour standards in the workplace. The Criminal Code of Ethiopia declares that anyone found guilty of forced labour is punishable to a term of imprisonment not less than three months or fine.<sup>85</sup>

#### 4.3 Child Labour and FDI

Child labour is generally prohibited, but it is not usual to witness to exploit cheap, but hardworking labour. Despite enormous efforts to avoid it, child labour still remains a global problem of enormous proportion which needs special attention in order to tackle it.<sup>86</sup> Child labour should be seen differently from the other three core labour standards since it is not just a labour issue but it triggering serious social, economic and human rights issues confronting rights of the most vulnerable group. International organizations have put much effort forth alike that the recent statistics. Efforts of various international organizations including the ILO were very crucial in

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<sup>81</sup> *Id.* Art. 41.

<sup>82</sup> *Id.*

<sup>83</sup> Jetu Edosa *supra* note 3, p.119.

<sup>84</sup> Labor Proc.No. 1156/2019 *supra* note 61, Art. 60-65.

<sup>85</sup> The criminal code FDRE proclamation No414/2004, Federal NegaritGazetta, 9<sup>th</sup> year , Addis Ababa, 9<sup>th</sup> May 2005,Art. 603

<sup>86</sup> Sebastian Braun, *Core Labor Standards and FDI: Friends or Foes? The Case of Child Labor*, Available at; <<https://about.jstor.org/terms>> last accessed (Nov 13, 2019).

highlighting the trouble of working children and abolishing child labour.<sup>87</sup> ILO convention numbers, 138 on minimum age<sup>88</sup> and 182 on worst forms of child labour<sup>89</sup> deal with child rights and many countries have ratified these conventions. The convention requires ratifying States to make available access to free basic education and, wherever possible or appropriate, provide occupational training for children that are detached from the worst forms of child labour. It also calls for States to provide the means to remove children from the worst forms of child labour and for their rehabilitation and social integration.<sup>90</sup>

The abolition of child labour was also encompassed as a core labour standard first by the Organization for Economic Cooperation and Development (OECD) and the ILO. The International Convention on the Rights of the Child (CRC), which aims at abolishing child labour, provides the conditions in which children to be employed.<sup>91</sup> The committee on the rights of a child monitors its enforcement. CRC defines any person under the age of 18 as a child. Almost all states have ratified both the ILO and UN conventions and made laws that declaring a ban or semi ban on child labour.<sup>92</sup> A semi prohibition on child labour prevents young children from being employed only in hazardous industries.

In line with the international convention on protection of children the Ethiopian Constitution by virtue of article 36(1) on the Rights of the Child recognizes the rights of children not to be subjected to exploitative practices and works, which may be hazardous or harmful to the education, health or safety of children.<sup>93</sup> Further, the Ethiopian Labour Proclamation sets the minimum age for employment of children at 15 years. This is in line with the ILO Minimum Age Convention. Besides, the Proclamation prohibits employment of children aged between 15 to 18 years (Young Workers) in work that would endanger the life or health of children. Thus, young workers cannot

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<sup>87</sup> Zur Erlangung , *Child Labor, its Relation with Competitiveness of Labor Intensive Exports, its Determinants and Education in India*(Feb. 02, 2008)

<sup>88</sup> Minimum Age Convention, 1973, (No. 138) Adopted: 26 June 1973 Entered into force: 19 June 1976.

<sup>89</sup> Worst Forms of Child Labor Convention 1999, (No. 182) Adopted: 17 June 1999 Entered into force: 19 Nov. 2000.

<sup>90</sup> *Id.*, Art 7.

<sup>91</sup> The International Convention on the Rights of the Child was adopted by the UN in 1989 and came into force in September 1990.

<sup>92</sup> *Id.*

<sup>93</sup> FDRE Constitution *supra* note 58, Art.36.



be deployed to work in hazardous occupations or work environment except in the course of professional education in vocational schools that are approved and inspected by the competent authority. This exception, however, does not conform to the threshold stipulated in Article 3(3) of the ILO Convention No. 138 that provides 16 years as minimum admission age for young workers to engage in hazardous work in spite of the fact that the necessary care and precautions to safeguard the health and wellbeing of trainees is put in place, such as vocational schools.<sup>94</sup>

The Ethiopian Labour Proclamation by virtue of article 90 sets the maximum working hours for young workers. Unlike adult workers, the daily maximum working hours for young workers is 7 hours and as per article 91(1) these hours should not fall between 10 p.m. and 6 a.m. in any working day. Furthermore, the law also prohibits young workers from working overtime, on weekly rest days; or on public holidays. Ethiopian labour law has provided fine punishment for the failure of the employer to comply with these provisions though the deterrent effect is debatable.

