

Rights Protection in the Labour Markets of Ethiopia

Research Reports from Selected Cities



Center for Human Rights

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Foreword

The Center for Human Rights (CHR) is an autonomous academic unit of Addis Ababa University engaged in multidisciplinary human rights teaching, research and community services. The Center is implementing a project that supports its teaching, research and community engagements (Project STRACE-CHR) funded by Sida and Royal Norwegian Embassy.

One of the objectives of the Project has been to strengthen community level engagement in promotion and protection of constitutional rights in general and the rights of women, children, workers, migrants, and persons with disabilities in particular. As part of activities related to fulfillment of this objective, the CHR has undertaken this empirical research with the aim of assessing practical challenges in labour rights protection in its project areas, i.e. Addis Ababa, Adama, Ambo, Hawassa, Semera and Gambella. This research aims to inform policy direction and programmatic interventions of the CHR by providing policy and action-oriented recommendations.

The research, carried out with participation of a dozen of researchers, analyzes policy and legal landscape of labour rights in Ethiopia and opportunities and challenges in labour rights enforcement. Specifically, it investigates labour rights violations and the recourse available to workers who face such violations in the study sites. Identifying some sectors, it explores the state of labour protection in manufacturing, hotel businesses, agro-industries, and in tripartite labour outsourcing schemes. It also analyzes the protection of migrant labourers and female employees in the study sites.

The CHR would like to take this opportunity to express its gratitude to Sida and Royal Norwegian Embassy for their financial support to conduct this research as part of Project STRACE-CHR. We are also

grateful for the valuable contributions of project office managers in coordinating data collection in their respective areas. Finally, the CHR conveys its gratitude to the researchers, reviewers, and copy-editor who have greatly contributed for the publication to take its current shape.

Wondemagegn Tadesse (Dr. jur.)

Center for Human Rights

1. Rights Protection in the Labour Markets of Ethiopia: An Introduction

*Daniel Behailu Gebreamanuel**

‘Universal and lasting peace can be established only if it is based on social justice’, ILO Constitution Preamble.

1.1. Introduction

The contributions in this book explore the challenges to labour rights protection in some selected cities of Ethiopia using case studies method. Employers and employees of both the private and public sectors have been covered. Where possible, special emphasis has been given to employment relationships in private enterprises with a view to assess how private employers have understood and implemented labour rights as enshrined in the laws.¹

Therefore, this research is a situation report divided into seven chapters addressing six cities and general introductory matters. The outcomes of the research exercise are captured in the findings of each chapter. In short, the findings indicate that labour rights are not seriously taken, employees are fired at will, labour association are discouraged or in

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¹ A note for the reader: The designing and data collection for the action researches reported in this publication were done in early 2019, while Labour Proclamation No. 377/2003 was still in force. However, a new labour proclamation, Proclamation No. 1156/2019, was adopted by the House of Peoples’ Representative in July 2019, repealing and replacing Proclamation No. 377/2003. By then data collection was finalized and analysis and report writing has commenced. As the design and data collection were undertaken in light of Proclamation no. 377/2019, the data analysis is done in light of this Proclamation. Since the new labour law is substantially similar with the repealed one on issues discussed in the research reports featured in this publication, we hope that this publication will still be relevant.

some cases made unviable, employees are denied their leaves and employment insecurity is quite common. In the findings of each report, it is indicated that unlawful termination of contract, absence of safe and secured working environment, sexual harassment, physical assault, limiting the utilization of leave and public holidays, insufficient benefits packages, maltreatment, stifling union related activities of workers, restrictive pension contribution, irregular and very low wages, denying severance payment and compensation are some of the common complaints against private enterprises.

Thus, this research output presents, using empirical method, an assessment of the extent to which labour rights and entitlements (so granted by both international and local laws) are observed by employers, mainly in the private sector. For this purpose, industries located in *Addis Ababa, Adama, Hawassa, Ambo, Semera and Gamebela* cities have been studied and analysed via up-close key informant interviews, focus group discussions, personal observations, secondary data, court cases, files from legal aid offices and trade unions. Hence, a mix of qualitative and quantitative research methods were employed to garner data from the selected study sites. The research output presents an introductory chapter, and six other chapters assessing the practices of labour rights enforcement. For the sake of convenience, each chapter presents its own data collection methods, approaches and key findings.

1.2. Ethiopia and Labour Rights

Ethiopia is the first African country to join International Labour Organization (ILO). Now, Ethiopia is the second-most populous country in Sub-Saharan Africa and its economy is growing fast. Historical records indicate that Ethiopia's labour development was very much associated with the emergence of industries and industrial production system which is a recent development compared to the long history of the nation.² Currently, it aspires to attract investment and

² Mehari Reda (2015), *Privation in Ethiopia: The challenges it poses to unionization and collective bargaining*, The University of Warwick, P. 39.

wants to expand its industrial sector towards employment creation, increase income of households and reduce poverty.³ A typical strategy employed includes the opening of industrial parks akin to China's *special industrial zone* that brought about a drastic economic development. However, investment and labour laws, policies and practices are criticized on account of bestowing much power to the investors and employers and providing little emphasis on labour rights and protections and/or gaps in the law and implementing institutions which created rooms for abuses of labour rights as stipulated in plethora of international bills of rights. Furthermore, the bilateral and multi-lateral investment agreements of the country bargain on '*cheap labour and abundant land*' opportunities, and these agreements are claimed as a source of disorder in employment relationship.⁴ Investors (both domestic and foreign including government owned enterprises) are often accused of stampeding on labour rights of one sort or the other.

Ethiopia has ratified a number of the ILO's Conventions including the eight core Conventions since 1923.⁵ The ILO employment policy *Convention* of 1964 requires ratifying states to declare and pursue an active policy designed to promote full, productive and freely chosen employment. Further, the 1998 ILO's Declaration on 'Fundamental Principles and Rights at Work' requires member states, by virtue of their membership, to promote, respect, and realise the core labour rights.⁶ Yet, there are controversies over the design of labour market policy that centres on achieving the delicate balance between

³ Ethiopia's *Growth and Transformation Plan II* (GTP II).

⁴ There are over 33 Bilateral Investment Treaties (BITs) that Ethiopia has concluded with foreign countries to expedite investment condition and these treaties are jam-packed with rights and privileges of the investors with little or no attention to labour issues.

⁵ Mehari, *supra* note 2 and List of convention ratified by Ethiopia: Unemployment Convention, 1919, Right of Association (Agriculture) Convention, 1921; Weekly Rest (Industry) Convention, 1921; Forced Labour Convention, 1930; Freedom of Association and Protection of the Right to Organize Convention, 1948., Employment Service Convention, 1948. Right to Organize and Collective Bargaining Convention, 1949; Private Employment Agencies Convention, 1997, Equal Remuneration Convention, 1951; Abolition of Forced Labour Convention, 1957; Discrimination (Employment and Occupation) Convention, 1958.

⁶ ILO Declaration on Fundamental Principles and Rights at Work, 1998.

preventing worker exploitation by guaranteeing basic rights, and avoiding loss of productivity or employment through excessive regulation.⁷ Thus, balancing rights of workers with employer's interest is quite challenging. The balancing effort must also take into account sustainability of business and societal factors as well. The new trend is that private business needs to consider human rights as a business case.⁸

Business actors need to earn trust once they started operating. Trust can only be earned via complying with a human right guiding principles for business actors which is suggested by the UN Guiding Principles on Business and Human Rights (UNGPs) and fighting corruption. The principles are nothing but an endorsement of the *international bill of human rights*⁹ that the world agreed on in the context of business. The biggest challenges in Ethiopia are more related to the companies and state enterprises which operate in neglect of human rights.

There are tendencies, among business actors, that perceive ILO and related standards as restrictive, entailing significant costs and thus hindering economic development. A growing body of research indicates, however, that compliance with international labour standards often accompanies improvements in productivity and economic performance and human development.¹⁰ Despite the ratification of a number of Conventions, challenges remain in relation to ensuring the fulfilment and respect of the obligations and rights enshrined therein.¹¹ Reports claim that the intricacies of labour market are rooted in the gaps amongst the law, policy, absence of minimum wage, the system of implementation of the legal rights bestowed to workers and the power

⁷ Palugod, N. & Plaugod, P.A. (2011). Global trends in offshoring and outsourcing, International Journal of Business and Social Science Vol. 2 (16).

⁸ See, UN Guiding Principles on Business Ethics and Human Rights, 2011.

⁹ International bill of rights encompass, among others, Universal Declaration of Human Rights (UDHR, adopted in 1948); the International Covenant on Civil and Political Rights (ICCPR, 1966) with its two Optional Protocols; and the International Covenant on Economic, Social and Cultural Rights (ICESCR, 1966).

¹⁰ World of Work Report, 2013.

¹¹ Ethiopia Decent Work Country Programme, DWCP 2014-2015.

imbalance between the employer and the employees, especially in the private sector. Besides, labour associations are either unavailable, or where available they are ineffective and hijacked by the employers and other interest groups.¹²

Over the last decade, there have been drastic changes in labour market in Ethiopia due to changes in the socio-economic development of the country.¹³ The Ministry of Labour and Social Affairs (MoLSA) recognizes that the labour in Ethiopia market is least regulated (since labour engagement are not fully kept in government database) and largely chaotic. Many workers and workers' right advocates are complaining on the inadequacy of the wage workers receive and the manner they are treated at work places including safety rules at work. Besides, legal entitlements are often ignored at the will of the employer. At times, the engagement of the employers is with the agents/ brokers than the employees themselves. Mainly, employee and employer relations are weak and are not up to the required legal standards.

On the other hand, the employer, as per the recent Labour Proclamation, is obliged to pay the worker a wage; to respect the worker's human dignity; to take all the necessary occupational safety and health measures and to abide by the standards and directives to be given by the appropriate authorities in respect of these measures. However, these requirements are often ignored and that their implementation and monitoring system tends to be weak. Some five years ago, the Ministry of Labour and Social Affairs reported that monitoring workers' situation is quite insignificant as compared to the problem at hand. In the year 2010 E.C., the Ministry planned to monitor 39,500 enterprises but managed to monitor only 14, 109 enterprises.¹⁴ More specifically, these complex problems are reported against the emerging industrial parks. Predominantly, very low wages, sexual harassments and

¹² Unreported survey conducted by Hawassa University, including Mrs. Armaye Assefa, on wages and hygiene status of female labourers at Hawassa Industrial Park, 2018.

¹³ Ministry of Labour and Social Affairs report, 2017.

¹⁴ Ministry of Labour and Social Affairs report, 2014.

physical assaults are chronic problems for young women employees who work as daily labourers.

1.3. Ethiopian Labour Policy Directions: Some Core Issues

1.3.1. Scope of Labour Policy

Ethiopia has been grappling with labour issues since the time of its modernization effort commenced in the early 20th C. It was one of the founding members of ILO (1919), an organization dedicated to improving the lives and working conditions of employees worldwide. Hence, sporadic laws and policy directions were in order since the imperial time. However, before we delve into the discussion of core labour policy issues, a word is in order about the scope of the concept of labour and labour rights.

Labour can be understood narrowly and broadly. Narrowly, it refers to workers in the private sector as well as profit-making state enterprises (e.g. Ethiotelcom and state-owned banks). In its broad sense, it goes beyond the narrow sense to include civil servants working in the public sector such as ministries and agencies. In both senses, those in management positions are outside of the purview of labour right matters.

The distinction between employees in the narrow sense and state civil servants has to do with historical developments. Traditionally, the relationship between civil servants and the state was not considered as one between two equal parties. Today, the significance of that distinction is diminishing. For example, the ILO database of national legislation refers to the bibliography of the law of civil service of ILO member states.¹⁵ Nowadays, civil servants are entitled to more or less the same rights as private sector employees, although the formal sources of entitlements vary. And for the purpose of this research, since there is no basic difference between the two categories, the term *labour* issues and *labour policy* are used in the broad senses of the terms.

¹⁵ World Bank. 2015. Ethiopia: Urbanization Review. Urban Institutions for a Middle-Income Ethiopia. Washington D.C.

However, the focus of this research and the recommendations relate to business enterprises.

Another distinction worthy of making is between *labour law* and *labour policy*. According to Driedger,¹⁶ *policy* refers to “the objective to be achieved” whereas *law* is “an outline of the method by which [a policy] is to be achieved”. A policy embodies a vision or direction of action and the law is an instrument through which that vision is put into action. Courts enforce laws, not policies. Although the two concepts technically differ in terms of their nature and effects, for the purpose of this research, they are used in interconnected fashion and that the policy guide results in dictating the nature of the law. In fact, by reading the law, one can infer the policy behind it and vice versa. However, it is often a common mistake that the policy guide is often neglected in the details of the law which all the same undermine the very purpose for which the policy guide is needed. Hence, utmost care need to be taken while articulating a policy statement as to make it easier to comprehend and detail it into effective laws. It is also essential to remember that policy guides dictate also the institutions to be established to affect and attain the objectives of such policy guides. In the sections to come, we are to figure out the nature of the labour policy in Ethiopia and its guiding role in forging a healthy labour relation; but it is also prudent to begin by expounding the concept of labour relations.

1.3.2. Labour Relations

Historically, labour relations have been quite uneasy and difficult. Revolutions that have changed the face of this world came about via difficult, discriminatory, exploitative, abusive, and unbalanced labour relations. One can note the writings of giants like Karl Marks in his book, *Das Kapital*, where he articulated the inherent conflict between the employer trying to maximize profit and the employee trying to earn a decent living. He talked of endless class struggles. The current world order with regard to labour rights came via labour right-based struggle

¹⁶ Boeckenfoerde, M. (2006) Max Planck Manual on Legislative Drafting on the National Level in Sudan.

of one sort and another. The laws, both international and national, are results of labour struggles. At the heydays of the struggle, labour-based political parties and movements have been able to assume political power in different countries.

Indeed, in the modern legal order, labour relations involve a tripartite relation between government, employers and employees. Hence, labour policy seeks to balance the conflicting interests of the three parties. Governments are basically concerned with ensuring industrial peace in the work place and jobs for the unemployed. Employers seek profit maximization with the lowest possible cost. On the other hand, employees strive for higher wages and good working conditions, and labour rights of one sort or the other. Because of the significance of good labour relationships and particularly the need to protect the interest of workers, international and national legal frameworks have been adopted. Having this in mind, we now turn to examine relevant policy and legal documents.

1.4. The Essence of Ethiopian Labour Law and Policy

Ethiopian labour policy is embodied in the FDRE Constitution (as far as principles are concerned) and the *National Employment Policy and Strategy* and in various international and domestic legal instruments. The essence of labour laws is to be found in the FDRE Constitution, the Labour Proclamation, ratified human rights and labour-related treaties, directives, collective agreements and workplace rules.¹⁷ According to ILO data base,¹⁸ Ethiopia has over 164 national documents (such as: constitution, policy documents, proclamations, regulations, directives etc.) in different forms and shapes with regard to labour laws and rights or have got to do with labour matters.¹⁹ The labour law and policy can

¹⁷ Getachew Minas and Yared Berhe (2011). The Impact of Ethiopian Labour Laws on Business Efficiency and Competitiveness (Addis Ababa Chamber of Commerce and Sectorial Associations)

¹⁸ Natlex, 2019

¹⁹ see the link here,
https://www.ilo.org/dyn/natlex/natlex4.countrySubjects?p_lang=en&p_country=ETH

be extracted from the following main legislation in the absence of a comprehensive labour policy in the framework of human rights.

1.4.1. The FDRE Constitution

The FDRE Constitution guarantees the right to association and, more specifically, workers' right to organize and join trade unions "to bargain collectively with employers or other organizations that affect their interests" (FDRE Con., Art 42). Another constitutionally protected labour right is the right to strike. But as Amnesty International reported, lengthy bureaucratic hurdles are imposed on exercising the right. Furthermore, women employees are entitled to equal pay for equal work. Forced labour and servitude are categorically outlawed.²⁰ Yet again, these constitutional principles and guides of the labour policy have not been fully legislated and enforced. Institutions that enforce these rights are also either compromised or are made dysfunctional. The Ethiopian government hitherto is nothing but tolerant of strong labour unions.

However, on rhetoric level, the constitutional order is quite a robust policy guide in the event that it is adhered to. For the constitutional guides and principles (even legal rights) to be implemented, there is a need for enacting a comprehensive labour policy and establishing a dedicated institution that oversees its implementation. Ethiopia needs to have a national human rights policy (and in particular labour rights policy) which inculcates that labour rights as a business case,²¹ which is quite important for the sustainability and profitability of government owned and private businesses.

²⁰ Article 18, the Constitution of Federal Democratic Republic of Ethiopia, 1995.

²¹ The Business Case is an instrumental tool in both justifying a project (requiring a capital budgeting decision), as well as measuring the project's success. The Business Case model typically takes the form of an Excel spreadsheet and quantifies the financial components of the project, projecting key metrics for making any important business decision: e.g. Net Present Value (NPV), Return on Investment (ROI), Payback Period, and Cost of Investment.

Therefore, the FDRE Constitution despite its lofty provision on labour related rights and its open endorsement of the international bill of rights (ILO Conventions included), its implementation is far behind its endorsement. The Constitution needs to be detailed into action policy, for instance national action plan and legal document. Besides, the policy and laws need to be implemented with strong institutions that consider implementing right-based approach to doing business (with labour rights) is sustainable for enterprises and the country at large.

1.4.2. The National Employment Policy and Strategy (NEPS)

The NEPS (2009) has as its objective to alleviate problems of unemployment, help eradicate poverty, and address labour and employment related issues in the country. The document is both a policy and strategy document blurring the difference between policy and strategy. Besides, it is focusing on many objectives which might be difficult to achieve in terms of labour issues. Employment creation and poverty reduction are macroeconomic policy matters which are quite a separate issue than labour issues which require focused attention and labour issues are culmination of the macroeconomic policy matters indicated in the document.

The Policy, albeit mixing issues, prioritizes decent employment opportunities, improving labour market information and employment services, creating enabling environment that facilitates transition from informal to formal economy, maintaining industrial peace, and other cross-cutting issues for employment creation.

Yet again, the Policy document, in its background narration, confirms its anticipation that in Ethiopia, labour market institutions provide such services as protecting the interests of workers based on standards and regulations related to employment, wages, benefits, promotion and other issues. In Ethiopia, the scope of such institutional provisions and protections has been confined in most part only to the public enterprises and to some private sector employees, with no protection for the largest segment of the labour force which is engaged in the informal sector and subsistence farming.

The NEPS identifies “policy action areas” from the perspective of the demand side. Specifically, it calls for accelerating the development of the private sector as an engine of job creation and an effective and efficient public sector employment. The document focuses on five areas: the promotion of productive safety net and employment and livelihood, social insurance, equitable access to basic social services and legal protection and support to vulnerable groups.

However, there is a divergence between the policy prescriptions and the attention given to private enterprise. Instead, the government has adopted the developmental state model of economic growth whereby the economy has been dominated by public investment at the expense of private sector. The government has failed to create a pro-investment environment. Economists warned the government against squeezing out the private sector.²² Restrictive regulatory environment on the financial sector has put excessive constraints on access to funding by private investors.

Furthermore, the Policy emphasizes the need to give increased attention to the legislative and administrative frameworks including finance and contract enforcement mechanisms. However, the government’s performance on both counts has been a dismay. The Ethiopian legal regime is anything but predictable. The judiciary is also tainted with corruption and political interference.

Among others, the policy envisions for balanced fiscal and monetary policies to achieve macroeconomic stability and favorable environment for private investment and job creation; support for public and private sectors and Non-Governmental Organizations (NGOs) to provide a business-friendly environment and controlling corrupt business activities. However, albeit recent reform effort, the nation is nothing but labour rights friendly and human rights-oriented business doing. Thus, the policy document is by far consistent and focused on labour rights protection. It mixes up macroeconomic matters with labour rights

²² Arkebe Oqubay, 2018, Industrial Policy and Late Industrialization in Ethiopia, working paper.

issues demanding a revision and sorting out the relevant labour issues into consistent and comprehensive labour right policy document. A robust labour right policy document guides the nature of subsequent legislation and institutions that see to it that the laws are implemented.

1.4.3. The Labour Proclamations and Related Laws²³

Ethiopia has issued many proclamations in the effort to improve employment outcomes through improving employment relations. The Labour Proclamation (Proclamation No. 377/2003), the provisions of the Employment Exchange Service Proclamation,²⁴ Ethiopia's Overseas Employment Proclamation No. 923/2016, the Right to Employment of Persons with Disability Proclamation (Proclamation No. 568/2008), etc. govern the relations between employers and employees. There are also employment related ILO Conventions (about 20) that Ethiopia has ratified as part of its domestic law.²⁵

The Labour Proclamation is by far the most comprehensive law on employer-employee relations. The Proclamation deals with, among others, contract of employment, duration, obligation of both parties, unlawful activities, suspension, termination of employment contract, severance pay, reinstatement or compensation, contract of apprenticeship, hours of work and overtime, leave, working conditions of young workers, occupational safety, occupational injuries and disease, trade unions, collective agreement, labour dispute resolution, strike and lockout.