#### **4.4 Discrimination against Female Workers**

As expressed in the preamble of ILO Constitution, protection of women's right is one of the major original objectives of ILO.<sup>95</sup> With the view to advance gender equality at workplace, ILO adopted the Equal Remuneration Convention No. 100 in 1951, and Discrimination (Employment and Occupation) Convention No. 111 in 1958.<sup>96</sup> In addition, elimination of discrimination (equal opportunity) is one of the four ILO declarations on fundamental rights and conditions at work, which sets out principles.

Although decades have passed since these Conventions have come into effect, gender-based inequality in remunerations and workplace discriminations against female workers, still a global

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<sup>94</sup> Jetu Edosa *supra* note 3, p. 121.

<sup>95</sup> The International Labor Organization's Fundamental Conventions, Available at; <[https://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---declaration/documents/publication/wcms\\_095895.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_095895.pdf)> last accessed (Feb 08, 2020).

<sup>96</sup> The Equal Remuneration Convention No. 100 in 1951 and Discrimination (Employment and Occupation) Convention, 1958 (No. 111).

problem. The problem is serious in EPZs. Countries specific reports indicate that female workers in most EPZs suffer from denial of access to jobs, insecure jobs, inadequate maternity protection, and sexual harassment.<sup>97</sup> The majority of workers in the industrial zones, especially in the garment and electronics sectors, are women. As women employees in EPZs are young ones, vulnerability of violation of the rights is so high. They are the most affected by the discriminatory practices and unequal treatment. Further, EPZ operators prefer young women employees because they are cheaper in terms of labour costs, show great fortitude in the repetitive production work, and are less prone to organize in trade unions and to have children.<sup>98</sup>

In protection of rights of women, Ethiopian legal regime is more specific and elaborative. In line with ILO Convention, in Ethiopia equal pay for equal work is constitutionally guaranteed,<sup>99</sup> maternity leave with full payment has been recognized,<sup>100</sup> discrimination in employment, payment disparity on account of sex is prohibited.<sup>101</sup> Further, the Labour Proclamation guarantees leaves for medical examination during pregnancy, 30 days prenatal leave and 90 consecutive days of postnatal leave.<sup>102</sup> In addition, a national policy on women that was issued in 1993, requires abolition of all discriminatory laws and regulations, and gears toward creating enabling environment for the full participation of all members of the society in the socio-economic and political sectors, with special focus on women.<sup>103</sup>

Ethiopia has a National Employment Policy and Strategy that provides guidelines for mainstreaming gender in employment generation in the country to promote social welfare and equity through poverty reduction.<sup>104</sup> Furthermore, Ethiopia adopted the Decent Work Country Programme (DWCP) in 2014-15.<sup>105</sup> The memorandum of understanding of the commitment to

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<sup>97</sup> Jetu Edosa *supra* note 3, p. 122.

<sup>98</sup> Pallavi Mansingh, et al. *Trade Unions and Special Economic Zones in India* (Geneva: International Labour Organization), (2012), p. 31.

<sup>99</sup> FDRE Constitution *supra* note 58, Art.36.

<sup>100</sup> *Id*, art. 35; see also Labor Proclamation No. 1156/2019 *supra* note 61, Art. 88(3).

<sup>101</sup> Labor Proclamation NO 1156/2019 *supra* note 61, Art. 87.

<sup>102</sup> *Id*, Art. 88.

<sup>103</sup> Decent Work Country Programme 2014-15 ETHIOPIA, International Labor Organization 2014

<sup>104</sup> National Employment Policy and Strategy of Ethiopia, November 2009 Addis Ababa, p.45.

<sup>105</sup> Decent Work Country Programme *supra* note 103.

collaborate in the implementation the Decent Work Country Programme was signed between representatives of the ILO, MOLSA, Ethiopian Employers Federation (EEF) and the Confederation of Ethiopian Trade Union (CETU). The Parties agreed on three pillars of Ethiopian DWCP priorities: improving implementation of international labour standards and social dialogue with an emphasis on compliance and coverage, promoting decent employment for poverty reduction, and improving social protection for sustainable development.<sup>106</sup>

## **5. An Appraisal of Core Labour Rights at Hawassa Industrial Park**

This Section briefly examines the application of core labour rights that discussed above in Hawassa Industrial Park. Hawassa Industrial Park was established in 2015, and as of 2020 about 22 textile and apparel industries have been operating in the Park, and hired about 32,000 workers. Surprisingly, after five years of launching of the Park, there is no trade union which is set up in the Sheds.<sup>107</sup> Is the absence of unions triggered by unawareness of the workers, lack of interest from the workers, or explicit or implicit act of employers or Regional or Central Government? Given the educational standard of most of the workers in the Industrial Parks, and apparent interest of skilled labour in the Park, the first two issues are unlikely. Thus, actions and inaction of actors outside employees themselves of is the most highly suspected cause that calls for investigation. Moreover, this Section also assesses direct or indirect pressure that forces workers to carry out a work without their free is explored. Further, respect to right of women and young workers is briefly examined.

### **5.1.1. Exploration of Respect to Freedom of Association and Collective Bargaining in Hawassa Industrial Park**

It is repeatedly said that said freedom of association and collective bargaining are among the core rights of workers that are spelled out in the national and international instruments. Having laws that explicitly recognize freedom of association and collective bargaining is one step, but not

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<sup>106</sup> *Id.*

<sup>107</sup> Interview with Mengistu Yimer *supra* note 19.

sufficient – the laws should be enforced. This subsection assesses the extent in which the rights conferred on worker force are respected by multinational companies in Hawassa Industrial Parks.

As pointed out earlier Ethiopia has ratified numerous international conventions, including ILO Convention No 87 on Freedom of Association and Protection of Right to Organize and Collective Bargaining Convention No 98 which recognized the freedom of association and trade union. Despite the recognition of vital rights of workers in the Constitution, legislation and other national policy arrangements, the rights are poorly enforced, even if enforced produced little effect, and not supplemented by adequate mechanisms of enforcement. Though the government has taken positive policy and legislative actions to realize the right to freedom of association, in practice, however, no visible change is apparent.

The Ethiopian law prohibits employers from anti-trade union practices by using any means of pressure.<sup>108</sup> Despite the absence of trade union that would coordinate a huge body of workers, there is no plausible evidence suggesting direct or indirect influence of employers at Hawassa Industrial Park.<sup>109</sup> The absence of a clear evidence however does not prove that the workers freely chose to avoid an umbrella organization that would bargain for the protection of the rights and interests of workers. Though not substantiated by evidence, the Confederation of Ethiopian Trade Union openly claims that workers who attempt set up trade union lost jobs. This claim contradicts with the absence of evidence clear. It may happen that workers may not wish to disclose the existence of actual or apparent pleasure not to think about setting up trade unions. If workers are already fired due to the claim to organize unions, there is sufficient evidence to claim violation on the part of employers. If the violation of employers is backed by Government officials, this is also violation.

Further, interviews were conducted for the purpose this work indicates some sort of violation on the part of employers.<sup>110</sup> A threat to fire workers may discourage workers not to think about trade

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<sup>108</sup> Labor Proc. No. 1156/2019 *supra* note 61, Art. 113.

<sup>109</sup> Snetsehay Assefa, *et al*, Workers' Rights Consortium Report, Grim Conditions And Miserable Wages Guide Apparel Brands In Their Race To The Bottom, available at; < [https://www.workersrights.org/wpcontent/uploads/2019/03/Ethiopia\\_isa\\_North\\_Star\\_FINAL.pdf](https://www.workersrights.org/wpcontent/uploads/2019/03/Ethiopia_isa_North_Star_FINAL.pdf) > last accessed (Feb 08, 2020).