Certainly, Proclamation 377/2003²⁶ contains pro-labour stipulations and employers have no free hand to fire workers. With respect to its

²³ Proclamation 377/2003 has been amended in August 2019 the details of which are highlighted from reports of the draft discussion in here. However, the newly amended proclamation grants more rights to the employees and is also more gender friendly.

²⁴ Employment Exchange Services Proclamation, proc. No. 632/2009.

²⁵ The National Employment Policy and Strategy (NEPS) of Ethiopia, 2009.

²⁶ On July 5 2019, the House of Peoples' Representatives (HPRs) approved a draft Labour Proclamation Proclamation) that will repeal Labour Proclamation No. 377/2003 (Labour Proclamation) together with its amendments.

implementation, in the past, there had been a widely held view among the legal community that in a court dispute, employers would rarely win. Judges used to interpret the law in favor of the weaker party, the employee. But that has been reversed in recent years. One reason could be the fact that judges have been subjected to a *gimgema* (self-criticism) and criticism sessions whereby those who decided against a government entity (and even *developmental investors*, whatever it means) were criticized for having passed such judgments (informal conversation with judges). However, with the current reform undergoing, the judiciary is supposed to be active and again the new Labour Proclamation (1156/2019) confers more rights to the employee and tightens the duties on the employer which creates a room for optimism. Robust judicial activism is required in here backed by strong labour unions veering its eyes on negotiation than confrontations.

1.5. Labour Rights and Recourse Options

1.5.1. Labour rights in general

The foundations of labour rights are human rights. In turn, human rights are the result of atrocities that had been ravaging the world and a human race realization that there is a need for universal values that cannot be left to individual states or any other powerful organs. Thus, the world especially after the World War II atrocities came to a conclusion that there is a need for universal laws (system of laws and governance) that govern human rights that transcend race, nationalities and other factors.

Labour rights are human rights, and the ability to exercise these rights in the workplace is prerequisite for workers to enjoy a broad range of other rights, whether economic, social, cultural, political or otherwise.²⁷ Everyone has the right to work. The right to work is a foundation for the realization of other human rights and for life with dignity. It includes the opportunity to earn a livelihood by doing a work

²⁷ UN New Report on Freedom of Assembly and Association, available at <http://www.industrial-union.org/labour-rights-are-human-rights-un-report> accessed on March9, 2019

freely chosen or accepted. Closely connected with the right to work are the right to just and favorable conditions of work, and trade union-related rights.²⁸ Workers have the right to associate with one another and bargain collectively for improved working conditions and living standards. They have the right to form and join a trade union of their choice. Such and other rights of workers have been codified and recognized under several international human rights instruments.²⁹ Besides, these rights and norms have been endorsed by national legislations of almost every nation on earth albeit huge differences in the implementation.

Moreover, the work as specified in various UN and ILO instruments must be *decent work*. This is a work that respects the fundamental rights of the human person as well as the rights of workers in terms of conditions of work, safety and remuneration. It also provides an income allowing workers to support themselves and their families.³⁰ Employment protection and promotion of employment security as an essential aspect of the right to work have been a major concern of ILO throughout its history.³¹ After all, the right to adequate standard of life is one of the core rights under the international bill of rights and, hence, an employment must cater to the requirements of adequate standard of life, one instrument among other being a decent pay for the work done.

This was the major component under ILO Declaration concerning the aims and purposes of the Organization and further established a cardinal principle of labour-capital relation. Accordingly, in 1944, ILO members built on these aims by adopting the Declaration of Philadelphia, which states that labour is not a commodity and sets out basic human and economic rights under the principle that “poverty

²⁸ ILO (2015), Employment protection legislation: Summary indicators in the area of terminating regular contracts (individual dismissals)-

²⁹ For example, see the International Covenant on Economic, Social and Cultural Rights (The ICESCR, 1966), articles 6-8, The International Covenant on Civil and Political Rights (The ICCPR, 1966), article 8, and many other ILO instruments.

³⁰ UNESCR General Comment No. 18: The Right to Work (Art. 6 of the Covenant)

³¹ ILO, *supra* note 28,

anywhere constitutes a danger to prosperity everywhere.”³² Thus, it had laid down the ground that labour regulation is not left to then prevailing doctrine of market economy and called for state intervention by setting modes of operation and granting of legally protected conditions of work. The intervention is towards protecting, respecting and fulfilling human rights in general. Human rights, according to UN Guiding Principles on Business and Human Rights are the obligation of states and responsibilities of the employers or businesses.³³ The employment contract is a legal notion widely used in countries around the world to refer to the relationship between a person called an employee or a worker and an employer for whom the employee performs work under certain conditions in return for remuneration. It is through the employment relationship legal rights and obligation are created. It is the key point of reference for determining the nature and extent of employers’ rights and obligations towards their workers.

As per the employment contract and other governing laws that dictate the contract, a host of labour rights emanate. Decent work brings human dignity and restores honor in relation to work. It brings together access to productive and suitably remunerated work, safety at the workplace and social protection for families, better prospects for personal development and social integration, freedom for individuals to set out their claims, to organize and to participate in decisions that affect their lives, and equality of opportunity and treatment for all men and women.³⁴

The ILO Governing Body has identified eight “fundamental” Conventions, covering subjects that are considered to be fundamental principles and rights at work: freedom of association and the effective recognition of the right to collective bargaining; the elimination of all

³² See in general, *Declaration concerning the aims and purposes of the International Labour Organization adopted at Philadelphia on 10 May 1944*, Para.1 available at General ILO website: www.ilo.org.

³³ Guiding Principles on Business and Human Rights: Implementing the United Nations ‘Protect, Respect and Remedy’ Framework, 2011.

³⁴ ILO rules of the game, 2019.

forms of forced or compulsory labour; the effective abolition of child labour; and the elimination of discrimination in respect of employment and occupation. These principles are also covered by the ILO's Declaration on Fundamental Principles and Rights at Work (1998) (see section 3). As of 1st January 2019, there were 1,376 ratifications of these Conventions, representing 92 per cent of the possible number of ratifications. At that date, a further 121 ratifications were still required to meet the objective of universal ratification of all the fundamental Conventions.³⁵ These instruments also penetrated national laws of almost every country including Ethiopia.

1.5.2. Labour Rights and Recourse Mechanisms: Ethiopian legal context

Labour rights recognition and development were the result of multiple political and socio-economic factors witnessed in the country during various regimes and ideologies of ruling group. Even if Ethiopia remained physically (un)colonized, it has been increasingly influenced by alien values in its introduction and development of labour legislation and systems³⁶ and it was because of that exposure that the country had adopted labour legislations strikingly different from each other both in their ideological orientation and normative standards.

Following the country's long-time membership of ILO (since 1923) and adoption of its normative frameworks,³⁷ the current FDRE Constitution has recognized many work-related guarantees as part of its human rights provisions and subject to constitutionally bound protections.³⁸ Accordingly, the Constitution guaranteed the broader rights like equality, freedom of movement and association, and rights of labour.³⁹ Particularly, specific rights and guarantees listed under

³⁵ ILO, *Ibid.*

³⁶ Mehari, *supra* note 2.

³⁷ So far Ethiopia has ratified over 20 ILO Conventions among which eight are categorized as core conventions.

³⁸ FDRE constitution, 1995.

³⁹ *Ibid.*, chapter 3.

labour rights classes are of paramount importance to workers in the country.⁴⁰ This is further reinforced by constitutional provisions guaranteeing the right to access to justice.⁴¹

However, granting labour rights constitutional status is thought to be insufficient, further requiring the availability of legal mechanisms of enforcing the rights and providing effective remedies for in cases of breach of legally protected rights. This has necessitated the government of Ethiopia to adopt more relevant labour legislations and providing institutional oversight mechanisms. A typical example of this attempt was the adoption, of course, revision of Labour Proclamation to fit to changing political, economic and social situation of the country. Accordingly, the House of Peoples' Representatives (HPRs) of Ethiopia has adopted a detailed labour legislation in 2003 which in turn is repealed and replaced by Labour Proclamation 1156/2019 in August 2019. Labour Proclamation No. 1156/2019 is the principal legal instrument regulating the various aspects of employment relationships in Ethiopia.

The Labour Proclamation begins with by defining what employer, employee, employment relation are and how that relationship is legally to be established.⁴² It further lists down the respective rights and obligations statutorily prescribed for the main actors in the relationship and the attendant consequences for not complying with the legal prescriptions or interferences in the prohibited norms.⁴³ Once a valid employment relation is set up between the employer and the employee, the worker will start benefiting from various crosscutting protections and workplace guarantees. These broad-based labour rights guarantees

⁴⁰ The specific rights listed under labour rights category are the rights of factory and service workers, labourers and government employees to form associations, the right to strike, women worker's right to equal pay for equal work, the right to reasonable limitations of working hours, to rest, paid leaves as well as to healthy and safe work environment. National policy principles and objective provisions are also important in guiding government policies and measures.

⁴¹ Ibid, Article 3.

⁴² Labour Proclamation No. 377/2003.

⁴³ Article 11-12 of the Labour Proclamation No. 377/2003.

apply through different horizons and levels of employment relations. One of the key areas of protection is concerned with ensuring employment security, that is, stable and continued livelihoods based on legally protected relation. Among the cross-cutting legal mechanisms devised to ensure employment security are legal rules governing duration of employment contract,⁴⁴ the requirement of good cause, substantive and procedural limitations for termination of employment contract by the employer,⁴⁵ the granting of mechanisms for judicial examination of unilateral decisions of termination of employment contract and the rules on awarding benefits of both lawful and unlawful termination of employment contract.

The worker is also entitled to multiple workplace legal safeguards while in the process of carrying out his/her contractual commitments. To mention some of the worker's rights in time of ongoing employment relation are protections against any discriminatory and abusive interference in the proper exercise of legal rights,⁴⁶ entitlement to limited daily or weekly hours of work, paid leaves and safe and healthy working environment.⁴⁷

Unlike employment relations in government institutions, the other area of concern partially left unregulated under labour law regime of Ethiopia is determination of minimum wage.⁴⁸ Contrary to experiences of many countries, including market-led economies, where determination of minimum wage is to be computed on hourly, daily or monthly basis; in Ethiopia, it is left to contractual agreement of the parties. Coupled with the widely propagated information of the existence of cheap labour and lesser bargaining power, the majority of

⁴⁴ Article 9-11 of the Labour Proclamation No. 377/2003.

⁴⁵ Article 23-29 of the Labour Proclamation No. 377/2003.

⁴⁶ Article 39-45 of the Labour Proclamation No. 377/2003.

⁴⁷ Article 14 and 26 of the Labour Proclamation No. 377/2003.

⁴⁸ Article 55 and the ff of Labour Proclamation No. 377/200. However, and here is a reference to the establishment of a Commission which studies about a minimum wage in the new labour proclamation (1156/2019).

particularly less-skilled and women workers are rendering services with disproportionately low amount of payments.⁴⁹

The other major area of recognition and protection is the provision of legal framework for freedom of association and collective bargaining.⁵⁰ Despite its practical limitations, this is nowadays considered to be an indispensable right of workers both for effective realization of individual labour rights as well as improvement of collective working conditions.

Rights of special categories of workers like women, young employees and employees with disabilities are made a separate subject of protection within the labour law and other legislations. By taking the productive and reproductive role of women into account, women employees are entitled to general classes of treatment like protections from discrimination in employment and payment, works hazardous to their health and unfavorable working times.⁵¹ The law also grants additional package of protection for women in special situations like pregnant, confinement and breastfeeding during times of employment and termination.⁵² Similar forms of special treatment and workplace protection are provided for young employees⁵³ and employees with disabilities.⁵⁴

Finally, the Labour Proclamation has recognized the right of workers for effective remedies and to seek recourse for violation of their legal

⁴⁹ There have been official statements by the country's top officials to potential investors, especially to those from abroad, about the presence of abundant and cheap man power as one form of investment incentive which is now said to be one reason for deterioration of labour standards in the country.

⁵⁰ Article 113 and 114 of the Labour Proclamation No. 377/2003.

⁵¹ Article 87 of the Labour Proclamation No. 377/2003.

⁵² Article 88 of the Labour Proclamation No. 377/2003.

⁵³ Article 89-91 of the Labour Proclamation No. 377/2003.

⁵⁴ Except for very limited rules in relation to employment injuries and layoff procedures, Ethiopian Labour Proclamation does not expressly recognize workplace rights of persons with disability. However, the legislature has adopted Proclamation No. 568/2008 providing for preferential treatment and workplace guarantees of employees with disability.

rights. This is designed by defining the types of disputes arising from any employment relations⁵⁵ and providing legal institutions and procedures for settlement of categorized labour disputes.⁵⁶ Additionally, workers may also resort to self-initiated exercise and enforcement of their rights through strike with a view to force/convince their employer to accept certain conditions of work.⁵⁷ Further, access to both judicial and administrative remedies is made free of any charges for services rendered, required to be litigated before a specialized labour division and mandatory time limits for litigation and awarding of judgment. In particular, the issue of labour union demands detailed consideration for it is through the instrumentality of trade unions that many rights find relevance and effectiveness.

1.6. Right to Unionize and Strike

International treaties ratified by parliament are part of the Ethiopian legal regime. Ethiopia is a party to a number of international treaties including labour related treaties. Article 20(1) of the UDHR recognizes the right to freedom of peaceful assembly and association. Article 22 of ICCPR, in part, guarantees freedom of association of workers, including the right to form and join trade unions for safeguarding their interests. The International Covenant on Economic, Social and Cultural Rights (ICESCR), too, has a provision on the right of everyone to form and join the trade unions of his/her own choice.

Contrary to the international treaties, the Ethiopian law either specifically excludes or is silent with respect to the right of certain group of works to join labour unions.⁵⁸ The Ethiopian government is

⁵⁵ According to the Labour Proclamation there are two types of disputes: individual and collective labour disputes.

⁵⁶ According to article 138 of the Labour Proclamation individual labour disputes fall within the jurisdiction of regular court; while collective labour disputes need to go through different levels of alternative dispute resolution.

⁵⁷ Article 157 of the Labour Proclamation No. 377/2003.

⁵⁸ Article 3(2) of the Labour Proclamation excludes from coverage workers engaged by means of the following types of contract: contracts for the purpose of upbringing, treatment, care or rehabilitation, contracts for the purpose of educating or training other than as apprentices, contracts relating to persons holding managerial posts who are

also accused of interfering in labour union affairs including harassment and dismissal of members of Ethiopian Teachers Association and imprisonment of its leaders in 1996. International organizations have also reported government surveillance and harassment against the Confederation of Ethiopian Trade Unions (CETU) and the replacement of its leaders.⁵⁹ The right to collective bargaining is not available to teachers and civil servants.⁶⁰ The formation of trade unions has never been seen as a healthy move in Ethiopia by all successive governments. Trade unions are either tolerated or openly harassed and kept under control. Indeed, they are made increasingly one wing of government control machines. However, trade unions are powerful ways for human rights implementation, where properly used and complemented by the judiciary and other competent institutions.

Finally, it is worth noting that the formation of trade union is a daunting task in the newly emerging Ethiopian industrial parks where most of the workforce are women. Workers' complaint about mistreatment at Hawassa Industrial Park, for example, was dismissed by a top government official who reportedly told them that there were many people who did not get the opportunity they had at the Park.

Besides, with formation of strong trade unions, the labour force would have been an instrument with which it can either negotiate or even force its demands. One natural alliance of the right to trade union is the right to strike. ILO Convention No. 87 (1948) stipulates that the right to strike is "an intrinsic corollary of the right to organize". This enables employees to promote and defend their economic and social interests. According to ILO, "It is the most visible and controversial form of

directly engaged in major managerial functions of an undertaking, contracts of personal service for non-profit making purpose, contracts relating to persons such as members of the Armed Force, members of the Police Force, employees of state administration, judges of courts of law, prosecutors and others whose employment relationship is governed by special laws and contracts relating to a person who performs an act in consideration of payments at his own business or trade risk or professional responsibility under a contract of service.

⁵⁹ Amnesty International, International Trade Union Confederation 2013.

⁶⁰ International Trade Union Confederation, 2013.

collective action in the event of a labour dispute and is often seen as the last resort of workers' organizations in pursuit of their demands.”

The scope of the right differs from one country to another. Some countries allow all workers, public or private, to exercise it, regardless of the impact of the strike on society. Other countries prohibit strike by public servants altogether. A third group of countries selectively prohibit workers in *essential services* defined as “services... the interruption of which would endanger the life, health or personal safety of the whole or part of the population”. The ILO legislation states that employers and employees providing “*essential service shall not strike or lockout in connection with any such essential service*”.⁶¹

The Ethiopian labour law enumerates the following as essential services: air transport, undertakings supplying electric power, undertakings supplying water and city cleaning and sanitation, urban bus services, health care and pharmacies, fire brigade and telecom services. The list includes activities not considered “essential” by the ILO, notably, air transport and urban bus transport services.⁶² In regard to the implementation of the right, workers are being deterred from resorting to strikes and other labour actions for fear of retribution.⁶³

After the reformist government led by Abiy Ahmed came to power in April 2018, air traffic controllers at the Bole International Airport struck over low wages. According to some reports, the controllers have been in talks with authorities about the issue for the last eight years but in vain. The airport called on retired staff and those working in other departments to cover the job. While some concessions have been reached with the government, the leaders of the strike were charged for criminal act.

⁶¹ ILO principles concerning the right to strike, 2000, International Labour Review, Vol. 137 (1998), No. 4.

⁶² US State Department (2017) *Ethiopia 2017 Human Rights Report* <<https://www.state.gov/documents/organization/277243.pdf>>

⁶³ US, Ibid.

1.7. The 2019 Labour Proclamation: New Trends

The laws hitherto governing labour relations in Ethiopia is changing once again. In August 2019 Labour Proclamation No.1156/2019, which repealed the 2003 Labour Proclamation has been enacted. The nature of the law can be assessed as more elaborate and granting of further rights to employees all the more. However, the writing of the laws is one thing but enforcing these laws is quite another thing. The existing laws are not even short of rights if were they adhered to. Yet again, the new proclamation in addition to the existing duties obligates the employer to:

a) Deduct union dues from the employee's regular wage, and transfer the cash into the trade union's bank account, if so requested by the employee b) raise awareness of employees on work rules of the organization c) register information on workplace location and work-related data and transfer to the Ministry of Labour and Social Affairs (MoLSA).

The new law has also given direction to the relevant government office to work on the hitherto procrastinated minimum wage issues and that the working age has also been raised to meet global standards and deal with child labour abuses. The new law also increases maternity leave time and introduces a new concept on paternity leave which might even backfire on workers in the practical world. It also increases annual leave time and probation time. On the other hand, in addition to the existing duties of the employees, it tightens up and includes the following obligations:

a) making use of falsified document or an attempt thereof; b) conducting meetings during working hours in disregard to the time assigned by the collective agreement or without obtaining the permission of the employer; c) commit sexual harassment or sexual violence at workplace; and d) physically abusing anyone in a work place.

The implication of the above unlawful acts is that the employer will be able to terminate the contract of employment without prior notice to the employee within 30 days of knowing the commission of such acts.

Hence, the new law except adding new rights does not bring any grand shift in labour rights issues. As new trends in Ethiopia unfold with nature of employment being diverse and getting sophisticated, it would have been nice for the law to be a little versatile and catering for the new developments. It would have been important had the law addressed labour outsourcing issues and other related matters. It would have been also important had the law commanded private sector enterprises to have their own human rights policies in general and labour rights policies as a business case.

1.8. Practical Challenges of Labour Markets in Ethiopia: Some Dynamics and Issues

Unemployment and underemployment are endemic social problems in Ethiopia. Each year more than one hundred thousand students graduate from universities alone and enter into the labour market. Generally, it is estimated that every year over a million potential labour force joins the market.⁶⁴ Over the years, the public sector has been the principal employer owing to the developmental state approach adopted by the ruling party. But in recent years, the developmentalism has run out of steam because of widespread grand corruption scandals. In addition, the new reformist Prime Minister⁶⁵ has promised to open up the economy to private investment including state enterprises.

The country is known for rapid population growth and workforce and limited employment opportunities. Ethiopia is facing a daunting task due to unbalanced supply and demand. On the supply side, a huge

⁶⁴ The Office of Prime Minister of Ethiopia, Official address of the Prime Minister on February, 2019.

⁶⁵ The reform started as a result of widespread public riots directed at mal-administration of the government ranging from 2015-2018. The protest resulted in the resignation of the then Prime Minister and ascension to power of PM Abiy Ahmed (PhD) in early 2018.

number of work force joins the labour market every year but the market is not creating enough jobs. In addition, the agricultural and informal economic sectors have failed to improve the lives of the people; on the contrary they are creating “working poor”.⁶⁶

From the employers’ side, issues of quality of the workforce are said to have negatively affected business efficiency and competitiveness in the country. Getachew and Yared⁶⁷ identified the main problems in the labour force: “lack of labour discipline, work slowdown and insubordination. Employers usually take measures to correct such problems, the consequences of which are unpredictable reactions from workers and trade unions”.