<sup>110</sup> Dawit taye, ኢሰማኮ በኢንዱስትሪ ፓርኮች ውስጥ ሠራተኞችን ማደራጀት እንዳልቻለ ይፋ አደረገ, May 2, 2018 Available at; <<https://www.ethiopianreporter.com/article/10212> > last accessed (Feb 08, 2020).

union. Further, as revealed by the Confederation of Ethiopian Trade Union, some government officials expressed that it was not the right time to think about trade unions. This may be justified on work assumption that creating means of livelihood to needy workers, than seeking union protection. In this regard a trade union is viewed as something luxury. The Governments priority is attracting more FDI and creating more jobs by affording incentives to actual and potential investors. Thus, at the cost of workers, the Government aspires to attract more investors who wish to work freely in the Park without too much worry about granting more right to workers. In this regard the Government views that to think about trade unions is untimely. Despite the government officials' view, employers appear not satisfied by the subtle motives of State officials. The employers feel that they are more pressured by the officials than workers. As revealed in the interview, employers stated that they are facing more challenges from government officials than workers desire to set up trade unions in the Hawassa Industrial Park.<sup>111</sup>

Whatever the cause and justification is, the anti-union practice is expressed in the way of systematic avoidance.<sup>112</sup> The companies' through formal employment contract and with the informal orientation of the newly hired workers create pressure through broad ranges of confidentiality which hinders exercising the right to organize trade union.<sup>113</sup> Some of the companies in the employment contracts and others through orientation to employees with confidentiality provisions restricting workers' ability to communicate with other workers or outside parties about their working conditions.<sup>114</sup> In doing so, workers are forbidden from

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<sup>111</sup> *Id.*, የዓለም የሠራተኞች ቀንን በማስመልከት ኮንፌዴሬሽኑ ሚያዝያ 22 ቀን 2010 ዓ.ም. በሰጠው ጋዜጣዊ መግለጫ፣ በኢትዮጵያ የሠራተኞች የመደራጀት መብት ችግር ውስጥ እንደሚገኝ ይጠቁማል። በተለይም እየተበራከቱ በመጡት ኢንዱስትሪ ፓርኮች አካባቢ ሠራተኞችን ማደራጀት አስቸጋሪ እንደሆነ «አንዳንድ የመንግሥት የሥራ ኃላፊዎች በኢንዱስትሪ ፓርኮች ውስጥ ያሉ ሠራተኞች ለመደራጀት ገና ናቸው፤ አሁን መደራጀት የለባቸውም ብለው መመርያ የሚሰጡ አሉ፤» ሲሉ የኢሠማኮ ፕሬዝዳንት አቶ ካሳሁን ተናግረዋል። «እንደውም ከአሠሪዎቹ የበለጠ ፈተናው እየገጠመን ያለው (ስማቸውን ያልጠቀሷቸው) ከመንግሥት የሥራ ኃላፊዎች ነው፤» ሠራተኞቹ የመብት ጥያቄ የሚያነሱ ከሆነም በቀጥታ ከሥራ እንደሚባረሩና በማኅበር ስለመደራጀት በየጊዜው በመነጋገር የመደራጀት ጥያቄ እያነሱ ስለመሆናቸው የተናገሩት ፕሬዝዳንቱ፣ ጥያቄያቸውን ለቀጣሪዎቻቸው ማቅረብ ሲጀምሩ ግን የመባረር ዕጣ ስለሚገጥማቸው መብታቸውን ለማስከበር አልተቻለም ብለዋል። በማለት አስተያየታቸውን ገልጸዋል።

<sup>112</sup> Snetsehay Assefa *supra* note 109, p. 14.

<sup>113</sup> Interview by the author with Asnake Demissie, Head of Legal Department and consultant of the president at Confederation of Ethiopian Trade Unions, (Addis Ababa 24 November 2019 at his office).

<sup>114</sup> Interview by the author with Yohanes Ezo Adulo, Claims Follow-up and Support Officer, at Directorate of Harmonious Industrial Relations in SNNPRS Bureau of labor and social affairs, (Hawassa 04 December 2019).

communicating, disclosing, and revealing, directly or indirectly, to any person, firm, corporation, or other entity any information concerning matters relating to the business of the employer.<sup>115</sup>

Furthermore, informants of FGD disclose that the employers warn employees by declaring that, failing to respect this rule results termination of employment contracts for bringing the company into disrepute.<sup>116</sup> These broad confidentiality terms of contract clearly violate relevant standards of workers' associational rights which recognized under international conventions as well as national laws.<sup>117</sup> Such restrictions preclude workers from communicating with each other and with representatives concerning issues workers must be able to discuss in order to carry out collective action.<sup>118</sup> Since the right of workers to speak freely is restricted, it also impedes exercising other labour rights related to working conditions in a meaningful manner. Moreover, the absence of trade unions at the factory level contributes to perpetrating labour and human rights violations of employees in Hawassa industrial park. Notably, workers in Hawassa industrial parks showed great hesitancy to speak about the factory's labour practices during interview.

The major reason attributed to this problem according to key informant interviews with officials of the MOLSA, CETU, managerial staff in Hawassa industrial park and Southern Labour and Social Affairs Bureau is employers' anti-union attitude who views the creation of trade union in their enterprise as a threat that result in unnecessary bargaining costs, fearing strikes and encumber output, therefore, degrading investment.<sup>119</sup> The interviewee of a key informant in CETU also indicated that the government is generally unwilling and reluctant in promoting and respecting workers' right to freedom of association despite several meetings and discussions with the concerned bodies.<sup>120</sup> Particularly, the key informants are deeply concerned about the rights of

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<sup>115</sup> *Id.*.

<sup>116</sup> Focus Group Discussion with workers of Everest apparel (Ethiopia) S.C in Hawassa industrial park, (at outside the courtyard of the park) 05 December 2019.

<sup>117</sup> Snetsehay Assefa *supra* note 109, p. 14.

<sup>118</sup> *Id.*, p. 15.

<sup>119</sup> Interview by the author with Hana Maru, Law and International Affairs Senior Expert, at Directorate of Harmonious Industrial Relations, in Ministry of Labor and Social Affairs, (Addis Ababa 31 January 2020 at her office).

<sup>120</sup> Interview with Asnake Demissie, *supra* note 113. While CETU has a strong position that employees right to form a union is to be respected unconditionally in line with Convention no 87 and 98 that Ethiopia has ratified, but the government is unwilling to remove barriers to organizing in the industrial park by providing different prerequisite from the perspectives of attraction of investment only.

workers in Hawassa Industrial Park to set up trade unions challenged not only by the employers, but also by the government officials who wished to attract more FDI and more investors living workers at the mercy of employers.<sup>121</sup>

## **5.2 The Respect to Freedom from Forced Labour in Hawassa Industrial Park**

Regarding respect to prohibition against exploitative and compulsory labour conditions, the practice of Hawassa industrial park is promising as compared to other standards, because cases of forced labour are nearly absent. Mainly in EPZs, forced labour occurs in the form of mandatory overtime work. As noted above, the Ethiopian labour proclamation does not allow overtime work in principle and in exceptional circumstances, overtime work is allowed in within confines of predetermined safeguards expressed by law.<sup>122</sup> The law requires overtime works to be done a voluntary basis. A worker may be required to work overtime only in exceptional situations that are unequivocally expressed by the labour proclamation.<sup>123</sup> Worker who participated in the questionnaire shows that companies' in the Park require workers to perform overtime as a mandatory aspect of employment. This illegal practice is explicitly codified in the employment contracts of some of the companies operate in the park. Everest Apparel Ethiopia is one of the major companies at the Hawassa Industrial Park, which issues employment contract to workers, and stipulates that reserve rights to the management to change workers' daily work schedules, including work starting and finishing times in accordance with business demands, with no caveat that such alterations are limited by the length of the statutory workday.<sup>124</sup> Additionally, it provides that employer may require workers to perform more than 8 hours per day when it is demanded by the nature of work. During the period in which the survey was conducted, the factory no one was working overtime. However, in prior months, workers stated that factory management required workers to performing overtime, typically amounting to six to eight hours of work per week, and workers were not allowed to decline.

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<sup>121</sup> *Id.*

<sup>122</sup> Labor proc. 1156/2019 *supra* note 61, Art. 66-67.

<sup>123</sup> *Id.*

<sup>124</sup> Employees' terms of the contract with Everest Apparel Ethiopia S.C, are selected because of the availability of data and their labor intensive nature offering significant number of employment opportunities for domestic workers compared to other companies in the industry park.