One possible explanation for this appears to be the lack of consensus between the parties involved in labour relations. Writing nearly six decades ago Dunlop⁶⁸ argued instead of trying to resolve labour disputes through laws and the fiat of force, it is good to create consensus among government, employers and workers in order to have productive work relations.

Similarly, the ILO has suggested, “[t]ripartism and social dialogue are the bedrock of a Decent Work Country Program”.⁶⁹ Consensus is missing in Ethiopian labour relations. There are reports that the government is not incorporating the views of workers during the law and policy making processes.

1.9. Labour Market Dynamics in Ethiopia

Labour force participation and labour productivity are important elements of growth and structural transformation. In particular, in situations where access to capital is highly constrained, long term

⁶⁶ National Employment Policy and Strategy (NEPS). 2009. National Employment Policy and Strategy of Ethiopia. Addis Ababa, Ethiopia.

⁶⁷ Getachew *supra* note 17.

⁶⁸ Dunlop, J. “Consensus and National Labour Policy” *Monthly Labour Review*, Vol. 84, No. 3 (1961), pp. 229-233 <https://www.jstor.org/stable/41834485>

⁶⁹ National Tripartite Social Dialogue, 2013, An ILO guide for improved governance.

economic growth can be sustained with a rise in labour productivity through education, experience, innovations, efficient combination of inputs and economies of scale.⁷⁰ As a result, change in labour productivity is a key concept in the assessment of economic performance. Moreover, with the poor being dependent on labour for sustenance,⁷¹ the dynamics of labour market has crucial implications for poverty reduction.

Labour market trends are often interrelated with the structural aspects of an economy. The experience of many developed countries shows that, with steady growth, the structure of the economies will be gradually shifting from agriculture to manufacturing and service such that the latter industries' share of GDP and employment increases.⁷² The labour market is among the sectors directly affected by such structural shifts with potential implications for (un)employment, poverty and income inequality. As such employment makes a useful link between economic growth and poverty reduction.

Whereas, development theorists and policy makers were largely concerned with addressing high rates of unemployment, emerging trends in the labour market indicate that quality of work deserves sufficient attention. Global labour demands are trending in favour of less job security employment arrangements resulting in relocation of work to countries where union presence and regulatory protection is weak or non-existent.⁷³ This has caused irregularities in employment deals, in what is termed as non-standard employment,⁷⁴ partly as a way

⁷⁰ Todaro, M. P. and S. C. Smith. 2012. *Economic Development*. 10th edition. Dorling Kingsley Pvt. Ltd., Licenses of Pearson Education in South Asia, New Delhi.

⁷¹ Von Braun, J. 1995. Employment for poverty reduction and food security: concept, research issues and overview In J. von Braun (ed.), *Employment for poverty reduction and food security*. IFPRI, Washington, D.C.

⁷² Todaro, *supra* note 69.

⁷³ Quinlan, M. 2015. The effects of non-standard forms of employment on worker health and safety. International Labour Office, Inclusive Labour Markets, Labour Relations and Working Conditions Branch. - Geneva: ILO (Conditions of work and employment series; No. 67). Geneva, Switzerland and ILO, 2018.

⁷⁴ Quinlan, *Ibid*.

of evading collective agreements and employer obligations.⁷⁵ This has implications for shaping the labour market dynamics and vulnerability profiles of workers particularly in developing economies that are opening up for a greater role of the private sector.

The Ethiopian economy exhibited one of the fastest growth rates of 10.8% during 2003/04-2012/13 period⁷⁶ with manufacturing contributing below 4% of GDP growth and service sector above 10% of GDP growth during 2003/04-2008/09.⁷⁷ Such growth pattern is matched by changes in the labour market featuring disparities in participation rates and wages across gender and age profiles.⁷⁸ The extent to which the growth has translated into employment generation and labour force participation is crucial for sustaining growth, reducing poverty and attaining the Sustainable Development Goals (SDGs).⁷⁹

Apparently, the high growth performance has coexisted with high unemployment rates (17.4% in 2014) disproportionately affecting the youth (22.8%) and females (24.1%) (CSA, 2014). This is due in part to the rapid growth of labour supply, fueled by the demographic profile of the country, in the context of a narrow-based manufacturing sector lagging behind the growing number of job seekers.⁸⁰ As a result, only about half of the urban labour force is employed as of March 2012.⁸¹

⁷⁵ Williams, C. C. and F. Lapeyre. 2017. Dependent self-employment: Trends, challenges and policy responses in the EU. Employment Policy Department, EMPLOYMENT Working Paper No.228 2017. Geneva.

⁷⁶ World Bank. 2015. Ethiopia: Urbanization Review. Urban Institutions for a Middle-Income Ethiopia. Washington D.C.

⁷⁷ AfDB. 2010. Ethiopia's Economic growth Performance: Current Situation and Challenges. The African Development Bank Group Chief Economist Complex. Economic Brief Volume1, Issue 5, September.

⁷⁸ WB 2015, *supra* note 74.

⁷⁹ UNECA. 2013. Economic Transformation for Africa's Development. UN Economic Commission for Africa Macroeconomic Policy Division C-10 Meeting, April 2013. Washington D.C.

⁸⁰ NEPS, *supra* note 25.

⁸¹ MOLSA. 2013. Labour Market Dynamics in Ethiopia: Analysis of Seven Key Indicators of the Labour Market (KILM). The Federal Democratic Republic of Ethiopia Ministry of Labour and Social Affairs. Addis Ababa, Ethiopia.

Furthermore, the predominance of informal employment signals a major setback in the labour market.⁸² Such challenges confuse the country's goal of successful structural transformation and poverty reduction by perpetuating precarious and poorly paid jobs and large income inequalities.

Cognizant of this fact and as a strategy to utilize the abundant labour for growth, the government of Ethiopia has placed employment into the context of the Growth and Transformation Plans (GTP I and II),⁸³ building up on what was initially embedded in the Plan for Accelerated and Sustained Development to End Poverty (PASDEP).⁸⁴

The documents pay attention to poverty reduction through increasing labour productivity and employment generation with a focus on providing favourable environment for the functioning of the private sector and increased investment in human capital. In addition, the promotion of women and youth employment constitutes one of the focus areas of the five-year GTP II. The various reform measures taken have started to stimulate the role of the private sector in the economy by attracting foreign and domestic investments.⁸⁵ The ensuing dynamism in the labour market presents the economy with both opportunities and challenges.

The expansion of employment opportunities due to the growing role of the private sector fosters economic transformation and growth by unlocking the potentials of the labour force in the economy. It also contributes to reducing inequality if youth and women labour forces are particularly targeted. Challenges pertain to the potential increase in the vulnerability of workers due to the diverse forms of non-standard employment that are introduced into the labour market dynamics.

⁸² SECR. 2015. State of Ethiopian Cities. Report. MoUDH, Addis Ababa, Ethiopia.

⁸³ MoFED. 2010. Growth and Transformation Plan (GTP). (2010-2015). Main Text Vol.1. Addis Ababa, Ethiopia.

⁸⁴ MoFED. 2006. A Plan for Accelerated and Sustainable Development to End Poverty

⁸⁵ MoFED 2010, supra note 82.

Such phenomenon in the expanding industries has attracted the attention of researchers and policy makers. However, our knowledge is still limited about the actual manifestations of non-standard and vulnerable employment, labour rights issues and recourses surrounding such employment patterns in the Ethiopian labour market context. Only a few studies addressed the role of the private sector for employment generation and reducing unemployment, and disparities in labour participation and wage rates across diverse social profiles, as well as skills gaps and mismatches as causes of disequilibrium in the labour market.⁸⁶

A study also shows that low wages and hazardous working conditions in textile, shoes, horticultural, flower, and beverage industries in Ethiopia cause reduction in the duration of time in employment as workers shift to informal activities.⁸⁷ Yet, there is little evidence on contextualizing the role of the expanding industries in general and the outsourcing ones in particular in generating jobs of sufficient security and quality. On the other hand, addressing labour market challenges is justifiable from the perspective of protection of workers' rights, curtailing social unrest⁸⁸ and sustaining productivity and growth. Outsourcing in particular has created a middle man between the employer and employee removing the employer from direct accountably for labour right abuses. Outsourcing is a common phenomenon in the employment related matters of newly emerging industrial parks which added a new issue to the labour dynamics.

⁸⁶ Tesfamichael Wossen and Seife Ayele. 2018: Ethiopia's Agricultural Transformation: Agribusiness' Contribution to Reducing Youth Unemployment. In Seife Ayele, Dominic Glover and Marjoke Oosterom (eds.), *Youth Employment and the Private Sector in Africa*. IDS Bulletin. Transforming knowledge development 49 (5): 15-30.

⁸⁷ Blattman, C. and Dercon, S. (2016) *Occupational Choice in Early Industrializing Societies: Experimental Evidence on the Income and Health Effects of Industrial and Entrepreneurial Work*, NBER Working Paper 22683, Cambridge MA: National Bureau of Economic Research.

⁸⁸ ILO. 2018. *World Employment Social Outlook. Trends*. Geneva, Switzerland.

1.10. Labour Rights and Gender in Ethiopia

The recent gender profile of Ethiopia shows that there are only few women in leadership in private manufacturing and very few women owned business.⁸⁹ Contrary to this, large number of women are employed in the private manufacturing industries. One example is the Hawassa Industrial Park where 19,000 out of 22,000 workers are women.⁹⁰

In fact, all workers, men and women, face challenges in relation to the national labour policy and the existing legal gap on labour right violations and redress mechanisms. In addition to the common challenges of workers and violations of labour rights, women workers face specific challenges which emanate from the sex differences, gender inequality and stereotype existing in Ethiopia. The issue of labour and gender needs to be well researched because women workers face two sets of challenges in the labour market. Challenges and discrimination from being women and again discrimination at work place.

Majority of researches on gender and labour rights focus on the principle of discrimination and gender equality at work places in Ethiopia. However, the practical challenges that women in the private labour market, especially in the recently developing manufacturing industries is not researched very well.

Findings show that women face various violations of labour rights such as discrimination at times of employment and promotion,⁹¹ verbal and physical abuse, forced labour and pressure to meet targets, sexual harassment, violence on the way to home after night shift, maternity leave denial, lack of hygiene in the work place, not having enough restroom breaks for menstrual hygiene, forced confinement at work

⁸⁹ Preliminary Gender profile of Ethiopia, 2017.

⁹⁰ IPDC, Hawassa 2019.

⁹¹ ABCs of Women workers' rights and gender equality ILO 2007.

places, denial of sick leaves, vulnerability to harassment because of nature of work such as hotel and tourism.

Though few studies have been done on gender and labour in Ethiopia, gender related challenges of women employed in manufacturing and hotel and tourism industries is not researched. Given the above problems specific to women in the labour market, an empirical research is needed to primarily identify the labour rights of women in international and national policy and legal frameworks, identify the challenges to implement these rights, analyze the existing violation of labour rights of women workers in Hawassa Industrial Park and beyond. Worth mentioning is also the need to survey the available legal and administrative remedies in time of rights violations.

1.11. Migrant Labourers and Refugee's Rights in Ethiopia

One of the key issues covered under this study is migrant labourers' rights in Ethiopia, taking the situation of refugees in Gembella region as a case study. The International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (ICMW) define the term migrant worker as 'a person who is to be engaged, is engaged or has been engaged in a remunerated activity in a State of which he or she is not a national.'⁹² The United Nations High Commissioner for Human Rights (UNHCR), by considering the refugee law, defined refugee as 'people who fled war, violence, conflict or persecution and have crossed international border to find safety in another country'.⁹³ The cumulative readings of article 2(7) and article 4 of the revised Ethiopian refugee law expound that a refugee is a person who evacuated from his country or residence due to a well-founded fear such as persecution, aggression, occupation or political domination and found in other country. Technically, the two terms are different, their implication and the legal status of migrant worker and refugee are not the same. However, once a refugee has a work permit

⁹² International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990), article 2 (1).

⁹³ UNHCR, what is Refugee? <https://www.unhcr.org/what-is-a-refugee.html>

in the host state, the rights accorded to migrant workers is applicable to the refugee.

In Ethiopia, the wider recognition of refugee's rights to obtain work permits, access primary education, obtain drivers' licenses, legally register life events such as births and marriages and open up access to national financial services like banking and insurance invite the protection accorded to migrant workers as per recently revised refugee proclamation (2019). Due to the prevalence of refugee workers and complicated labour relations in *Gambela*, the research team perceived that the term 'migrant workers right' implies refugees labour rights. Therefore, this research theme will consider refugee workers' rights as migrant workers' rights by taking rights accorded to refugees in relation to work and, the international and domestic labour rights protections accorded to migrant workers.

Migration is a hot topic in the world. Ethiopia has also done its assignment in issuing laws and directives that cater to the world standards on migration matters. In recent years, human rights violations of migrant workers have gained attention in the UN human rights systems, host and origin states. There are a number of international legal instruments established to provide the protection of human and labour rights of migrant workers. These include ILO conventions on migrant workers such as Migration for Employment Convention of 1949 (No. 97) and Migrant Workers Convention of 1975 (No. 143), and ICMW. Host states have been in pressure from international community and origin states. For instance, Human Rights Watch report on the Gulf and Middle East countries and these states travel ban expound the controversies and concerns to protecting citizens from harsh treatments and sufferings and host states responses (Human Rights watch, 2012.) Under the ICMW, state parties are required to ensure migrant workers and their families equal protection without distinction, freedom of movement, freedom from servitude, slavery, torture or to cruel, inhuman or degrading treatment or punishment, the right to freedom of thought, conscience and religion etc. Further, it protects their families' right to receive any medical care, equality of

treatment with nationals of the State concerned and access to education. Member states are obliged to stop the use of forced or compulsory labour in all its forms.⁹⁴ Ethiopia is one of the originating state of migrant workers, mainly female workers who fled to Middle East and Gulf States for domestic work and exposed to various human rights violations.⁹⁵ As a result, there is a growing interest to safeguarding citizens' rights through diplomatic negotiation, international human rights protection mechanisms, regulating private agencies, controlling illegal migration etc. At the same time, Ethiopia is the second most refugee host country in Africa with 905,831 refugee population coming from South Sudan, Somali, Eritrea and Sudan. Most of them are found in Gambela region, which is the least developed region with harsh weather conditions, poor infrastructure and development indicators.⁹⁶ The country is showing greater commitment for the protection of refugees by adopting the Comprehensive Refugee Response Framework (CRRF) following the 2016 New York Declaration for Refugees and Migrants. The CRRF pledges to expand the 'out-of-camp' policy benefits, provide work permits, increase enrolment of children to school, avail irrigable land, local integration scheme, employment in industrial parks, expand and enhance basic services. On 17th January 2019, as part of this pledge, the Ethiopian parliament adopted a new refugee proclamation (Refugee Proclamation of 2019) which makes a lot easier to obtain work permits, driver licenses, and access to primary school for refugee etc. UN agencies and the international communities are hailing the new law.⁹⁷

⁹⁴ Article 1 of the ILO forced labour convention.

⁹⁵ Kidus Meskele (2016). Migrant Workers Rights under the Ethiopian Legal System Global Journal of Human and social Science. Volume 16 Issue 6 Version 1.0

⁹⁶ Ethiopia Refugee Profile, 2019.

⁹⁷ See <https://news.un.org/en/story/2019/01/1030812>, <https://reliefweb.int/report/ethiopia/unhcr-welcomes-ethiopia-law-granting-more-rights-refugees>, <https://arra.ct/ethiopias-refugee-law/>, <https://www.africaportal.org/features/depth-unpacking-ethiopias-revised-refugee-law/> etc.

The law accords refugees and asylum seekers the right to stay in Ethiopia; receive the same treatment as accorded to Ethiopian nationals with respect to access to primary education and available health services; the right to association, as regards non-political and non-profit making associations and trade unions; the right to liberty of movement and freedom to choose his/her residence within the national territory; the right to acquisition and ownership of movable or immovable property like the treatments accorded to Ethiopian nationals; access to justice, bank services, telecommunications, vital event registrations, etc. Essentially, the right to employment covers broad spectrum of livelihood activities such as engaging in private livelihood activities including agriculture, industry, small and micro enterprises or business organizations, except in national defense, security, foreign affairs and other similar political establishments. Some conclude that asylum seekers or refugees enjoy similar treatment accorded to Ethiopian diaspora.⁹⁸ Equal treatment with Ethiopian national and non-discrimination is the principle of the law. However, some restrictive measures imposed by applicable laws such as employment of foreign nationals for the protection of the national labour market are still applicable except to a refugee or asylum seeker who is married to Ethiopian national or has one or more child in possession of Ethiopian nationality.

One of the key restrictive aspects of the new scheme may be work permit for migrant worker. The Labour Proclamation requires, under article 174(1), a work permit from MoLSA as a mandatory requirement for a foreigner to be employed for any type of work in Ethiopia. Pursuant to Proclamation No. 471/2005 and Proclamation No. 377/2003, the responsibility of administering expatriate employment is vested in MoLSA. Regulating this service requires a clear policy direction and legislative frameworks. In February 2010, the Ministry issued a directive that address the scope of application of the

⁹⁸ Mehari Tadelle (2019). In Depth: Unpacking Ethiopia's Revised Refugee Law.
<https://www.africaportal.org/features/depth-unpacking-ethiopias-revised-refugee-law/>

requirement of having work permit, conditions, procedure and manner of presenting application for work permit etc. However, in relation to the refugee law, the restrictions and conditions arising from Directive hinder the issuance of a work permit.

1.12. Outsourcing and Labour Rights in Ethiopia: A New Trend in the Making

Outsourcing of labour is fast becoming the new modes operandi of doing business. Only, in Addis Ababa over 300 agencies of this kind exist. Outsourcing takes of the load from the employers and engages employees who have been recruited, trained and have contracts with the outsourcing agencies. Hence, there is no direct employment contract between the employer and the employee but the contract of the employee is with the agencies. It creates a tripartite relation where labour is provided via a middle agent which complicates accountability for violations of labour rights.

Business is becoming increasingly competitive in our dynamic and globalized world. The technologies and, ICT in particular, have become the driving force for firms' competitiveness by enabling continuous innovation and re-engineering of business processes. Firms are continuously transforming the ways they manage their business to improve customer service, cut operational costs, raise return on investment and eventually stay in the market. Business process outsourcing (BPO), which is the transfer of business process that was traditionally executed internally by companies to be executed by external service providers, has become one of such innovations.⁹⁹ In the current tight competitive environment, firms may practice outsourcing of their production, marketing, distribution and financial strategies. The outsourcing of manufacturing or production process is a normal practice in the field of business particularly in the production of goods and services due to firms' lack of vertical integration to perform all activities in the production process. BPO entails outsourcing non-

⁹⁹ Palugod, N. & Plaugod, P.A. (2011). Global trends in offshoring and outsourcing, *International Journal of Business and Social Science* Vol. 2 (16).

core business activities, which was traditionally undertaken by the outsourcing company itself, to a third party.¹⁰⁰

Outsourcing enables firms to use external resources and get the work done through a specialized and more efficient service and talent providers. By leveraging their resources to well selected core competencies that have great importance to costumers through investment and management attentions and outsourcing other activities that are non-core activities,¹⁰¹ firms reduce operation costs and can focus on their core business.¹⁰² The outsourcing company and the service provider (vendor) may agree on certain terms and conditions relating to the transfer of employees to the vendor.¹⁰³

In such competitive environments, firms not only outsource their business process to external firms, but may also transfer their business location to another country in search of cheap labour and natural resources. In a global competitive market, transnational corporations (TNCs) move their business process to around the world to take advantage of low production costs, particularly labour.¹⁰⁴ Such moves make developing countries like Ethiopia a destination for TNCs, which also eventually enhance their integration into the global market. The Ethiopian government continues promoting investment to attract foreign and domestic capital and technology in view of earning foreign currency, technology transfer and overcoming unemployment problems in the country. In this regard, a key strategy pursued by the Ethiopian government has been the construction of Industrial Parks and availing cheap labour to companies. One of such Parks is the *Hawassa*

¹⁰⁰ Palugod, N. & Plaugod, P.A. (2011). Global trends in offshoring and outsourcing, International Journal of Business and Social Science Vol. 2 (16).

¹⁰¹ Doval, E. (2016). Is outsourcing a strategic tool to enhance the competitive advantage? Review of General Management, Volume 23 (1).

¹⁰² Robert Handfield (2006): A Brief History of Outsourcing, Directorate of SCRC, Bank of America University.

¹⁰³ Halvey, John K. and Melby B.M. (2007). Business process outsourcing: process, strategies, and contracts.

¹⁰⁴ Marcel Kordos, 2016, Transnational corporations in the global world economic environment, Procedia - Social and Behavioral Sciences 230 P. 150 – 158.

Industrial Park- engaged in textile and apparel production and export, an industry which is labour intensive. Ethiopia's foreign direct investment (FDI) growth due to the industrial parks and privatization was estimated at 27.6 percent.¹⁰⁵

In Ethiopia, business outsourcing is a recent phenomenon. Given the infancy of the outsourcing business, little is known about it. For example, the Commercial Bank of Ethiopia, which is the largest financial institution in the country began outsourcing three of its non-core activities namely security service, messenger service and janitorial service since 2010.¹⁰⁶ Ethio-telecom is the other state-owned telecommunication company which has been outsourcing some of its business processes. Ethio-telecom arranged outsourcing business process to its internal staff members who formed a business enterprise called Hedase Telcom.

The labour arrangements at Hawassa Industrial Park vary depending on the types of work. The regional state recruits and supply labourers to work in production lines in factories while non-core business activities of the Park such as cleaning services are outsourced to local firms.

Outsourcing arrangement changes the traditional labour relations between the workers and company seeking the services to workers and vendor providing the service to company seeking the service. Hence, there is a need to regulate the outsourcing business and also protect labour rights of workers in outsourcing business. The Ethiopia's new Labour Proclamation (2019) provides legal framework for outsourcing. The Proclamation stipulates that the employment contract should be entered at two levels; i.e., one contract should be between the outsourcing company and the employment agency and the other one between employees and the employment agency.¹⁰⁷ Cases decided by

¹⁰⁵ IMF Country Report No. 18/18, 2018, the federal democratic republic of Ethiopia.

¹⁰⁶ Betelhem Mekuria, (2017). Challenges and Prospects of Outsourcing Practice in Commercial Bank of Ethiopia (Unpublished).

¹⁰⁷ Tamiru, Y (2017). Hammering Labour Rights: Succinct Summary of the Draft Labour Proclamation. <https://www.abbyssinialaw.com/component/k2/item/1770>

the Federal Supreme Court Cassation Bench indicate that employment contract could be terminated with prior notice when the post of the employee is outsourced. This shows that the legal provision in outsourcing is insufficient to protect the labour rights of workers at employment agencies.

The present research, therefore, as reported in subsequent chapters, aims at understanding employees' labour rights in different outsourcing arrangements in industrial parks, manufacturing industries, hotels and catering services in Hawassa, Addis Ababa and Adama. Specifically, the research assesses the working conditions, safety, security, violence and harassments, salaries and benefits, annual and sick leaves, working hours, promotion, transfer, membership in trade union, management of complaints, contract agreements, termination, severance pays, etc.

1.13. Major Findings

Ethiopia has adopted a labour policy and strategy in 2017. Apart from the policy document, there are legal instruments relevant to labour relations. The rights of workers are protected by the highest law of the land, the FDRE Constitution, the labour legislation and directives. Ethiopia is also a party to a multitude of international labour Conventions with direct legal effect in the country. Yet again, the labour law is amended to include even more rights to the employees.

However, the labour policy and laws cannot stand in isolation. Its implementation is affected, positively or otherwise, by the macro-economic and related social and political environment. Despite the good intentions contained in the policy document and laws of the country, Ethiopia is far from a perfect place for labour rights. For one, the policy prescriptions are not being implemented and it complicates up micro-economic issues with labour rights. For example, the labour policy promises to support private enterprise in order to create more jobs. But, the developmental state ideology of the ruling party has sidelined the private investment in terms of access to finance and other

key enabling factors, albeit recent reforms. Again, despite the promises to improve the legal and judicial system, the courts have been subservient to the political institutions. Hence, at practical world of Ethiopia, the labour laws and policies are willfully ignored and labour right abuses are all the way common *modes operandi*.

We have also considered the rights to trade union and strike as a case study to evaluate the implementation of the policy prescriptions. As reported by international organizations, the government (and employers) used repressive tactics and harassment to discourage workers from organizing themselves and expressing their grievances through strike. Overall, Ethiopia has adequate labour policy framework but the problem is with implementation. And a policy without implementation is as good as no policy.

Finally, the issues of migrant workers in Ethiopia and core matters with respect to outsourcing and attendant labour issues have been reviewed. Outsourcing is one instrument where the employer has no direct contact with the employees without the middle man. The outsourcing mechanism has complicated labour issues as well albeit some benefits.

Hence, in terms of policy direction, the following can be summed up from the field works that have been conducted:

- The law and the practice are at odds and hence there is a need for strong institutions and labour unions that ensure labour rights are implemented.
- Outsourcing has come to be the reality of the nation yet there is no robust legal mechanism let alone regulatory institutions to ensure that it is done in line with labour rights and the laws of the nation.
- Industrial parks are also a new phenomenon in Ethiopia where labour rights are a chipping bargain for the government and that gets in the way of protection of labour rights as well.
- The hotel industries, manufacturing, and agro-industries need specific attention with regard to the labour contracts, pays and benefits and the absolute power of immediate bosses.

- In nutshell, besides reforming the laws and institutions, trade unions need to work in unison to bring order to the chaotic labour issues in Ethiopia.

2. Labour Rights Implementation: Case Study from Ambo Town of Oromia Regional State

*Admasu Alemayehu**

Abstract

Labour rights are sufficiently provided in the laws and international norms that Ethiopia has adopted. However, the practice of their implementation is quite dismaying. This research covers the situation of labour rights implementation in Ambo town of Oromia Region. More often than not, employees in different sectors, at the target research site, complained absence of written contractual engagement and arbitrary dismissal from job and lack of effective recourses. Besides, the granting of leaves, respecting working hours and honoring work place safety rules are areas where violation of rights is noted. The researcher has also attempted to address the working situation of especially vulnerable groups like female, young and employees with disability in the town.

2.1. Introduction

This part of the research reports on the situation of labour right protection and implementation of labour laws in some selected private sectors engaged in production, construction and service sectors in Ambo town of Oromia regional state. Selection of the private entities was mainly based on preliminary information of labour right situation and available remedies gathered by the assigned research assistant and coordinator of the legal aid service center of the Center for Human Rights (Addis Ababa University) in Ambo. Besides, according to initial information from Labour and Social Affairs Office of the town, the three sectors are also stated to be the major private sector employers in

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the town. Thus, in the data collection process, efforts were made to cover private entities implicated for their low level of observance of labour standard and those appreciated for their effort to uphold workers' rights.

Issues addressed in this research are those relating to employment contract/relation and employment security, protection of workers' rights relating to working hours, paid leaves, occupational safety and health, collective labour relation with particular emphasis on trade union rights and collective bargaining. The researcher has also attempted to address the working situation of especially vulnerable groups: female employees, young employees and employees with disability in the town of Ambo.

2.2. Methodology and Source of Data

The research model used was an empirical qualitative approach. To investigate the labour rights situation in the town of Ambo, the researcher has used a variety of data sources and data collection methods. Accordingly, the researcher employed an extensive interview questions guide to solicit data from ordinary employees, human resource managers and employer's representatives, labour union leaders, government authorities and experts, leaders of disability association and non-governmental organizations (NGOs) working on vulnerable groups, judges and legal practitioners working in the town and legal officers in the free legal service centers of Addis Ababa University Center for Human Rights. Over five focus group discussions (FGDs) with representatives from diverse stakeholders and interest groups such as ordinary workers, trade union leaders, disability associations, labour and social affairs officers, women, children and youth affairs officers, employers and legal practitioners were conducted for over half an hour in each session.

The researcher has also attempted to make personal observation of some working conditions in construction, production and service sectors which enabled him to acquire direct information on implementation of basic labour standards and alleged violations on the

ground. Documentary evidence collection such as court cases from Ambo Woreda Court and the Free Legal Aid Center of Center for Human Rights, Ambo office, and collective agreements of certain trade unions were made. Therefore, the research has generally involved 74 persons as respondents for in-depth interview and FGD. Among them 21 are females, 5 young employees below the age of 18 years and 3 are employees with disability. The rest are ordinary employees, human resource managers and representatives of employers, labour union leaders, government representatives, judges and legal practitioners. A total of seven court decided labour files are investigated and analyzed. In total, four service providing hotels and cafeteria, three mineral water, gypsum and limestone production factories and two construction companies are personally observed.

Data collected from the diverse sources are transcribed based on major research themes and pressing labour rights issues in the town. The researcher has made triangular analysis of data collected through extensive interview from diverse categories of interviewees and key informants, participants of FGDs and the research team's personal observation. Court decided cases and trade union agreements were analyzed thoroughly in order to crosscheck the real application of laws in providing remedies for abuse of rights and, hence, to identify practical limitations.

2.3. Literature Review on Labour Rights

This sub-section is devoted to discussion of general conceptual frameworks on matters of establishing employment relation and the legal consequences flowing from such relation. This basically includes matters of employment contract and ensuring employment security, rights relating to limitation of working hours and paid leaves, workplace safety and health, and matters of collective labour relation.

2.3.1. Employment contract/relation and employment security

The employment contract forms the pillar of all labour protection and claims for any legal rights and entitlements arising from the special relation. All legal safeguards and claims under labour legislations are subject to existence of employment relation between the parties so called the employer and employee.

The ILO, in its 2006 document, describes the term employment relationship as referring to a relationship between a person called an “employee” and an “employer” for whom the former performs work under certain conditions in return for remuneration.¹ Such relationship is the main vehicle through which workers can claim direct rights and benefits arising from such relation under relevant laws in the area..²

According to one writer,

*The employment relationship lies at the intersection of the economic organization and the legal regulation of work. Its central feature is hierarchical organization: the employer has power to direct employees in their work; to control their work by monitoring their performance; and to discipline them for poor performance. Accordingly, the contract of employment, however defined, is the key regulatory device for allocating rights and obligations between an employee and an employer.*³

As labour markets become more flexible, it has multiple impacts on employment security and caused the decline of formal employment giving rise to various forms of non-standard employment.⁴ Employment security is different from job security in that the former refers to protecting against unfair dismissals, however, the latter usually

¹ The Employment Relationship, Part 1, International Labour Office, 2006, P. 3.

² The employment relationship, ILO, 2006, p.4.

³ Nicola Countouris, Defining and regulating work relations for the future of work, ILO, Geneva, 2019, p. VI.

⁴ Sukti Dasgupta, Employment Security: Conceptual and Statistical Issues, International Labour Office, Geneva, 2001, p. iii.

address the security of being employed in a job.⁵ Generally, employment security suggests the existence of strong and systematic protection against unfair and arbitrary dismissals from employment as well as proper and adequate redress during unfair dismissals.⁶ Therefore, existence of secured employment relation is one essential way of protecting employment security. Ultimately, this will relieve individuals from fear of losing their income and livelihood. The issue is even more pressing for developing countries like Ethiopia where there are no unemployment social security benefits.

2.3.2. Working hours limitation

Before the establishment of ILO, the eight-hour day, implying the 48-hour week, was a key demand of the working class all over the world.⁷ Taking this long historical demand of working section into account, the ILO, in its Constitution, specifically recognized the maximum daily or weekly working hours with a view to improve the conditions of work prevailing at the time.⁸

The principle of ‘8 hours a day and 48 hours a week’ for the manufacturing sector was established by the first ILO Convention, the Hours of Work (Industry) Convention, 1919.⁹ Following the first Convention, ILO had adopted a series of working hour, weekly rest, night work and holiday’s conventions that extended protections to groups excluded at the initial stage of treaty making and also introduced new regimes of protection. Among these, the hours of work in commercial establishments and administrative services were regulated

⁵ Dasgupta, Employment security, 2001, p.4.

⁶ Economic Security for a Better World, International Labour Office, 2004, p.137.

⁷ Sangheon Lee, Deirdre McCann and Jon C. Messenger, Working time around the world: trends in working hours, laws and policies in a global comparative perspective, 2007, p. 1.

⁸ Lee, McCann & Messenger, Working Time in the twenty-first century, International Labour Office, Geneva, 2011.

⁹ Ibid.

by the Hours of Work (Commerce and Offices) Convention, 1930 (No. 30).¹⁰

Another means of regulating long working hours is by establishing maximum limits on overtime hours of work. Overtime refers to all hours worked in excess of the normal hours of work defined under internationally agreed norms and national laws.¹¹ Overtime work as a temporary exception is also strictly regulated by the above two ILO instruments. As regards industrial undertakings, member state governments can adopt regulations in consultation with the workers' and employers' organizations and may allow the performance of overtime work in order to help enterprises cope with an exceptional workload and emergency situation.¹²

Globally, the recent development shows that a large number of countries have consistently reduced their statutory normal working hours from 48 hours to 40 hours.¹³ Thus, in ILO's General Survey of 2005, Committee of Experts concluded that "regulation of hours of work and working-time arrangements is a fundamental issue for the ILO and its tripartite constituents because it lies at the heart of the employment relationship and because of its direct and crucial impact on the protection of the health and well-being of workers."¹⁴ But another study conducted by a team of researchers found that "despite progress in some measures of reducing working hours, a substantial number of workers – estimated by the authors at about 22 per cent of the workers in the world – are still working more than 48 hours per week."¹⁵

¹⁰ Lee, McCann & Messenger, *Working time around the world*, 2007.

¹¹ *Reduction of Hours of Work Recommendation*, 1962 (No.116), Para.16.

¹² Art. 3 of ILO C. No. 1(1919) & art.5 of ILO C. No. 30(1930).

¹³ *Working Time in 21st century*, ILO, 2011.

¹⁴ *Ibid.*

¹⁵ Lee, McCann & Messenger, *Working time around the world*, 2007.

2.3.3. Occupational safety and health (OSH)

Occupational safety and health is primarily concerned with the prevention of work-related injuries and diseases and generally with the protection and promotion of the health of workers at workplace.¹⁶ According to International Occupational Hygiene Association, OSH is generally defined as “the science of anticipation, recognition, evaluation and control of hazards arising in or from the workplace that could impair the health and well-being of workers, taking into account the possible impact on the surrounding communities and the general environment.”¹⁷ With a view to address the safety and wellbeing of workers, ILO has made immense efforts by adopting more than 40 standards specifically dealing with occupational safety and health, as well as over 40 Codes of Practice while nearly half of its normative standards deal with OSH issues directly or indirectly.¹⁸

The recent estimated data of ILO showed that globally about 330 million occupational accidents occur annually. Moreover, 160 million workers are estimated to suffer from work-related diseases that lead to a death toll of 2 million workers and loss of 4% of world’s annual GDP.¹⁹ A more recent global estimate also shows that about 2.78 million work-related deaths are recorded every year, of which 2.4 million are related to occupational diseases.²⁰

¹⁶ Technical and ethical guidelines for workers’ health surveillance (OSH No.72), International Labour Office, 1998.

¹⁷ ILO standards on occupational safety and health, Promoting a safe and healthy working environment, Report III (Part 1B) , INTERNATIONAL LABOUR OFFICE GENEVA, 2009 p.2.

¹⁸ Occupational Safety and Health, ILO, available at <https://libguides.ilo.org/occupational-safety-and-health-en/standards> accessed on August 2020. Among these are: - Occupational Safety and Health Convention, 1981 (No. 155), Occupational Health Services Convention, 1985 (No. 161) and Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187).

¹⁹ Prevention of occupational diseases: world day for safety and health at work ILO, 2013.

²⁰ International Labour Standards on Occupational Safety and Health, ILO, 2015, <https://www.ilo.org/global/standards/subjects-covered-by-international-labour->

In addition to the immense suffering caused to workers and their families, the economic consequences of OSH hazards are huge for enterprises, countries and the world.²¹ That is, the losses incurred in terms of compensation, lost working days, interrupted production as well as health-care expenditure, represent around 3.94 per cent of the world's annual GDP. The cost to employers in terms of early retirements, loss of skilled manpower, protracted absenteeism and high insurance premiums are tremendous.²²

In the context of Ethiopia, lack of information poses a major challenge in systematically assessing workplace hazards in detail. However, few studies show that there is a high level of workplace injuries that often results in extended loss of productive working days. Moreover, occupational safety and health services were found to be poorly organized.²³ Though there are challenges of acquiring accurate data on the status of OSH, limited data from Ministry of Labour and Social Affairs shows that workplace accidents are increasing from time to time in the country.²⁴

Though there is rich policy and legal frameworks, the challenges in the implementation of the provisions of regulations remain big. This is partly due to the poor understanding of the laws by employers or investors and lack of adequate access to hazard measuring equipment

[standards/occupational-safety-and-health/lang--en/index.htm](https://standards.occupational-safety-and-health/lang--en/index.htm); accessed on August 2, 2019

²¹ ILO on Occupational Safety and Health, available at <https://libguides.ilo.org/occupational-safety-and-health-en>; accessed on August 15, 2019.

²² Ibid.

²³ Abera Kumie, Tadesse Amara & et.al, Occupational Health and Safety in Ethiopia: A review of Situational Analysis and Needs Assessment, Ethiop. J. Health Dev. 2016; 30(Special Issue), pp.1-2.

²⁴ Workplace accidents in Ethiopia, MoLSA, 2012.

by OSH inspectors as well the limited knowledge and skill of using available equipment.²⁵

Another study conducted in the construction sector also revealed that the standard of safety and health is very poor and most of the construction companies do not have written safety policy, safety officer and safety committee in line with the labour law prescription.²⁶ Since the national compilation of annual occupational injuries suffers from under reporting and has remained to be poor, the existing statistics cannot show the reality of both the incidence and rate of occupational injuries in the country.²⁷ As experts from Ambo Town Labour and Social Affairs Office indicated, except for scattered individual and unorganized information and court cases on the same issue, there is no accurate information regarding the prevalence and status of OSH in the town.²⁸

2.3.4. Paid leaves

Labour legislation has also rules providing for mandatory granting of various categories of leaves with payment. According to works and programs of ILO, paid leave is:

the annual period during which workers take time away from their work while continuing to receive an income and to be entitled to social protection. Workers can take a specified number of working days or weeks of leave, with the aim of

²⁵ Abera Kumie, Tadesse Amera & et.al, Occupational Health and Safety in Ethiopia: 2016.

²⁶ Seifedin Sermolo , Occupational Safety and Health in Ethiopian Construction Industry: a case study on Addis Ababa and Welkite, Addis Ababa university school of graduate studies, 2014.

²⁷ Esayas Assefa, The Practices and Challenges of Occupational Safety and Health in Meta Abo Brewery Sc. Co, AAU. 2018.

²⁸ Interview with experts from Ambo Town Labour and Social Affairs Office, June 5, 2019.

*allowing them the opportunity for extended rest and recreation.*²⁹

Paid leave plays two essential roles in the regulation of working time: firstly, protecting the health and well-being of workers thereby contributing to their productivity and secondly has positive impact on limiting working time over the course of a year. As a result, many countries have been convinced to revise their legislation on the duration of paid annual leave in recent times by granting more rest times to their workers.³⁰ Globally, almost 97% of countries have adopted legislations recognizing the right to a minimum period of paid annual leave. Out of them, roughly half of them provide for 20 working days of paid annual leave or more³¹.

The ILO Convention in the area of paid leave is the Holidays with Pay Convention (Revised).³² According to article 3 of this Convention, every person covered by Convention is entitled to an annual paid holiday (leave) of at least three working weeks for one year of service. Through time, other sets of paid leaves are added to the existing regimes of protection. Among these are ever increasing safeguards accorded to female workers and the protection of maternity and other pregnancy-related protections.³³

Maternity and pregnancy related protection takes into account the special vulnerability of working women and their families. As a consequence, expectant and nursing mothers require special care and protection balancing their working time as well as the needs to give them adequate time to give birth, to recover and to nurse their

²⁹ Paid annual leave, International Labour Office Geneva, 2004, available at https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---travail/documents/publication/wcms_170703.pdf accessed on August 22, 2019.

³⁰ Working Time in the twenty-first Century, ILO, 2011.

³¹ Ibid.

³² Holidays with Pay Convention (Revised), 1970(No.132), adopted on 1970 and entered into force on 1973.

³³ Maternity Protection Convention (Revised), 1952) No103 was adopted in 1952 & entered into force on September 1955.

children.³⁴ As a result, ILO has adopted several conventions and recommendations focusing on maternity leave.³⁵ Accordingly,

*The ILO created the first global standard in 1919 aimed at protecting working women before and after childbirth: the Maternity Protection Convention. The standard was revised in 1952 and now calls for a minimum 12-week leave, although a 14-week leave is recommended. Currently, 119 countries meet the ILO standard of 12 weeks with 62 of those countries providing for 14 weeks or more. Just 31 countries mandate a maternity leave of less than 12 weeks.*³⁶

2.4. Labour rights and recourse mechanisms: Discussion of the relevant laws and policies in Ethiopia

Attempts to introduce workplace rules in Ethiopia have had relatively long history. One of these was the issuance of a regulation on workplace safety and health in the 1944 which gave the power of implementation to the Ministry of Labour and Social Affairs.³⁷ By virtue of this proclamation, the Ministry of Commerce and Industry was entrusted with the mandate of adopting rules and regulation on the factory employees' working hours, prevention of accidents, health and safety of workers.³⁸ So far, the country has become a party to 22 ILO conventions among which eight are fundamental workplace protection instruments.

³⁴ International labour standards on maternity protection (ILO), available at https://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_008009/lang-en/index.htm; accessed on August 17, 2019.