### 5.3 Child Labour in Hawassa Industrial Park

Though tracking child labour cases based on minimum age requirement is extremely difficult due to the absence of birth certificates or any other reliable mechanism to trace the actual age of the workers, in an interview with the person in charge of labour inspection from SNNPR Labour and Social Affair Bureau in the Park indicated that most of the workers recruited in the park were mostly in age groups of 16-22 years.<sup>125</sup> The basis for his assertion is that workers completion of 8<sup>th</sup> grade has been ascertained by SNNPR Labour and Social Affair Bureau during recruitment. The whole information available so far suggest employers in the Park do not intentionally violate the minimum age stipulation in accordance with Ethiopian Labour law and Child Rights convention as well as ILO Conventions.<sup>126</sup>

#### 5.3.1 Exploring the Prevalence of Discriminatory Practices against Female Workers in Hawassa Industrial Park

Again both the international instruments and the domestic legislations including the Constitution prohibit discrimination of all forms based on gender. Accordingly, employers are required to respect the workers' human dignity irrespective of gender difference. With a view to investigate treatment of workers on the basis of sex a survey was conducted through informal discussion with a small group of workers at Hawassa Industrial Park. The participants were asked to respond to questions like workplace sexual harassment or abuse, the practice of discrimination against women regarding employment recruitment and unequal pay for the same job.

The participants responded that in respect of recruitment mechanisms and employment criteria there was no apparent discrimination against female workers.<sup>127</sup> In line with this affirmation, the Park's monthly report released on October 30, 2019, shows that 90.2% of the 30,701 local workers are female.<sup>128</sup> Sewing production unit in apparel companies is the most female dominated

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<sup>125</sup> Interview by the author with Yohanes Ezo Adulo *supra* note 114.

<sup>126</sup> *Id.*

<sup>127</sup> Focus Group Discussion with female workers in Hawassa industrial park, (at outside the courtyard of the park) December 06, 2019.

<sup>128</sup> Mulu Beyene *supra* note 21.



department. Women are considered more patient than men workers because sewing is a task that they can carry out while sitting. The Park administration confirmed also that employers prefer women to men because women are careful and tolerant that matches with the challenging nature of the work, while men are believed to be less tolerant and aggressive.<sup>129</sup>

The severe violation of fundamental female workers' rights in Hawassa industrial park is discrimination against pregnant female workers. Discrimination in employment on the basis of sex is prohibited by the Ethiopian Constitution and labour proclamation.<sup>130</sup> It is widely understood that such stipulation bars discrimination against women workers due to pregnancy.<sup>131</sup> Ethiopian law also specifically provides women to get 120 days of paid maternity leave and prohibits employers from terminating a worker during pregnancy.<sup>132</sup> Contrary to this rule, the JP factory at Hawassa Industrial Park practice of not hiring workers who are pregnant at the time they apply for work or who admit, in response to management questioning, a near-term intention of becoming pregnant.<sup>133</sup> A former nurse at Hawassa Industrial Park clinic testified that pregnancy tests were conducted in the recruitment process at some companies.<sup>134</sup> Without exception, all-female key informants interviewed by the author stated that they had been warned about pregnancy by management during the recruitment and screening sessions they suffered before commencing their jobs.<sup>135</sup> Several workers stated that managers go so far as to touch and inspect the stomachs of likely employees to check for signs of pregnancy.<sup>136</sup> The JP factory's open practice of not hiring pregnant workers constitutes violation of international conventions that Ethiopia has ratified and national law. This unlawful practice would jeopardize work opportunities for both pregnant women and creates a discriminatory practice. However, as a positive remark, there is no difference

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<sup>129</sup> Interview by the author with Yohanes Ezo Adulo *supra* note 114.

<sup>130</sup> FDRE Constitution *supra* note 58, Art. 35.

<sup>131</sup> Labour Proc. No.1156/2019 *supra* note 61 art.

88(3).<sup>132</sup> Snetsehay Assefa *supra* note 109, p. 28.

<sup>133</sup> Interview by the author with Betelhem Mekebib The former nurse at Hawassa industrial park vision clinic, (Hawassa 02 December 2019 at Hawassa Referral Hospital).

<sup>134</sup> Focus Group Discussion with female workers in Hawassa industrial park, (at outside the courtyard of the park) December 06, 2019.