³⁵ The Maternity Protection Convention, 1919 (No. 3), the Maternity Protection Convention (Revised), 1952 (No. 103) and very recently the Maternity Protection Convention, 2000 (No. 183) were adopted.

³⁶ International labour standards on maternity protection (ILO) available at https://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_008009/lang-en/index.htm; accessed on August 17, 2019.

³⁷ The Factories' Proclamation No. 58/1944.

³⁸ Mehari Redae, Privatization in Ethiopia: the challenges it poses to Unionization and Collective Bargaining, 2015.

Labour rules and standards were part of the legislative revision extensively carried out in the 1960s.³⁹ Of course, this was the period during which the country had adopted separate and comprehensive labour legislation in its history.⁴⁰ On the other hand, constitutional recognition and protection of labour rights, though slightly, began under the 1955 Revised Constitution.⁴¹ The 1955 Constitution devoted full chapter towards rights and duties of people and enshrined such rights relevant to labour relation as freedom of speech, the right to peaceful assembly and the right to form or join associations in accordance to law.⁴²

Development of labour legislations and workplace standards had continued throughout the subsequent change of regimes and shift in political and economic ideologies in the country.⁴³ Hence, rules on labour rights and standards had been part of constitutional documents and other primary legislations adopted under each constitutions of the previous regimes of Ethiopia.

Following the country's long-time membership of ILO⁴⁴ and adoption of its normative frameworks,⁴⁵ the current Federal Constitution has recognized many work-related guarantees as part of its bill of rights. Accordingly, the Constitution guaranteed the broader rights of immense relevance to labour protection like equality, freedom of

³⁹ For example, the 1960 Civil Code incorporated a section relevant to labour relation and workplace standards such as the rules on general contract, provision of service and work and labour. See Civil Code of the Empire of Ethiopia, Proc. No. 165/1960, *Negarit Gazetta*, Extraordinary issue.

⁴⁰ The Labour Relation Proclamation No. 210/1963.

⁴¹ The 1955 Revised Constitution of Ethiopia.

⁴² Mehari Redae, *Privatization in Ethiopia*, 2015.

⁴³ After abolishing the 1963 Labour Proclamation, the Military Government (*Dergu*) instituted a famous labour proclamation No. 64/1975 which after regime change was replaced by Proclamation No. 42/1993.

⁴⁴ Ethiopia became the member of ILO in 1923.

⁴⁵ So far Ethiopia has ratified more than 20 ILO Conventions among which 8 are categorized as core labour conventions.

movement and association and rights of labour.⁴⁶ Particularly, specific rights and guarantees listed under labour rights clauses are of paramount importance to workers in the country.⁴⁷ This protection is further reinforced by constitutional provisions guaranteeing the right to access to justice⁴⁸ and the mandatory requirement to conform interpretation of the human rights provisions to international instruments adopted by the country.⁴⁹

However, incorporating and granting constitutional status of labour rights are felt to be insufficient and demands further legal mechanisms for enforcing the rights and providing effective remedies for breach of legally protected rights. This has necessitated the government of Ethiopia to adopt more relevant and implementing labour legislation and providing institutional oversight mechanisms. A typical example of this attempt was the adoption, of course revision of previously existing labour proclamation to fit to changing political, economic and social situation of the country. Accordingly, the parliament of Ethiopia adopted labour legislation in 2003⁵⁰ which itself has currently been repealed and replaced by Labour Proclamation no. 1156/2019.⁵¹ Thus, Labour Proclamation No. 1156/2019 is the principal legal regime

⁴⁶ Proclamation of the Constitution of the Federal Democratic Republic of Ethiopia, Federal Negarit Gazetta, Year 1, No. 1, 1995 (now after The FDRE Const. 1995)., articles 25, 31, 32 & 42.

⁴⁷ The specific rights listed under labour rights category are the rights of factory and service workers, labourers and government employees to form associations, the right to strike, women worker's right to equal pay for equal work, the right to reasonable limitations of working hours, to rest, paid leaves as well as to healthy and safe work environment. National policy principles and objective provisions are also important in guiding government policies and measures.

⁴⁸ The FDRE Const.1995, art.37.

⁴⁹ The FDRE Const.1995, art.13(2).

⁵⁰ Labour Proclamation No.377/2003, Federal Negarit Gazetta, Year 10, No. 2.

⁵¹ Labour Proclamation No. 1156/2019, Federal Negarit Gazetta, year 25, No.89 (hereafter the Labour Proc.).

currently regulating the various aspects of employment relationships between the employer and the employee in Ethiopia.⁵²

The status of labour rights as human rights is also strengthened by the adoption and ratification of the key UN human rights instruments in the area of civil and political rights as well as socio-economic rights.⁵³ The UN Bill of Human Rights, namely the UDHR, ICESCR and ICCPR, are expressly made an integral part of the law of the land and an interpretive guide in the application of human rights standards in real situation.⁵⁴ Efforts have continued to add subordinate laws in the area of labour reduction, occupational safety and health and special working condition of women and young workers in the country.⁵⁵

For the purpose of our work, a brief elaboration of legal standards concerning employment contract/relation and security, limitation of daily/weekly working hours, paid leaves, occupational safety and health and collective labour relation is to follow herein after.

2.4.1. Employment contract and security

As discussed before, the employment contract forms the pillar of all labour protection and claims for any legal rights, benefits and obligations arising from the special relation. All legal safeguards, claims and obligations under labour legislations are subject to existence

⁵² But despite some amendments made to its limited provisions, this proclamation has a striking similarity both in its content and form to that of the earlier one. Thus, since principal data collection and case analysis is made during the effective time of earlier legislation, without disregarding major areas of departure between both legislations, the researcher's observations and cases analysis are principally made in light of the previous proclamation no. 377/2003.

⁵³ A case in point is adoption and ratification of the UN Convention on Economic, Social and Cultural Rights and that on Civil and Political Rights in 1993.

⁵⁴ The FDRE Const., 1995, Art.13(2).

⁵⁵ Based on the mandates given by the Labour Proclamation, Ministry of Labour and Social Affairs has issued directives on list of works prohibited or dangerous for women workers and young employees in 2013.

of employment relation between the parties so called the employer and employee.⁵⁶

Generally, an employer-employee/worker relation is a kind of individual relation mainly for the sake of receiving service on the part of the employer and payment of remuneration for the employee.⁵⁷ Except for some type of employment relations, under Ethiopian labour legislation, parties are left at freedom to conclude their contract and absence of special form will not affect the rights and obligations arising from their relation.⁵⁸ However, for employment contracts not made in written form, the law requires employers to give a written and signed document containing the details of their agreement.⁵⁹ This being the obligation of the employer, the latter's failure in complying with the above condition will not have the effect of depriving worker's rights under the same law.

2.4.2. Limitation of working hours

Though Ethiopia has long been member of ILO, limitation of working hours had been incorporated into Ethiopian law since the adoption of 1960 Civil Code and Labour Relation Proclamation of 1963.⁶⁰ Later amendment of labour laws in the country had kept similar trends of legal protection. According to the current labour legislation, normal hours of work shall not exceed 8 hours a day or 48 hours a week.⁶¹ This

⁵⁶ The employment relationship, ILO, 2006. The concept of employer/undertaking and employee/worker is respectively defined under articles 2(1,2&3) of the Labour Proc.

⁵⁷ Article 4(1) of the Labour Proclamation defines the essential elements constituting a contract of employment: the existence of two parties (employee & worker), legally valid & enforceable agreement, and performance of work, direction/authority of the employer, payment of wage/remuneration and duration/time of engagement.

⁵⁸ See art. 5 of the Labour Proclamation According to Ethiopian law, employment relations which need to be made in special forms include those relating to probationary employment, modification and termination of employment contract by agreement and contract of apprenticeship.

⁵⁹ See The Labour Proc. art. 7(1) .

⁶⁰ Both the 1960 Civil Code & the Labour Relation Proclamation No. 210/1963 have set 8 hours per day maximum working time.

⁶¹ The Labour Proc. Art. 61(2).

was further strengthened by the rules prohibiting employers from compelling their worker to work overtime.

The law also envisages for the possibility of reducing normal hours of work by directives of the Ministry of Labour and Social Affairs having regard to special conditions of work.⁶² On the other side, any work done in excess of the normal daily hours of work is deemed to be overtime.⁶³ With a view to ensure the limitation of working hours protection, under Ethiopian law, overtime work is strictly regulated and applicable on exceptional grounds provided by law.⁶⁴ When overtime work is done for legally permitted grounds, workers are entitled to additional remuneration at a rate higher than their normal wage rate.⁶⁵

2.4.3. Paid leaves

Labour legislations have also rules providing for mandatory granting of leaves with payment. Major paid leave packages recognized both under international labour standards and domestic legislations primarily include maternity leave, annual leave, sick leave and leave for union and personal matters.⁶⁶

Ethiopian labour legislation also provides for different categories of paid leaves based on individual circumstances of each workers and duration of service. For instance, annual leave with pay is a right granted to each worker after the legal minimum service of one year.⁶⁷

⁶² The Labour Proc. Art. 62.

⁶³ The Labour Proc. Art. 66(1).

⁶⁴ According to article 67 of the labour proclamation, overtime work may be done whenever the employer cannot be expected to resort to other measures and only where there is: - (a) accident, actual or threatened; (b) force majeure; (c) urgent work; (d) substitution of absent workers.

⁶⁵ The Labour Proc. Art. 68. Onerous rate of payment for overtime work is basically designed to discourage employers from compelling their workers to work overtime work and also compensate workers for their extra labour.

⁶⁶ For instance, reference can be made to ILO Convention No. 052 (Holidays with Pay Convention, 1936), No. 132 (Holidays with Pay Convention (Revised), 1970), No. 103 (Maternity Protection Convention (Revised), 1952) and so many others.

⁶⁷ The Labour Proc. Arts. 76 & 77.

The amount of leave may increase according to length of service rendered to the employer.⁶⁸ Besides, unless otherwise provided by law, it is also prohibited to pay wages in lieu of the annual leave.⁶⁹ However, if the contract of employment of a worker is terminated before fully utilizing any outstanding annual leave for whatever reason, he/she is entitled to his/her pay for the leave not taken.⁷⁰

Coming to the maternity leave in the Ethiopian legal context, legislative reform took a progressive trend and it is now in line with the ILO minimum recommendation.⁷¹ The current labour legislation recognizes paid leave for pregnant women for medical examination, leave upon recommendation of the doctor and leave before and after giving of birth or confinement.⁷² Moreover, female employees are entitled to other protections relating to their working environment, type of work and working time.⁷³

2.4.4. Occupational safety and health

Ethiopia has had a regulation on occupational safety and health (OSH) since the issuance of Factory Proclamation in the 1940's by the then Ministry of Labour and Social Affairs. The 1960 Civil Code also incorporates some standard rules on OSH.⁷⁴ Ethiopia is also a party to

⁶⁸ According to article 77 of the Labour Proclamation, a worker is entitled to 16 working days for the first one year of service and 16 working days plus one working day for every additional 2 years' of service.

⁶⁹ The Labour Proc. Art. 76(2).

⁷⁰ The Labour Proc. Art. 77(4).

⁷¹ The Labour Proc. Article 88. According to the initial law on the issue, art. 2566 of the Civil Code, a female employee who expects a child is entitled to one month leave with half pay.

⁷² The Labour Proc. Art. 88. The current labour proclamation no. 1156/2019 has provided a more generous package of maternity leave to female employees, that is, 30 consecutive days of leave with pay of pre-natal leave and a period of 90 consecutive days of leave of post-natal.

⁷³ See art. 87 of the Lab. Proc. and also a directive on working condition of female employees was issued by the Ministry of Labour and Social Affairs, 2013.

⁷⁴ The Civil Code of Ethiopia, articles 2548-2559.

ILO Conventions on occupational safety and health⁷⁵ and has addressed the issue successively in all of its previous labour legislations. Subordinate laws enacted by the Ministry of Labour and Social Affairs have enriched normative frameworks in the area.

Current Ethiopian labour law provides detail rules on ensuring workplace safety and health. The rules attempt to address double stage of obligations: preventive and remedial. Preventive stage safety rules primarily aim at avoiding or reducing the occurrence of workplace injuries. This is designed to be achieved by imposing reciprocal obligations on the employer and the employee. Thus, the employer is required to comply with the legal requirements for prevention of occupational injury mainly by providing proper instruction concerning workplace risks, protective equipment and necessary safety measures.⁷⁶ The worker, on the other hand, is legally obliged to comply with safety measures taken by the employer and make proper use of equipment supplied for the prevention of occupational injury.⁷⁷ Thus, under Ethiopian law preventive stage of occupational safety and health measures strictly require the cooperation of both parties.

Despite the efforts of prevention, workplace injuries may occur at any time and the law has put in place remedial mechanisms to address such risks. This is usually done through transferring loss sustained as a result of the materialization of workplace risk. Except for injuries caused by the exclusive fault of the worker,⁷⁸ employer's liability is irrespective of fault or what is usually known as strict liability.⁷⁹

Accordingly, if an injury qualified as workplace injury, employer is legally bound to discharge obligations of covering costs of medication,

⁷⁵ Occupational Safety and Health Convention, 1981 (No. 155) was ratified on 28 January 1991.

⁷⁶ The Labour Proc. Art. 92.

⁷⁷ The Labour Proc. Art. 93.

⁷⁸ Art. 96(2) provides circumstances when a workplace injury is caused by the fault of worker and hence serves as a defense for the employer's liability.

⁷⁹ The Labour Proc. Art. 96(1).

grant employment injury, leave with pay and, upon assessment by competent medical board, pay disablement benefits.⁸⁰ The duration and amount of payment for employment injury leave as well as disablement benefit depend on duration of separation of the worker from work, and the type and degree of injury sustained.⁸¹ Following the adoption of Private Organizations Employees' Pension Proclamation,⁸² there is a slight change in the amount and mode of assessment of employment injury benefits.⁸³

2.4.5. Collective labour relation: With particular emphasis on Trade Union Rights

The last, but not least, issue of assessment made in the study area is the situation of collective employment issues with particular emphasis on unionization-related rights of workers. Freedom to organize and form labour union form crucial right of workers for effective realization of individual contract-based rights. This is because claiming rights in organized manner has a strong impact in compelling the duty-bearer to discharge obligations assumed under the law. That is why ILO conventions on freedom of association and collective bargaining are labelled as forming part of its eight core labour standards.⁸⁴

In Ethiopian context, the country has been member of ILO since 1923 and ratified both core conventions of ILO on freedom of association,

⁸⁰ The Labour Proc. See articles 105, 107, 108 and 109.

⁸¹ According to article 99 of Ethiopian labour law, disablement or a decrease or loss of capacity to work takes the following forms: - temporary disablement, permanent partial disablement, permanent total disablement and death.

⁸² Private Organization Employees' Pension Proclamation No. 715/2011, Federal Negarit Gazeta, Year 17, No.79 (as amended by 908/2015).

⁸³ Under labour law, employment injury disablement benefits are assessed in lump sum based on the degree of the disablement and paid in once to the beneficiary. But the approach under pension proclamation is a kind of periodical payment by way of pension allowance.

⁸⁴ ILO Declaration on Fundamental Principles and Rights at Work and Its Follow-Up adopted by the International Labour Conference at its Eighty-sixth Session, Geneva, 18 June 1998, available at: https://www.ilo.org/public/libdoc/ilo/1998/98B09_234_engl.pdf

the right to organize and collective bargaining in 1963.⁸⁵ Domestically, the general right to freedom of association had its roots in the provisions of the 1955 Revised Constitution.⁸⁶ Though its scope of protection may vary, all subsequent labour legislations incorporated the right of labour to form association and collectively bargain for better working conditions.⁸⁷

Currently, freedom of association, the labour right to organize and collectively bargain has got constitutional recognition under the Bill of Rights chapter of the supreme law of the country.⁸⁸ There is a detailed law governing the formation of trade union and exercise of trade union powers and functions.⁸⁹ Once established, labour unions are expected to make effort to bring about improved conditions of work and better working relation. This is fundamentally achieved by what is known as collective bargaining process and upon reaching new terms of working condition by conclusion of collective agreement.⁹⁰ Any difficulties arising during collective negotiation process may be referred to labour dispute settlement organ like Labour Relation Board.⁹¹ There are also options for either party to the dispute to take measures of industrial action, namely strike or lockout.⁹²

⁸⁵ Both Conventions, namely on freedom of association and the right to organize (No. 87 of 1948) and those on right to organize and collective bargaining (No. 98 of 1949) was ratified and in force in Ethiopia since 1963.

⁸⁶ The 1955 Revised Constitution, Art. 47.

⁸⁷ The first enabling law which clearly recognized the right of workers to form an association was the Labour Relation Proclamation of 1963 No. 210/1963. All subsequent labour codes had legal frameworks for the formation and functioning of trade unions such as Proclamation No. 64/1975, No. 42/1993 and current Proc. No. 377/2003.

⁸⁸ The FDRE Const., art. 42(10(a)).

⁸⁹ Rules for the formation and functioning of labour organization are listed under articles 113-123 of the Labour Proclamation No. 377/2003.

⁹⁰ For definition of collective bargaining and collective agreement see art.124 of the Lab. Proc.

⁹¹ The Labour Proc. Art. 130(5).

⁹² The Labour Proc., Art. 157.

2.5. Discussion of Data and Findings on the Implementation of Labour Rights in Ambo Town of Oromia State

2.5.1. Background of Ambo Town, Oromia Regional State

The study was conducted in Ambo Town of West Shewa Zone, Oromia Regional State. Ambo town is a zonal town with the 2nd grade of administrative status. It is located 114 km west of Addis Ababa on the main road that leads to western region of Ethiopia. Ambo town was established in 1889 and covers 8587 hectares of land. It is one of the oldest towns in Ethiopia.⁹³ The name Ambo came from a lake, which has salt in it. The development of Ambo town is related with the hot spring called “Ambo Tsebel”. According to recent information, Ambo town has 6 urban kebeles and 4 rural peasant association in its surrounding.⁹⁴ The projected current total population of the town is more than 120,000 with an even distribution of female and male population.⁹⁵

2.5.2. Discussion of data and findings of the practical issues

Once an employment relation is established, it is normally expected to produce mutually enforceable rights and obligations between the contracting parties. On the bases of the data collected from various sources by using in-depth interviews of key informants, FGD, personal observation, court cases and documents gathered, the researcher has identified varying levels of rights violation and abuses in the study area. A brief discussion of the findings has been provided.

2.5.3. The Employment relation and Employment-related Problems in the Study Area

As pointed at the beginning, the researcher has attempted to check the nature and status of employment relations commonly established

⁹³ Chala Deyessa Fita, An assessment of urban water supply and sanitation: the case of ambo town, Oromia Region, 2011.

⁹⁴ Information from Ambo Town Municipality, 2011 E.C.

⁹⁵ Information from Ambo Town Planning Office, 2011 E.C.

between the employer and the employee in Ambo town. Accordingly, with the exception of few production entities,⁹⁶ all the responses of interviewees and participants of FGD have strongly confirmed that employees are not provided with any written documents evidencing their employment relation with their employers. The worst practice exists for those employees engaged in hotel and cafeteria services. In most employment relations, asking for written employment contract is unthinkable and any claim of it may result in immediate dismissal.⁹⁷ According to an official from Labour and Social Affairs of Ambo town, most employers intentionally deny their employees of any copy of written documents evidencing their employment relation with their employees. This is done with a clear purpose of escaping any legal responsibility and they specially think that they can terminate the employment contract of such employees without any legal liability.⁹⁸ Of course, such absence or denial of written documents has so far practically caused many challenges in times of termination of employment contract and claim for compensation and other benefits associated with termination of employment.⁹⁹ This is because many claims of illegal termination depends upon proof of duration of employment contract and amount of wage paid to the worker and if such matters are not properly proved, it will be difficult to give an enforceable judgement for the victims of illegal dismissal.¹⁰⁰ And this is stated to be the consequence of not sanctioning the failures of employers in providing written documents containing the details of their agreement within 15 days from the commencement of their employment relation. Because of that, legal service support centers and

⁹⁶ One example of private company that provides a complete written employment contract together with company working rules and regulations is Ambo Mineral Water PLC.

⁹⁷ Interview with employees from selected hotels and cafeteria in Ambo town, From May 29- June 7, 2019.

⁹⁸ Interview with W/o Kumeshe Birdaba, Team Leader, Ambo Town Labour and Social Affairs Office, on June 5, 2019

⁹⁹ Interview with Mr. Yifru Dagnachew, Ambo Project Office of the Center for Human Rights, volunteer advocate who has multiple experience of representing labour clients in court of law, on June 6, 2019.

¹⁰⁰ Interview with Mr. Alemu Shumbe, Judge of Ambo Woreda Court, on May 31, 2019

courts are forced to use other less certain and time-taking evidences like witnesses and ordering the production of payroll and tax sheet, if any, from respective tax offices.

The other problem surrounding employment relation in Ambo town is grievances concerning duration of employment contract. This is because many workers and leaders of trade union have seriously expressed their grievances that some workers are forced to work on definite contract basis even 10 to 20 years at a very meager payment rates.¹⁰¹ Though the work done by temporary and permanent employees are similar in nature and amount, most employers make distinction with a view to exclude certain categories of workers from additional benefits and bonuses provided at a certain intervals.¹⁰² Once again, this strategy is used to reduce the cost of production and to easily terminate employment contract of the so called temporary employees without complying with mandatory requirements of the law to effect termination.¹⁰³ Others view such type of employment relation does not impose duty to pay employment income tax and pension deduction.

But according to Ethiopian Labour Law, duration of employment contract is not totally left to free agreement of the parties. The employment relationship is subject to legally prescribed conditions based on the nature of the work done and the interest of the employer in the continuity of his/her undertaking.¹⁰⁴ Under the current law, except under certain conditions, in principle employment contracts are presumed to be made for a continuous period. However, except for few

¹⁰¹ This was basically raised by worker interviewees and trade union leaders from Senkele Lime Factory & Indo-Liben Gypsum Factory and FGD with workers from diverse background, from May 29- June 7, 2019.

¹⁰² Ibid.

¹⁰³ This fact was evident from some cases of illegal termination instituted to claim compensation and employers invariably argues on the basis of definite time employment- See a case b/n Mr. Gudussa Megersa vs. EAY, Ambo Woreda Court, File No. 18277.

¹⁰⁴ For example, art. 9 of the Lab. Proc. States that except for those legally listed and other similar grounds 'any contract of employment shall be deemed to have been concluded for an indefinite period'.

entities, the practice in the selected private enterprises in Ambo town seems to negate the legal presumption; the majority of employment contracts reviewed are for definite duration though there is no any distinction in the nature of the works done by temporary employees and permanent employees.¹⁰⁵ As a consequence, such approach indirectly violates the legal principle of equal pay for equal work and also amounts to acts of discrimination and operates against the law.¹⁰⁶

A last point to mention in relation to employment security is the prevalence of arbitrary dismissal of workers in the study area. Evidence gathered from key informants, trade union leaders, documents of legal service providing centers, lawyers and judges of Ambo Woreda court categorically showed that the majority of employers dismiss their workers in complete disregard of the requirements of the labour law. This is also clearly proved from contents and ultimate decisions of some court cases gathered from legal service centers and Ambo Woreda Court which predominantly found employers liable for termination of contracts illegally. As stressed by one judge from Ambo Woreda Court, though arbitrarily dismissed, most workers victim of illegal termination do not know how to present their case and vindicate their rights.

2.5.4. Compliance with limitation of working hours, paid leaves and weekly rest day

When we assess the practical implementation of working hour limitation as recognized under international and national legal standards, except for few production and manufacturing sectors, the rules on maximum daily working hour is totally unobserved in the selected private enterprises and employers in the town.¹⁰⁷ The problem is not only disregarding the legal protection on working hours; but also

¹⁰⁵ Interview with employees from Production, Hotel and Construction sectors has proved this fact.

¹⁰⁶ The principle of equal pay for works of equal value are incorporated under art. 42(1/d) of the FDRE Const. and ILO Equal Remuneration Convention, 1951 (No. 100).

¹⁰⁷ Data collected through in-depth interview of workers and participants of FGD from different entities in the town have firmly confirmed consistent breach of rules on working hour's limitations.

workers are always compelled to work beyond the legal limits of working time and no compensatory payment is given to them for extra hours of work.¹⁰⁸ The working practice in most hotels and café centers in the town is a kind of work from early morning to evening and seven days a week.¹⁰⁹ That means most workers are also denied weekly rest days or granted half day rest within a week.¹¹⁰ From the data collected, except for few private employers and enterprises with effectively functioning workers association, working hour limitations and payment for extra hours of work are unknown and unenforced legal norms.¹¹¹ The concept of weekly rest day for workers of most hotels and cafeteria are totally unknown and, if granted for some compelling personal reasons, it will be without payment.

When we come to matters of paid leaves, except for few employees in production sector and those with well-functioning labour union, paid leaves are totally unknown for most workers, be it annual leave, maternity leave or even temporary sick leave.¹¹² Even considerable number of participants of the study disclosed that claim of such rights may result in automatic termination of employment contract and, in fact, some workers were victimized for claiming pay during annual/sick/maternity leave.¹¹³ Employees with work experience of

¹⁰⁸ The worst of such scenario exists in almost all hotels and cafeteria service entities. The researcher has only come up with 3 hotels that comply with daily limitations of working hours.

¹⁰⁹ Most middle level hotels and cafeteria workers informed the researcher that they came to workplace early morning at 12:00 and always left after 9:00-1000 PM evening.

¹¹⁰ Few interviewees responded that they are sometimes granted half day weekly rest day only to wash their clothes and go to church service.

¹¹¹ Most workers involved in the FGD and interview complained that no government organ is monitoring their situation and they are always left to the mercy of their employers.

¹¹² According to the data collected through interview and FGD, annual leave and maternity leave arrangement only exists in two factories (Ambo Mineral Water PLC and Indo-Liben Gypsum Factory) both of which has worker's association.

¹¹³ Interview with workers from TMT Construction Company confirmed that 3 employees with 4-8 years' service time are dismissed from their job for their claim of annual leave. The name of this company was changed for the security of our interviewee workers.

more than 10 years in an enterprise are denied annual leave and no one is there to defend their rights.¹¹⁴ Upon pregnancy, most female employees know that they have no other claims except leaving their job and taking care of their child.¹¹⁵

However, there are some private companies with better records in their respect and protection of workplace rights and guarantees. A best example to mention here is the working condition in Ambo Mineral Water PLC in which all participants of the study, including trade union leaders, confirmed nearly perfect compliance with fundamental rights at workplace.¹¹⁶ Particularly, treatment of female workers is so extraordinary and the protections go beyond what the labour law and the collective agreement stipulate.¹¹⁷ This was further reaffirmed by key informants and volunteer lawyers from Free Legal Service Provision Center of Ambo Project Site Office of Center for Human Rights has a plan to promote such best practice of harmonious workers/trade union-management relation among other private investors in the town.¹¹⁸

2.5.5. Occupational safety and health in Ambo Town

Coming back to the situation of occupational safety and health in Ambo town, most participants of the research confirmed that generally most employers do not comply with the requirement of safety laws and

¹¹⁴ Interview with workers from TMT Construction Company on June 5, 2019.

¹¹⁵ This is the case for most female workers engaged as waitress in most hotels and cafeteria sector in the Ambo town.

¹¹⁶ This was clearly attested by a randomly selected interviewees and participants of FGD comprising workers from all levels and positions from the Company on June 1, 2019.

¹¹⁷ An instance of such favourable treatment includes granting of 120 days paid maternity leave, monthly support to families who sent their children to University and other social and financial support services are made available to all workers from time to time.

¹¹⁸ This is because as disclosed from the participants of the FGD in the said PLC as well as the human resource manager of the Company, since the beginning of health and cooperative worker/TU-management relation, annual profit of the company has been increasing thereby earning additional incentives and bonuses to all of its workers.

regulations in the country.¹¹⁹ Workers engaged especially in construction sector¹²⁰ and production factories¹²¹ are the most vulnerable to those easily preventable occupational injuries. Workers stated that their employers focus on increasing their production and profits and do not bother about the health and wellbeing of their workers. Most employers think that workers are responsible for keeping their health and any injury sustained will be at the risk of each worker.¹²² There is no such arrangement as for safety officer and OSH committee as prescribed by the law.¹²³ There is no custom of registering and reporting occupational injuries to labour inspection offices. Nor do such officers make visits to and supervise working environment in the town till the time we conducted the research.¹²⁴

The problem is not only in disregarding the obligation to make workplace safe and healthy. Most of the interviewees and participants of the FGD from construction and production companies in the study area elaborated, most victims of employment injury do not get employment injury entitlements from their employer, with the exception of providing emergency medical services. There are multiple cases in the study area where workers sustained serious workplace injury and disablement but lost their job without any compensation.¹²⁵

¹¹⁹ With the exception of workers from Ambo Mineral Water PLC, most workers involved in the interview and FGD stated that they are not given with adequate safety tools nor proper instruction of their use.

¹²⁰ Interview and FGD with workers from TMT and MCG Constriction Companies from May 29- June 7, 2019.

¹²¹ Interview and FGD with selected workers and trade union leaders from Indo-Liben Gypsum Factory; SKL Lime Factory and Privately-owned Commercial Farm, conducted between May 29 and June 7, 2019. The names of some companies are changed for the security of our interviewee workers.

¹²² *Ibid.*

¹²³ The Labour Proc., See art. 92(2).

¹²⁴ A concerned official from Labour and Social Affairs Office fully admitted the complaint of workers regarding OSH in the town; but attributed their failure to do OSH supervision to acute shortage of resources facing the office (Interview with Ms. Kumeshi Birdaba, at Note 65).

¹²⁵ This was raised by a victim of employment injury who lost his hand in similar incident and because of that separated from his work with only 12,000 birr paid to him to cover

In one case,¹²⁶ a worker of electric line installation sustained workplace injury which resulted in serious damage to his leg. Despite the evidences of medical board, his employer only covered some portion of medical costs and terminated his employment without paying compensation for employment injury. He was forced to institute a lawsuit in court of law against his former employer and ultimately awarded with compensation of 70,000 birr. According to the lawyer and key informant¹²⁷ that represented the victim in the court of law, this was one of many similar cases occurring in the town which demands close attention of legal support and government intervention.

As disclosed in the in-depth interview at TNT Construction site and of course corroborated by evidence from personal observation of the working environment by the researchers, an employee with physical disability, who was previously engaged as data recorder at office, was forced to work as machine operator at sewerage disposal site. As vividly observed, he was not provided with the necessary safety devices and as a result was exposed to multiple health risks.¹²⁸ According to an employee the researcher talked to, faced with work or die options, he is still working in a very hazardous working environment and his request for provision of protective tools was neglected by the employer for long time. He also added that he has never witnessed any government organ supervising and monitoring his employer's working environment.¹²⁹ Of course, absence of supervision and inability to take corrective measures by labour inspection authority in the study area have been stated to be the main source of labour rights abuse in the town. Most workers explained that they have repeatedly complained to the Office of Labour and Social Affairs of the town; but no changes happened to date and

medical expenses. Also, one of the lawyers who usually supports workers having employment injury cases confirmed the same fact.

¹²⁶ Mr. Gudissa Megersa vs. EAY, cited above at note 124.

¹²⁷ Interview with Ato Yifru Dagnachew, cited above at note 66

¹²⁸ Interview with Addisu Kidane, an employee with disability of TMT Construction Company, on June 5, 2019.

¹²⁹ *Ibid.*

they are losing confidence in government response. Generally, there is no right of recourse for excessive labour rights abuses in the area of occupational safety and health prevention. Only few workers of victims of employment injury came to courts and got limited remedies.¹³⁰

2.5.6. Collective labour relation (the situation of trade union rights) in the study area

Currently, freedom of association, the labour right to organize and collective bargaining have got constitutional recognition under the Bill of Rights chapter of the supreme law of the country.¹³¹ Further, there is a detailed law governing the formation and operation of trade unions.¹³²

The researcher has made efforts to observe implementation of collective labour rights in the study area in light of the available legal and policy framework. According to information from Labour and Social Affairs Office of the town,¹³³ there are around 10 labour unions in the town and half of these are not actively functioning. Even the majority of trade unions are those previously established when the undertakings were under government ownership and later transferred to private employers by privatization.¹³⁴ However, as disclosed by leaders of trade union from those undertakings previously privatized, effective functioning of trade union has been deteriorating from time to time.¹³⁵ Though there are many employers and undertakings engaging 20 to 50 workers in the town, most of them are not willing to allow the formation of workers association and any attempt to do so may result

¹³⁰ This can be observed from limited number of employment injury cases opened in Ambo Woreda Court. Interview with a volunteer lawyer and judge of Ambo Woreda Court has confirmed the continuing grievances of most workers in the town.

¹³¹ The FDRE Constitution of 1994, articles 31& 42(1/a).

¹³² Rules for the formation and functioning of labour organization are listed under articles 113-123 of the Labour Proclamation No. 1156/2019.

¹³³ Interview with Ms. Kumesi Birdaba, cited at Note 65.

¹³⁴ A case in point include Ambo Mineral Water PLC Workers Trade Union, SKL Lime Factory, Ethiopia Hotel and so forth.

¹³⁵ A best example is the situation in SKL Lime Factory and many privately owned commercial farms in and around the study area.

in retaliatory measures including denial of promotion in work and payment and eventual dismissal from job under disguised grounds.¹³⁶

Even for those undertakings where there are labour associations, they are rendered tactically ineffective by the employers using a various techniques.¹³⁷ These include discriminatory treatment among workers in the area of work, payment promotion and exclusion from incentives stipulated under collective agreement.¹³⁸ In others, employers are not willing to renew collective agreements after expiry of agreed terms.¹³⁹ Efforts of trade union leaders for the intervention of concerned government offices as a mediator were not successful.¹⁴⁰

However, it is worth mentioning the practice and working relation of Ambo Mineral Water PLC¹⁴¹ and its workers' union. According to participants of FGD and key informants from the labour union, since the reinstatement of new management system in 2008 E.C, worker-management relationship has significantly improved and positively contributed to the efficiency and productivity of the company.¹⁴² While most workers in the town are struggling to form trade union and those already existing are fighting to stay active, Ambo Mineral Water Factory is even granting additional benefits and working conditions

¹³⁶ Interview with workers from selected production and construction companies in the town, cited above at note 122.

¹³⁷ The case in point is trade union in SKL Lime Factory and partially labour unions of most privatized enterprises in the town.

¹³⁸ Interview with Mr. Teresa Beksisa, Chairperson of SKL Lime Factory workers union on May 30, 2019.

¹³⁹ Ibid.

¹⁴⁰ Ibid.

¹⁴¹ It was one of government-owned enterprises which was transferred to private entities through privatization process.

¹⁴² Interview with Mr. Kebede Furgasa, Chairperson of Ambo Mineral Water PLC Workers' Union and Mr. Duresa Gonfa, HR Manager of the company on June 7, 2019. This is the only privately owned company where all participants of FGD and selected key informants affirmed the existence of conducive working environment and full respect for the rights of workers. All participants added that this has produced concrete results in the mutual benefits for both sides.

than those agreed in the collective agreement.¹⁴³ As vividly asserted by all workers from varying departments, a growing positive workers-management relation has created strong sense of responsibility and ownership among the majority of staff and cited as best practice not only in the town but region-wide.¹⁴⁴

As clearly explained by the Human Resource Manager of Ambo Mineral Water, formation and effective functioning of trade union cannot be perceived as a threat to employers; but also it is a wise and informed way of leading manpower to efficient and productive working atmosphere. If companies are engaged in continuing controversies and litigation with its labour force, above others, companies will be affected first and others may feel the consequences gradually. Therefore, it is so paradoxical to see such open and participatory management in a town where most selected private employers and investors put continuing obstacles in the way of workers to exercise their collective labour rights and even making efforts to dismantle existing labour unions. Thus, as observed from the work initiatives of Ambo Town Labour and Social Affairs Office, a lot remains to be done to bridge the huge gaps in awareness about socio-economic advantages of having labour union for the employer and the town as a whole.

2.6. Conclusion and Recommendations

Labour right protection forms an essential aspect of a nation's effort to improve the social, economic and political conditions of its citizens. At domestic level, this effort may take various forms like putting in place relevant laws and policies, establishing institutions addressing implementation issues and providing redress for breach of fundamental workplace rules and standards. In this regard, Ethiopia has gone a long

¹⁴³ For instance, the company has introduced a voluntary monthly support of birr 500 for those workers who have sent their children to universities. Other benefits include full medical services up to referral hospital, financial contribution to workers' saving association, periodical salary increment and payment of bonuses out of yearly profits of the company.

¹⁴⁴ This point was mutually agreed by the Chairperson of the Trade Union and human resource manager of the company.

way. To this effect, it has adopted and ratified many ILO recommendations and conventions including eight of ILO's fundamental workplace standards. The FDRE Constitution, supreme law of the land, has also satisfactory provisions guaranteeing general human rights norms of immense relevance to labour relation and even specialized rules on labour rights protection. These constitutional guarantees are further elaborated under primary legislations and other subordinate rules on matters of contemporary labour issues like occupational safety and health, labour reduction and the working conditions of vulnerable groups like women, children and employees with disability. However, there are also areas where legislative gaps are still apparent and the one at the core of the current labour problem in private sector is determination of minimum wage.¹⁴⁵

From the institutional perspective, government has made efforts to set up both at federal and regional levels regulatory organs entrusted with the mandate of overseeing the implementation of labour legislations and taking appropriate corrective measures. There are also judicial and quasi-judicial institutions where individual victims of labour rights violations can resort to for appropriate legal redress like the ordinary court of law and labour relation board. However, problems associated with such arrangement are issues of accessibility and absence of effective service due to lack of necessary financial, human and intellectual resources.

Though the country has adequate policy, legal and institutional options for the protection and realization of labour rights and guarantees, the practice in the study area is far below the expected level. Most employment relations are typically the traditional form of at will contracts. Except for few selected private employers and enterprises in the study area, most employers do not give any document evidencing employment relation to their employees and any claim for such

¹⁴⁵ On this topic, though no mandatory regime of minimum wage was fixed, Article 55(2) of the current Labour Proclamation envisages creation of the institution of Wage Board by a regulation which is empowered to revise periodically minimum wages by taking into account legally stated factors.

documents may result in arbitrary dismissal from their job. This is mainly done to evade obligations arising from employment relation like claim of rights both during period of employment and after its termination. Most employees in the selected private entities are still working under temporary arrangement and denied protections available for permanent workers. Decisions of termination by most employers are usually arbitrary and made in complete disregard of labour law requirements. Victims of illegal dismissal are less remedied due to lack of awareness, absence of adequate legal support and rigid and lengthy court proceedings.

The most important labour right, limitation of daily/weekly working hours, is still under serious challenge and continuing violation in private sectors and employers selected under this study. The rule in the study area for most workers is to work for 12 hours a day and 7 days a week. In most cases, overtime payment, weekly rest days and most paid leaves are unknown to substantial number of workers. Even if known and claimed by few employees, they may result in serious consequences like automatic dismissal and deductions in payment as a of penalty. Save for few undertakings in the production and standard employers in service sectors in the study area, issues of occupational safety and health are totally disregarded both by the employers and monitoring organs in the town. Thus, most victims of occupational injury are still suffering a lot and the situation does not seem to improve in the near future. The matter is so concerning especially in construction companies and some factories where government supervision is so sub-standard and even in others totally absent.

Moreover, most employees in the selected private sectors have disclosed the prevalence of labour exploitation which was further aggravated by high level of youth unemployment and absence of mandatory payment rate by law. Wages are not paid at regular time and it may be delay as long as 3-4 months' time without any legal sanction. Arbitrary deduction of wages is common even for the silliest workplace mistakes.

Collective labour relations especially trade union rights fall behind the minimum legal standards. Though there are some trade unions, most of them were established before privatization process and their effective functioning is tactically thwarted by disguised measures of employers. Others are unable to renew their lapsed collective agreements and to negotiate for better working conditions. Most employees in undertakings with legally qualified number of employees are still unable to form workers' associations due to external interferences and continuing intimidation by their employers. This is aggravated by absence of government organs dealing with collective labour matters and inadequate legal service access in the study area.

Hence, by way of recommendations, the researcher strongly believes to attract the attention of concerned organs to intervene in the following areas:

- In the area of employment contract/relation and security, implementation of existing laws which demand the provision of written documents evidencing the details of the employment agreement and imposing clear legal sanctions on employers for not doing so;
- On the issues of maximum hours of work, overtime and paid leaves, labour law and standard implementing organs in the town should properly discharge their duties by supervising work sites, hearing grievances of workers and taking timely corrective measures;
- In the area of occupation safety and health, since all rules of workplace safeguards are totally missing in the selected private employers and enterprises in the town, it demands high priority of intervention not only by town administration but also at regional and federal level.
- Collective labour relation particularly freedom of association, the right to organize and collectively bargain, as it exists now, cannot be realized in the absence of concerted efforts and intervention from government organs, civil societies and other

national and international stakeholders working on group labour rights promotion and protection.

- As can be observed from the findings of this research, the current performance of the office of the Labour and Social Affairs of the town remains far below what it is legally expected to discharge. So, if labour rights and standards are to be implemented smoothly in the study area in the future, the organ should be properly equipped with necessary manpower, capacity, equipment and resources for making effective labour inspection.
- Lastly, as observed from limited number of practical cases and legal support intervention by organs like the Center for Human Rights, it reminds us that labour right protection and promotion demand more efforts and proactive intervention. This in turn, calls for increased, multifaceted and coordinated efforts of legal support institutions both in public and private sphere with a view to reach more number of victims of labour rights abuses and assist their efforts for viable legal redress.