<sup>135</sup> *Id.*

between male and female workers in terms of wages for similar work in Hawassa Industrial Park.<sup>136</sup>

### 5.3.2 Maternity Leave

Women workers are entitled to the right to maternity leave with pay or without fear of loss of employment as per in the international legal instruments and the Ethiopian Constitution, as well as under labour proclamation. In addition to this, pregnant women have the right to get special protection during pregnancy depending upon the nature of work.<sup>137</sup> Participants of the FGD explained that in the employment contract the employer incorporates maternity leave by asserting leave entitlements.<sup>138</sup> In some cases, contrary to the requirements of law, pregnant women work in machines and are not allowed to follow up medical check-up.<sup>139</sup> This is contrary to the dictates of law which requires pregnant women's entitlement. This proves that there is critical problem in caring pregnant women at the Park.

## 6. Conclusion

As do other emerging economies, Ethiopia has been doing its level best to attract FDI and international companies that thought to create job, channel transfer of technology, increase Ethiopia's share in international market. With this view in mind the nation embarked on construction of industrial zones in all major cities of the country. Hawassa Industrial Park is one of earliest parks that has employed tens of thousands of Ethiopians and has started to play a great role in the Ethiopian economy. The Park has already started contributing a crucially needed hard currency to the Ethiopian treasury.

But economic goals cannot win the demands of period unless workers are humanely treated and their interest is respected. In disregard of workers interest either the employers and the Government that relentlessly work to usher FDI can gain temporary attainment but unless the very people who

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<sup>136</sup> Interview by the author with Rebeka Getahun, human resource officer at Everest Apparel Ethiopia in Hawassaindustrial park, (Hawassa 02 December 2019 at Reception of Shed 50 in Hawassa industrial park).

<sup>137</sup> Convention on the Elimination of All forms of Discrimination against Women, (CEDAW, 1981)

<sup>138</sup> Employees' terms of the contract with Everest Apparel Ethiopia S.C.

<sup>139</sup> Interview by the author with Asnake Demissie *supra* note 113.

take part in the production process are not treated well and their human and natural right is not respected in accordance with the dictates of the international instruments that Ethiopia has ratified and domestic legislations that are designed in the accordance with the Ethiopia's international commitments are respected the temporary gains will fade steadily fade and the whole process will end up at loss.

This works found that some of the core labour standards that Ethiopia committed to enforce and domestic legislations are not effectively enforced. Though the Park has created job opportunity to tens of thousands, there is no trade union in the Park. Employers express and subtle practices and the ambition to attract FDI and more international investors in the Parks have triggered the Government to keep silent. Though there is no apparent wrong on the part of employers with regard to young workers, failure to have clear evidence regarding true age of young workers has been a problem. There is no discriminatory practice among workers based on race, and gender but, some employer either exercise some discriminatory practice in filtering pregnant women during employment or through laboratory test or during interview. Further, some companies do not afford adequate protection to pregnant women in accordance with the dictates of the ILO Core Standards or respect the Labour Proclamation. Further, respect to the rights of pregnant women workers is respect to the future generation that needs all concerned to enforce in accordance with the dictates of the law.

The relationship between core labour standards and FDI is among the critical issues that caught concerns of human rights organizations and activists. Despite the fact that the proliferation of the textile and apparel factory at the industrial park has offered job seekers the opportunity to work, such job opportunities often come at the expense of fundamental rights of workers granted in the international, regional as well as national legal instruments. Employee's challenges continue at the companies operating in industrial park.

The International Labour Organization (ILO), through various conventions, has provided core labour standards, which are regarded as minimum rights that must be respected by all employers.

Ethiopia is among many countries that are parties to all of these conventions, but the problem remains on their implementation. Though there is no apparent forced labour in the Hawassa Industrial Park, indirect pressure through overtime is often practiced. Indirect or direct compulsion has the effect of enslaving a poor worker, this practice falls short of the dictates of Core Standards of ILO and domestic laws. Employers are suggested to respect rights of workers to choose whether take over time jobs or not. If an unwilling worker is coerced to work beyond the regular schedule, Ethiopia's international commitments and domestic laws would at stake. Though not all companies and in all times, such practice is apparent in Hawassa Industrial Park.

As a general remark this work concludes that the Ethiopian government has failed to strike a balance between protection of core labour rights standards and FDI. The interest to usher FDI is understandable but neglect to enforcement of right of workers cannot make the investment sustainable. Finally, it is suggested that the Government to change its stance with regard to the respect to the workers right to set up of trade unions. The crucial need for FDI and economic development cannot be sustainably acquired at the cost of rights of workers.