3. Outsourcing and Labour Right issues in Ethiopia: Some Experiences from Addis Ababa City Administration

*Hirut Bekele Haile (Ph.D.)**

Abstract

In an increasingly competitive and dynamic business environment, business process outsourcing has become an important strategy to reduce labour costs and invest resources in core competencies while outsourcing non-core activities. Outsourcing has been implemented in Ethiopia for over two decades despite limited legal framework to govern the sector. There is also limited knowledge about labour rights pertaining to employees of outsourcing service providers. The purpose of this study is, therefore, to explore labour rights issues in selected labour outsourcing arrangements in Addis Ababa. It assesses specifically workers' rights related to contract, salaries and benefits, working hours, leaves, and health and security hazards. The study involved in an exploratory design and employed a mixed research method. A questionnaire was administered to 92 employees drawn from three outsourcing service providers. In addition, in-depth interviews and key informant interviews were carried out with 14 individuals. In addition, secondary sources were used to supplement the primary data.

The finding shows that many of the workers did not have formal or written work contracts with their employers but only informal work agreements. As a result, workers had limited information about their rights and obligations. In addition, the wages were very low and insufficient for living. Workers' right to different types of leaves seemed to be widely violated. Even those who had leaves, it was not according to the labour law. Most employees are found to work for more than eight hours per day for seven days a week against the labour law and overtime work is hardly remunerated. Workers' exposure to health and security hazards was also found to be widespread. Furthermore, the study identified gaps that reinforced labour right violations and the

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exploitation of workers which include the absence of minimum wage, insufficient legal provision, weak law enforcement system, legal ignorance, fraud and deception, etc. The study recommends the need for legal framework for labour rights in outsourcing, the setting of minimum wages, strengthening labour inspection, promotion of trade unions, creating legal awareness and help desks and further research in outsourcing.

3.1. Introduction

3.1.1. Background

Business is becoming increasingly competitive in our dynamic and globalized world. The technologies, in particular the information and communication technology (ICT) have become the driving force for firms' competitiveness enabling continuous innovation and re-engineering of business processes. Firms are continuously transforming the ways they manage their business to improve customer service, cut operational costs, raise return on investment and eventually stay in the market. Business process outsourcing (BPO) has become one of such innovations.¹ BPO entails outsourcing non-core business activities, which were traditionally undertaken by a given company, to a third party. Firms tend to outsource their production, marketing, distribution and financial strategies.²

An outsourcing strategy enables firms to use external resources and get their work done through specialized and more efficient service or talent providers. This means, firms reduce operational costs and focus on their core business activities that have great importance to costumers³ by leveraging their resources to well selected core competencies.⁴

Outsourcing decisions are made deliberately to reduce labour costs, which has adverse implications to employees providing limited

¹ Click, R. L. & Duening, T.N. (2005). Business process outsourcing: the competitive advantage: John Wiley & Sons, Inc., Hoboken: New Jersey

² Palugod, N. & Plaugod, P.A. (2011). Global trends in offshoring and outsourcing, *International Journal of Business and Social Science*, Vol. 2 (16)

³ Handfield, R. (2006). A Brief History of Outsourcing, Directorate of SCRC, Bank of America University

⁴ Doval, E. (2016). Is outsourcing a strategic tool to enhance the competitive advantage? *Review of General Management* Vol.23 (1).

protection and working conditions.⁵ Workers may be dismissed and lose permanent jobs when their employers decide to outsource tasks to vendors.⁶ Outsourcing arrangement may also adversely affect workers due to its non-permanent contract, low wage, absence of job security, minimum social security, the absence of guarantee on career development, etc.⁷ But the outsourcing company and the service provider (vendor) may also agree on certain terms and conditions relating to the transfer of employees to the vendor.⁸

Outsourcing businesses have been implemented in Ethiopia for over two decades despite limited legal framework to govern the sector. For example, the Commercial Bank of Ethiopia, which is the largest financial institution in the country began outsourcing its non-core activities such as security service, messenger service and janitorial service since 2010.⁹ Ethio-telecom is the other state-owned telecommunication agency which has been outsourcing some of its business processes. Ethio-telecom arranged outsourcing business process to its internal staff members who formed a business enterprise called Hidase Telecom.

Like elsewhere, outsourcing arrangement in Ethiopia changes the traditional labour relations from two (employer and employee) to three entities, i.e. outsourcing company where the work is performed, the outsourcing labour providers/vendor (an employer in the new arrangement) and employees doing the outsourced tasks. This necessitates regulating BPO activities and protecting labour rights. Until recently, there was no legal framework for outsourcing related labour right protection. However, outsourcing cases was regarded as one ground for the termination of employment contract (with prior

⁵ Tambusa, M. (2005). Outsourcing, ILO Seri Pembinaan Hubungan Industrial, Seri 3.

⁶ Bacea, A. and Borza, A. (2015). Outsourcing: Why and Why not? Proceedings of the 9th International Management Conference, “Management and Innovation for Competitive Advantage”, November 5th-6th, 2015, BUCHAREST

⁷ Tambusa, Outsourcing, ILO.

⁸ Halvey, John K. and Melby B.M. (2007). *Business process outsourcing: process, strategies, and Contracts* (2ndeds). John Wiley & Sons, Inc, Hoboken: New Jersey.

⁹ Mekuria, B (2017). Challenges and Prospects of Outsourcing Practice in Commercial Bank of Ethiopia, MA Thesis, Addis Ababa University

notice to employees) at the Federal Supreme Court Cassation Bench.¹⁰ The key development in the new Labour Proclamation (2019)¹¹ is the recognition of employment agencies to provide labour services for organizations/companies that outsource task (Article 13(b)).

3.1.2 Objectives

The purpose of this study is to explore labour rights issues in selected labour outsourcing arrangements in Addis Ababa. It assesses specifically workers' rights related to written contract (including renewal), salaries and benefits, working hours, leaves, and health and safety hazards. Moreover, the study seeks to identify gaps and challenges related to the law and its enforcement, and problems workers face in pursuing legal actions. It finally recommends what has to be done to protect the rights of employees.

3.1.3. Research design

This study adopted largely an exploratory (also descriptive) design to provide insight into labour rights issues in BPO, an area which has not been much studied in Ethiopia. Mixed research methods, involving quantitative and qualitative approach, were employed to generate and analyze data. The quantitative approach was employed for the collection of measurable data using a survey method. A survey questionnaire was administered to 92 employees drawn from three employment agencies involved in providing labour to companies outsourcing tasks. The interview was conducted by a university lecturer with a legal educational background.

Whereas the qualitative approach (key informants and in-depth interviews) was used to have an in-depth understanding of labour rights issues experienced by respondents and to identify gaps and problems. In-depth interviews were conducted by the researcher with eight employees of the employment agencies to learn from their experiences pertaining to labour issues in outsourcing. Key informant interviews were carried out with four labour experts from Addis Ababa Bureau of

¹⁰ Tamiru, Y (2017) Hammering Labour Rights: Succinct Summary of the Draft Labour Proclamation. <https://www.abbyssinialaw.com/component/k2/item/1770>

¹¹ Federal Democratic Republic of Ethiopia, FDRE (2019) Labour Proclamation No.1156/2019, Federal Negarit Gazeta.

Labour and Social Affairs (BoLSA), a legal advisor from the Confederation of Ethiopian Trade Unions (CETUs) and two officials from one of the outsourcing organizations. We were unable to conduct key informant interview with two of the employment agencies (included in the study) because they were either not cooperative to be interviewed or could not be reached despite several visits to their offices and repeated phone calls.

With regard to data analysis for the quantitative data, the Statistics Program for Social Scientist (SPSS) version 21 was used to compute frequencies, percentages, means, cross tabulations, and to conduct significant tests. The qualitative data was narrated thematically and used to supplement and provide explanation for the quantitative findings. The accounts of research participants or personal experiences were also narrated. The study finding was interpreted in the framework of the previous law, i.e. Labour Proclamation no. 377/2003¹² as the new labour law issued in 2019 was not approved at the time of conducting this research. Since the new Labour Proclamation was issued at the time of this report writing, i.e. on September 2019, it is only highlighted in this report as deemed necessary.

The lists of 302 employment agencies in Addis Ababa City Administration were obtained from Addis Ababa Bureau of Labour and Social Affairs (BoLSA). The agencies are distributed in the different part of the city and found to offer their services to the private sector, the government, the NGOs, embassies, etc. These employment agencies provide recruitment service on behalf of employers and/or supply labour service for organizations or companies which outsource their non-core functions. From the report we got however, it was unclear how many of them were engaged in labour supply to outsourcing companies or organizations. These agencies were established between 1999 and 2019 with a capital ranging from ETB 1,000 to 27 million.

Selecting employment agencies and determining their numbers for this study was the most challenging exercise due to lack of detailed information about the agencies and to time and budget constraints to

¹² Federal Democratic Republic of Ethiopia, FDRE (2004) Labour Proclamation No. 377/2003, Federal Negarit Gazeta.

gather information. It was also difficult to differentiate among agencies that provide the service of hiring workers and those supply workers (we refer to this as vendor or outsourcing service providers) to outsourcing organizations/companies. The information was also insufficient regarding the types of labour (security guard, janitor, etc.) which the employing agencies supply to outsourcing organizations, and the business sector of their clients (outsourcing organizations). It is worth noting here that the information obtained from BoLSA regarding the profile of employment agencies (name, license no., year of establishment, capital, work location, contact number, etc.) was helpful to identify possible research sites. Despite this, locating the employment agencies was difficult as they often change their addresses.

Hence, we decided to focus on employment agencies and/or outsourcing agencies that were located or working in the project sites of the Centre for Human Rights, namely Gulele and Arada Sub-cities of Addis Ababa.

3.1.4. The studied organizations/agencies

The research intended to cover four sectors i.e. education, health, finance and manufacturing. However, the manufacturing sector was excluded because outsourcing companies (also outsourcing labour providers) approached (by phone and physically) were not willing and cooperative to be included in the study. One of the manufacturing companies noted that the company information is private and it does not allow researchers from outside the company to have access. In another case, a manufacturing company was willing to allow the research given the approval of the employment agency. But the later was against doing the research on its employees. Therefore, in consultation with the CHR, we decided to choose three employment agencies engaged in health (hospital), finance (bank) and education (university). The researcher used pseudonyms for the outsourcing agencies, for the vendors (outsourcing service providers) and research participants to safeguard confidentiality. From each agency (sector) a minimum sample of 30 (in two cases 31) employees was taken. The list of employees was obtained from site supervisors, and the samples were selected based on systematic sampling. The following paragraph describes the distribution of the sample alongside the employment agencies and outsourcing companies.

3.1.5. Distribution of respondents

As shown in Table 1, the respondents were almost equally drawn from three employment agencies namely FX employment agency (33.7%), AX employment agency (33.75) and CX employment agency (32.6%). The last agency is a private limited company established by/for a state enterprise.

Table 1. Distribution of Respondents by employment agency and task outsourcing companies

Types of employer: Employment Agency	Task outsourcing companies	No. of respondents	%
FX	University	31	33.7
AX	Hospital	31	33.7
CX	Bank	30	32.6
Total		92	100

Source: Survey, 2019

3.1.6. The scope of the study

The scope of this study is limited to key labour right issues namely employment contract, salaries and benefits; working hours and overtime payments; types and duration of leaves; health and security; and gaps and concerns pertaining to labour rights.

3.1.7. Centre for Human Rights legal aid service

Addis Ababa Legal Aid Centre (4 Killo Centre) was established by the Center for Human Rights, Addis Ababa University in 2018. Since its establishment, the Center has been providing free legal aid service for the community. A total of 469 cases were entertained by the Centre of which 62 cases were related to the Labour Proclamation and the Civil Servant Proclamation. Among the labour cases, six cases were in connection to labour outsourcing companies and of these, three cases were in connection with unlawful termination of employment contract. In these cases, most clients were unaware of whom to hold responsible or whether the responsible party should be the outsourcing company or

the company when they perform their duties. Before starting the court procedure, employees are advised to reach an agreement with employers amicably, and in line with this, two claimants were able to reach into agreement with the outsourcing company. However, the other legal aid client did not want to go further with the legal procedure. The other case was in relation to criminal responsibility. As the legal aid client explained, robbery took place during his shift and he was held responsible both criminally and civilly even though there was fault from the outsourcing company. A legal advice was provided for the person based on the relevant law. The other two cases were in relation to the provision of different tools and safety equipment that are necessary to perform one's duty but were not provided for the clients. The legal aid clients came to the Center to get an advice on how to make their compliant and who they should make their compliant to.

3.2. Description of Respondents

3.2.1 Demographic and socio-economic profiles

Table 2, below, presents the socio-demographic profile of the respondents including sex, age, level of education, and marital status. The survey showed that a little more than half (53%) of the respondents are males while the other 47% are females. With regards to age, a third of the respondents reported that they were 24 years old or below while about 41% of the respondents reported that they were in the age group of 25 and 34 years. The rest (15%) of the respondents indicated that they were in the age group of 35 to 44 years, and about 10% of the respondents in the age group of 45-55 years old. The finding shows that the average age of the respondents was about 30 years which shows most workers are in younger demographic group.

Regarding marital status, the study indicated that over half (57%) of the respondents were unmarried or single and more than a third (38%) of them reported that they were married. About 5% of the respondents reported that they were divorcees. Similarly, nearly two-third (62%) of the respondents reported that they did not have children, about 29% of them reported that they have one to four children, and about 9% of the respondents indicated that they have five to eight children. The average number of children is reported to be one child per respondent. In summary, the majority of the respondents in this study are young, single and without children.

Table2. Respondent Socio-demographic data

Variable	Value	N	%	Mean	Min	Max
Sex	Male	49	53.3			
	Female	43	46.7			
	Total	92	100			
Age	18-24	31	33.7	29.98	18	63
	25-34	38	41.3			
	35-44	14	15.2			
	45-54	6	6.5			
	Above 55	3	3.3			
	Total	92	100			
Marital Status	Single	52	56.5			
	Married	35	38.0			
	Divorced	5	5.4			
	Total	92				
No. of Children	0	57	62.0	8	0	1.23
	1-4	27	29.3			
	5-8	8	8.7			
	Total	92	100.0			

Source: Survey, 2019

3.2.2. Education

As we could see from Table 3, about a third (30.4%) of the respondents reported that they attended grade 9th to 10th, about 26% of the respondents reported that they attended grade 5 to 8, and about 9% of the respondents reported attaining preparatory (11 to 12) level education, and about 4% in the primary first cycle (4%). Over a quarter of the respondents are graduates of Diploma/TVT (22%) or BA degree (5%) programs. Only 3% of the respondents reported that they did not have a formal education. Most of the jobs that are outsourced are non-skilled jobs that require low level of education.

Table 3 Educational Background of Respondents

Education status	N	%
No formal education	3	3.3
1-4 (1 st Cycle)	4	4.3
5-8 (2 nd Cycle)	24	26.1
9-10	28	30.4
11-12	8	8.7
Diploma / TVET	20	21.7
BA degree	5	5.4
Total	92	100

Source: Survey, 2019

3.2.3. Employment related data

3.2.3.1. Job type

Table 4 below shows the current job title of the respondents and their work experiences with outsourcing service providers (vendors or employment agencies). Larger proportion (39%) of respondents was working as security guards, about a quarter (24%) of the respondents reported to be janitors. About 10% of the respondents indicated that they work as waiter/waitress or cooks while 8.7% indicated that they held leadership and supervision related tasks. Respondents who reported that they work as messengers and drivers constituted 5 to 6.7%. Other types of job titles such as car washers, store keeper, traffic controllers etc. together constitute 7.7%. Cross tabulation analysis indicates that most of the job diversity was observed among CX employees. The types of jobs listed confirm that low level of education reported above.

Table 4: Current job title of the Respondents

Job type	N	%
Janitor	22	23.9
Security guard	36	39.1
Waiter/waitress/cooks	9	9.7
Site leader/ supervisors/managers	8	8.7
Messengers	6	6.7
Drivers	5	5.4
Others	7	7.7
Total	92	100

Source: Survey, 2019

3.2.3.2. Work experience with the current agency

Table 5 presents the years of service of the respondents with the current employment agency. Half of the respondents reported that they worked for less than one year and about 26% reported that they worked between one year and two & half years. The rest 9%, 7% and 8% of the respondents reported to have worked 3 to 4 years, 5 to 6 years and 7 to 8 years for the current employment agencies, respectively. This shows that, many of the workers were relatively new to the employment agencies.

Table 5 Work Experience with the current agency

Years	n	%
Less than one	46	50
1-2.5	24	26
3-4	8	8.7
5-6	6	6.6
7-8	7	7.6
Total	92	100.

Source: Survey 2019

3.2.3.3. Employment history

As shown in Table 6, the study finds that about a fourth (26%) of the respondents were unemployed before their current jobs while nearly a similar proportion (23%) of the respondents were working for different outsourcing service providers. In addition, 19%, 15% and 13% of the respondents reported that they used to work with private companies, were self-employed in the informal sector and worked for the government before, respectively. The employment history suggests that the respondents did not have either a secure job or a job at all.

Table 6 Respondents' prior employment history

Description	N	%
Unemployed	24	26.1
Another outsourcing agency	21	22.8
Self-employed/informal sector	14	15.2
With the private sector	17	18.5
With the government	12	13.0
Other	3	3
Total	91	98.6

Source: Survey 2019

3.3. Key Findings and Discussion

3.3.1. Employment contract

The Ethiopian Labour Proclamation no.377/2003 article 6 &7 stipulate that employers should conclude a written contractual work agreement with its employees containing signatures of both parties. It further states that if the agreement concluded is not in written form, the employer is obliged to give workers a written agreement within 15 days from the conclusion of the contract.

The study assessed employment contract, duration and renewal arrangements. As shown in Table 7, about 45% and 11% of the respondents reported that there is no renewal of contract or they do not know about a renewal of contract as a matter of right. On the other hand, 11% to 14% of respondents indicated that their employment contract is renewed annually or every two years or every three years. Only 5% of the respondents reported that their employment is for indefinite duration. The reasons for significant proportion of respondents

reporting the absence of contract renewal or those who did not know about it may be an indication that employees did not have any written employment contract as the in-depth interview discussed below revealed.

When looking at the distribution of respondents who reported that they have a contract renewal, CX stands out with about 83% of its employees in this study claiming that their contract is renewed annually to every three years. In contrast, it is only 19% and 32% of, respectively, FX and AX employees in this study reported that their contract is renewed or permanent or may have labour contract. Of those who reported contract renewal, about 26% of respondents from FX reported that their contract is renewed annually and less than six percent of respondents from FX and AX reported that their contract is renewed every two years. The absence of contract renewal or short-term contract will have adverse implications for workers while opening rooms for employers to exploit and maneuver workers.

Table 7 Respondents' Status of employment contract and renewal

Description **	Employment Agency						Total	
	FX		AX		CX			
	n	%	n	%	n	%	n	%
No contract renewal ¹³	15	48.38	22	70.96	4	13.33	41	44.6
I don't know	6	29.35	3	9.67	1	3.33	10	10.9
Annually	8	25.8	0	0	5	16.66	13	14.1
Every 2 years	2	6.45	1	3.22	9	30.00	12	13.0
Every 3 year	0	0	0	0	11	36.66	11	12.0
Permanent Contract	0	0	5	16.12	0	0	5	5.40
Total	31	100	131	100	30	100	92	100

Source: Survey, 2019

*** significant at 1% level, ** significant at 5% level

¹³ Respondents were asked if their contracts are renewed or not. The assumption was that all employees have written contract.

Similar finding is obtained from qualitative inquiry. Similarly, in-depth interviews with employees of two employment agencies (FX & AX) disclosed that they never entered into a written employment agreement or contract with the respective agencies. An employee who supervises 64 security guards in FX revealed that the company did not have written employment contract with its workers and he himself did not sign any contractual agreement. According to key informant from BoLSA (Industrial Relations Expert), even if employment agencies enter into employment contract with their workers, they hardly provide them with contract agreements. Often workers seemed to be orally informed by supervisors about the job description, specifically their responsibilities with little information about their rights. It is plausible to suggest that, even in oral agreements, workers are not sufficiently informed about their rights. This could be because most participants got the jobs informally through personal connections, which may be regarded as a favor done by employer, and employees may be reserved to inquire about formal work agreement. Furthermore, employees hardly go to the office of their employers to discuss work details (often informally done) and employment terms even at times of right violation. A site supervisor at AX noted that he even has the right to fire employees. This fact reveals the level of job insecurity and absence of the legal equation in their engagement subjecting them to abuse and summary dismissal at the will of the employers.

Besides, there are problems with oral agreement according to respondents. Often the employer may promise to protect employees' rights but never realize them. In oral agreement, workers may hardly have evidence pertaining to their rights and obligations that they can claim when violated. This coupled with legal ignorance, workers may shy away from pursuing legal actions at times of rights violations. In the absence of a written agreement workers tend to perceive that they have no right to ask or to file charge against employers in case of dissatisfaction. This clearly illustrates that the rights of workers to have a written work agreement is routinely violated by employment agencies.

3.3.2 Wages/Salaries and benefits

3.3.2.1 Wages and related information

Ethiopia's Labour Proclamation no. 377/2003 article 53 sub article 1 defines wage as "the regular payment to which the worker is entitled in return for the performance of the work that he performs under a contract

of employment”. This Proclamation under article 58 stipulates that salary payment has to be effected at intervals provided by law or collective agreement or work rules or contract of employment.

Table 8 presents the result of the survey regarding respondents’ salaries, satisfaction, timeliness of salary payment and deductions. The finding shows that over half (58.7%) of the respondents earn wage that ranges between ETB 1000 and 1500 per month. Nearly a fourth (23.9%) of the respondents indicated that they earn between ETB 1501 and 2000 per month, while about 17.4% of the respondents noted that they earn between ETB 2001 and 2,500 per month. In addition, about 8.7% of the respondents reported that they earn between ETB 2501 and 3000, and 6.5% reported as earning between ETB 3001 and 3500 per month. Only 2.2% of the respondents reported that they earn over ETB 3,500 per monthly. The mean salary is reported to be ETB 1774.2 per month.

We computed a cross tabulation analysis to examine if there are salary differences among employees of the three employment agencies and workers in the different job positions. Accordingly, CX is found to pay the highest monthly salary which ranges between ETB 2000 and 3772. Great majority of FX and AX respondents fall in the salary range of ETB 1000-1500. This indicates a stark difference in the salaries of the three employment agencies where CX stands out as the highest paying agency compared to the other two agencies. The reason for CX paying relatively higher than the two agencies is largely due to its association with its client. As a result, CX had the ability to negotiate with its mother company to adjust the salaries of its employees. Accordingly, recently salaries were adjusted making the salaries of its staff relatively higher compared to the other agencies.

In terms of the salaries of workers in different types of jobs, the study revealed that those who earn the lowest salary (less than 1500 ETB) are mostly janitors (14 out of 24), security guards (30 out of 35), and waiters (3 out of 3). Most messengers, shift supervisors and drivers earn more than ETB 2501.

The respondents were asked about their perception towards their salaries. As seen from Table 8, nearly all (95%) of the respondents are in agreement that they earn low wage while only 5% reported otherwise. In-depth interviews also revealed that workers are dissatisfied with amount of their salaries. Those workers directly hired

by government or business companies, i.e. without outsourcing, where the outsourcing work was done said to earn relatively higher salary for similar types of jobs compared to those employed through employment agencies. For example, a driver employed by CX (working with a bank) reported that his salary is less than 50% of the salary earned by a driver directly employed by the bank. The key informants from BoLSA also expressed their concerns that salaries/wages are not commensurate with the work done. Many workers are frustrated with low pay coupled with long working hours, the absence or lack of leaves and other benefits, poor working conditions, etc. Also, almost all (96%) respondents revealed the absence of salary increment, which may have a devastating effect on the motivation and aspiration of workers. This is again in contrast with the employees directly employed by the outsourcing companies, who often get annual salary increment.

With regard to timeliness of salary payment, a little more than half (54.3%) of the respondents reported that there is delay in salary payments while about 46% of the respondents acknowledged timely salary payment. The reason for the delay was in part due to the late release of payment to the employment agencies. If an employment agency does not have enough working capital, such problem may adversely affect employees and their families. It is found that salaries are paid mostly through bank transfer.

The study also found deduction from salaries for income tax and pension purposes. Accordingly, half (53%) of the respondents reported that there are deductions from their salaries and the rest (47%) reported that there are no deductions. This is an indication of how employment agencies tend to violate the rights of its employees by neglecting its legal responsibility.

In the qualitative study, in-depth and key informant interview participants widely expressed the low level of salaries paid by employment agencies. Salary difference was also observed between employees in employment agencies and outsourcing agencies for similar types of jobs despite workers in the former work longer hours and get limited benefits. Respondents also complained about the very low salary, which is incomparable with the amount of energy and time spent on the job. They expressed their frustration that their labour is highly exploited.

Table 8 Respondents' wage related information

Description	Amount in ETB	n	%	Min	Mean	Max
Wage/Salary	1000-1500	54	58.7	1000	1774.2	3772
	1501-2000	22	23.9			
	2001-2500	16	17.4			
	2501-3000	8	8.7			
	3001-3500	6	6.5			
	+3500	2	2.2			
	Total	92	100			
Low wage	Yes	84	94.6			
	No	5	5.4			
	Total	92	100			
Timeliness of payment	Yes	50	54.3			
	No	42	45.7			
	Total	92	100			
Salary increment	No	87	94.6			
	Yes	5	5.6			
	Total	92	100.			
Salary deduction	Yes	49	53.3			
	No	43	46.7			
	Total	92	100			

Source: Survey, 2019

Experts at BoLSA as well as CETU expressed their concerns about the absence of fixed minimum wage in Ethiopia which resulted in the exploitation of workers. According to this informant, despite several policy advocacy works in last couple of years, the Ethiopian government did not take any measure to set minimum wage, which was justified on budget constraints. However, informants noted that in recent years there is a discussion with the concerned government agencies on the need to set a minimum wage in Ethiopia. On the other hand, until recently the Ethiopian government itself has been promoting low wages in the effort to attract foreign direct investment in the

country, and this may have jeopardized the setting of minimum wage in the country. The unfair salary coupled with increasingly inflated prices of basic goods and services in the country tend to undermine the ability of workers to live a decent life.

The study shows that workers are not only under paid but they are not also in a position to get their salaries timely and do not have prospect to improve their livelihood as periodic salary increment is made. As a result, workers are hardly able to meet their basic needs from the meagre income they earn.

3.3.2.2 Pension contributions

According to Private Organization Employees' Pension Proclamation no.715/2011 article 10 (1) & (2), the employer and the employee shall, respectively, contribute 11% and 7% of the salary of the employee on monthly bases to the Private Organizations Pension Fund. The same Proclamation in articles 11 and 12 obliges private organizations to pay for the Pension Fund by deducting pension contributions from the salaries of its employees alongside its own contribution within 30 days of the last salary payment. According to this Proclamation no. 715/2011 article 11 (3), a failure to deduct contributions of its employees from their salaries makes the employer liable for payment of the contributions.

The study has also assessed pension contributions and status of employees. As can be seen from Table 9 below, more than half (59%) of the respondents largely from FX (29 out of 31%) and CX (25 out of 30) reported that they and their company contributed to the pension fund. In addition, about a third (34%) of the respondents reported that there is no pension fund, of which 97% (30 out of 31) are from AX. Whereas the other 8% of the respondents, mostly from CX (5 out of 7), did not know whether the employer or themselves contribute to pension funds or not.

In this study, pension fund is the most contested issue raised during the qualitative inquiry. As mentioned earlier, some employers have reported deducting from employees' salaries for pension contribution alongside with income tax. However, employee respondents note that there is hardly evidence of that. There were complaints that employment agencies are unable to provide pension identification number to employees as an assurance to their contributions to the fund.

One of the supervisors at AX disclosed that her previous employer never gave her any evidence of her pension fund contribution despite deduction from her salary for 12 months; the practice is the same with her current employer. It is widely asserted that deductions are made by employers from salaries as pension contributions but there is doubt whether employment agencies transfer the fund to the concerned government bodies or not.

Table 9 Contribution to pension fund by employers and respondents

Pension fund contribution	n	%
Yes	54	58.7
No	31	33.7
I do not know	7	7.6
Total	92	100

Source: Survey 2019

The problem related to pension fund contributions was raised during two key informant interview/discussions with BoLSA experts. The experts explained that they have information about employment agencies deducting pension money from employees' salary but not putting it to the pension fund. In addition, if the employment agencies do not deduct from employees' salary for pension contribution, they keep the 11% that it is supposed to contribute for workers' pension. The worst situation is when the agency cut pension contributions from employees' salary but fail to transfer the money to the pension fund adding its (agency) contributions to the fund.

The above discussions clearly illustrate the widespread frauds, exploitation, and crime or the violation of the law.

3.3.2.3 Other benefits- bonus

Under other benefits, we discuss mainly bonus. As shown in Table 10, about a fourth (26%) of the respondents reported that they have ever received a bonus from their employers compared to the majority (71%) who reported otherwise. A cross tabulation analysis indicates that most of the respondents (22 out of 26) who reported to have ever received bonus were mainly those who worked with CX. As said before, CX

officials lobbied the outsourcing company (the bank) to adjust its employees' salaries and to provide them with bonus.

Table 10 Respondents' response on bonus

Ever received Bonus	n	%
Yes	24	26.1
No	65	70.7
Total	89	96.7

Source: Survey 2019

A discussion with leaders of CX indicates that a bonus is a common practice in the banking sector, and their employees working with their major clients (bank) also started receiving bonus. We also observed in the summary of the administrative expenses of CX that bonus amounting between ETB 187.39 and 196.7 per person. In-depth interview with a cook who is an employee of AX also noted that cooks get free meals every day and sleeping place at the hospital where they cook.

3.3.3 Leave Related Rights

In the following paragraphs, we present the legal provisions relating to the different types of leave and discuss the results of the quantitative and qualitative findings concerning the type and duration of leaves that workers were entitled in practice. Table 8 presents the types and duration of leaves.

3.3.3.1 Right to annual leave

The Ethiopian Labour Proclamation no. 377/2003 article 78 (2) states that a worker shall be entitled to uninterrupted annual leave with pay which shall in no case be less than fourteen (14) working days for the first one year of service which increases by one working day for every additional year of service.

As presented in Table 11, nearly a quarter (23%) of the respondents reported that they did not know if they have annual leave or not while another quarter (27%) of the respondents indicated that they did not

have annual leave. Of those 50% of the respondents, who claimed having entitlement to annual leave, about 7% noted that they are entitled to 2-12 days leave, about a third (32%) reported that they are entitled to 14 to 15 days leave, and less than 7% of respondents reported that they are entitled to annual leave days of 16 to 20 and 24 to 30, respectively. For the majority of respondents reporting to have entitlement to annual leave, the number of leave days are in accordance with the law or at least not less than 14 days.

3.3.3.2 Right to sick leave

The Labour Proclamation no. 377/2003 article 85 (1-5) stipulates workers' right to sick leave upon presenting a valid medical certificate given by a recognized medical organization and based on the collective agreement. Article 86 indicates the period of sick leave and associated payment as follow: 1) the first one month with 100% of his wages; 2) the next two months with 50% of his wage; and, 3) the next three months without pay.

In this study, the respondents were asked if they were entitled to sick leaves in their current work. As indicated in Table 11, about a quarter (21%) of the respondents reported that they have 1-3 days and about 5% reported to have 4-10 days of sick leave. This means about a fourth (26%) of the respondent reported to have a sick leave. On the other hand, a fifth (21%) of the respondents reported that they did not know if they are entitled to such leaves or not, whereas over half (52%) of the respondents reported that they are not entitled to any sick leave.

As shown in Table 11, the majority of those who reported that they are not entitled to sick leave are from FX (68%), followed by CX (56%), and AX (32%). In addition, relatively larger proportion (29%) of FX employees indicated that they do not know if they are entitled to sick leaves or not in contrast to respondents from AX (26%) and CX (20%). In general, most workers in this study were not entitled to sick leave.

3.3.3.3 Maternity leave

Regarding maternity leave, the Ethiopian Labour Proclamation no. 377/2003 article 88 (3) stipulates that a woman worker shall be granted a period of 30 consecutive days of leave with pay preceding the presumed date of her confinement and a period of 60 consecutive days of leave after her confinement. In this regard, as shown in Table 8, only

16 (17%) of the respondents indicated that female employees are entitled to maternity leaves in contrast to 77% who reported that females are either not entitled to maternity leave or they do not know if they are entitled or not. All those who reported the existence of entitlement to maternity leave belong to CX. The duration of maternity leave is reported to range between two and four months, and 13 respondents out of 16 reported the duration to be three months which is in line with the law.

The above finding reveals that 22% to 25% of the respondents did not know whether or not they were entitled to any types of leave. Thus, owing to lack of contractual agreements, rights were not communicated well either deliberately or that it did not matter for the employers. In addition, the proportion of respondents who reported that they did not have any of these leaves ranged between 27% for annual leave to 52% and 56% for sick leave and maternity leave, respectively. The proportion of respondents with access to the different types of leaves ranges between 17% for maternity leave to 26% for sick leave and 50% annual leave. In addition, the number of leave days for the different types of leaves is found to be not in accordance with the legal provision. In this regard, an overwhelming majority (86%) of CX employees reported to have annual leave days ranging between 14 to 30 days. Whereas only about 19% to 26% of FX and AX employees reported to have entitlement to annual leave in accordance with the law (14-15 days).

The qualitative inquiry also corroborated the survey findings and demonstrated that employees have limited right to the different types of leaves mentioned above. Access to different leaves as well as the duration of leave is at the discretion of the employers. On the other hand, agencies may inform their workers that they are entitled to sick leave, annual leave, even special leaves in relation to mourning. According to a shift supervisor at AX, two or three workers were dismissed though they were absent from duty due to mourning. Respondents are not also sure if they will be able to take their leaves in practice. There are cases where respondents did not take their leave in three years.

Table 11 Types of leave and duration

Types of leave	Description	Employment Agency								Total
		FX		AX		CX				
Annual Leave ***		n	%	n	%	n	%	n	%	
	Not sure	10	32.26	10	32.26	1	3.3	21	22.8	
	0	13	41.94	11	35.48	1	3.3	25	27.2	
	7	0	0	4	12.9	0	0	4	4.3	
	12	0	0	0	0	2	6.7	2	2.2	
	14-15	8	25.8	6	19.35	15	50	29	31.5	
	16- 20	0	0	0	0	6	19.4	6	6.6	
	25-30	0	0	0	0	5	16.7	5	5.5	
	Total	31	100	31	99.99	30	99.4	92	100	
Sick leave ***	Not sure	8	25.8	9	29.03	3	10	20	21.74	
	0	21	67.7	10	32.25	17	56.7	48	52.17	
	1-3	1	3.2	9	29.03	9	30	19	20.65	
	4-10	1	3.2	3	9.68	1	3.3	5	5.43	
	Total	31	99.9	31	99.99	30	100	92	99.99	
Maternity leave***	Not sure	5	16.1	11	35.5	7	23.3	23	25	
	0	26	83.9	20	64.5	7	23.3	53	57.6	
	2 Months	0	0	0	0	1	3.3	1	1.08	
	3 Months	0	0	0	0	13	43.3	13	14.13	
	4 Months	0	0	0	0	2	6.67	2	2.1	
	Total	31	100	31	100	30	99.87	92	99.91	

Source: Survey 2019

*** Significant at 1% level, ** significant at 5% level

There were accounts of respondents showing salary deduction by employers despite submission of medical certifications by employees at times of sickness. Workers who might be absent from their work due to sickness hardly complain when their salaries are deducted because they often consider maintaining their jobs (or not being fired) as a courtesy by their employers. For example, a young mother reported that

she never took annual leave in three years at AX. She vividly describes the denial of her maternity leave as follow:

When I got pregnant, I hid my pregnancy for long time for fear of being fired. At my 8th month of pregnancy, I informed my immediate supervisor about my pregnancy. He promised me that I am entitled to a maternity leave of four months. At the ninth month, I stopped my work and delivered my baby. However, the agency stopped paying my salary. After two or three months, I decided to contact my employer to ask him about my entitlement to maternity leave to find out that I am not entitled to a paid maternity leave. After my inquiry, however, the manager of the agency sent me about ETB 2000, which is equivalent to my one-month salary. Despite this situation, however, the agency insisted that I have to report back for work because I am a hard worker but I did it after six months of unpaid maternity leave (AL).

Both the qualitative and quantitative information demonstrated that workers are either not entitled to different types of leaves or they are not aware (informed) of their rights to different leaves or their entitlements are not as per the legal provision. This is particularly because they hardly have binding work agreement stating the rights and obligations of workers and employers (outsourcing agencies) and poor legal awareness about their labour rights. The above discussions show that employees' rights enshrined in the labour law (i.e. Proclamation no. 377/2003) are often violated.

3.3.4 Maximum working hours

The importance of limiting the maximum working hours is a long-recognized concern to protect employees from excessive work and exploitations. By 1933, ILO had issued a convention (CO30) on Hours of Work to provide an international framework for the setting of maximum daily/weekly working hours, which is eight hours a day and 48 hours a week.¹⁴ The Ethiopia Labour Proclamation no. 377/2003 article 61 (2) defines normal hours of work as “the time during which a worker actually performs work or avails himself for work in accordance with law, collective agreement or work rules”. In sub article 1 of the same article, it is stated that such work hours shall not exceed eight hours (8) a day or forty-eight (48) hours a week. In addition, article 68 (1) of Proclamation no. 377/2003 states that a worker who

¹⁴ ILO (1933). Convention concerning the Regulation of Hours of Work in Commerce and Offices.

works over-time shall be entitled to extra-payment depending on the extra hours or days worked. Furthermore, under article 67 (1) of Proclamation no. 377/2003, employers are allowed to let employees to work overtime during critical situation such as, accident, actual or threatened, force-majeure, urgent work and substitution of absent workers (involved in work that should not be interrupted), where the employer cannot be expected to resort to other measures.

Table 12 presents respondents' working hours per day, whether such length of working hours is in line with the work agreement or not, and if there is payment for overtime works. The finding indicates that only about 11% of the respondents reported that they work five to eight hours a day. At CX, it is indicated that respondents may work less than eight hours a day when they are given permission to start work late due to family responsibility. About 13% of the respondents reported that they work for 8:30 hours per day, about 17% of the respondents indicated that they work for 9 to 11 hours per day and about a fifth (21%) of the respondents reported to work between 11:30 to 13:30 hours per day, and 4% of them reported that they work 15 to 18 hours a day. In addition, a third (33%) of the respondents reported that they work for 24 hours. It is worth noting here that respondents from FX employment agency reported that they work 24 hours a day. In-depth interviews revealed that the normal work arrangement in the agency is that security guards work 24 hours for 10 days per month. In such arrangements, security guards are expected to work for 24 consecutive hours and then rest for two full days (48 hours) before commencing work at the next working day.

A cross-tabulation analysis shows that 9 out of 10 respondents who reported working between 5 to 8 hours a day belong to CX. Whereas almost all (97%) FX respondents, who are security guards, reported that they work 16 to 24 hours per day and nearly two third (65%) of AX respondents reported that they work 11:30 to 15 hours a day. In principle, security guards are expected to work continuously for 24 hours and rest for 48 continuous hours before resuming work. However, in practice this is not the case either because of the pressure from the employment agencies to work longer hours without rest or due to employees' desperation to earn more money for living. According to in-depth interview participants except for workers at CX, who do not work on Saturday afternoon and Sunday depending on the nature of their works, employees of AX and FX were reported to work 7 days per

week. All janitors at CX (eight) work 5-8 hours a day whereas at AX (14) they work 8 and ½ hours to 15 hours a day.

Respondents were asked if their daily/monthly working hours are in line with their employment agreement or oral agreement. Over three-fourth (77%) of the respondents reported that their working hours is per their agreement while about 22% reported that the work hours are not as per the agreement. This means, though many do not have any written contract, employees seem to be aware that they have to work more than eight hours a day. In terms of payment for extra-hours, again over three-fourth (77%) of the respondents noted that they are not paid even if they work more than the agreed work hours per day whereas only 23% reported that they get paid for extra hours worked. Between 36% and 37% of respondents from FX and CX indicated that they receive payment for extra works done whereas less than 10% of AX respondents reported the same.

Table 11. Working time and extra payment

Description	Hours	Employment Agency						Total	
		FX		AX		CX			
		n	%	n	%	n	%	n	%
Hours worked per day ***	8 or less	0	0	1	3.23	9	30	10	10.9
	8:30 -11	1	3.23	8	25.81	19	6.33	28	30.4
	11:30-15:00	0	0	20	64.52	2	6.7	22	23.9
	16:00 – 24:00	30	96.77	2	6.45	0	0	32	34.8
	Total	31	100	31	100.01	30	43.03	92	100
Hours worked as per agreement**	Yes	29	93.5	19	61.3	23	76.7	71	77.2
	No	2	6.5	12	38.7	7	23.3	21	22.8
	Total	31	100	31	100	30	100	92	100
Extra hours payment**	Yes	11	35.5	3	9.7	11	36.7	25	27.2
	No	20	64.5	28	90.3	19	63.3	67	72.8
	Total	31	100	31	100	31	100	92	100

Source: Survey 2019

*** Significant at 1% level, ** significant at 5% level

The qualitative inquiry revealed the unpalatable realities of workers' exploitation by employment agencies. This was especially obvious at FX and AX. According to the site manager at FX, most security guards are involved in additional full-time work, which is during their resting time, for the same employment agency but working at different outsourcing companies. It was noted that FX initially promised to pay such workers on the basis of an overtime rate but failed to keep its promise and end up paying them normal salary or a second salary with no other benefits attached to it. The rate of overtime payment as well as the total overtime hours an employee is expected to work i.e., 2 hours per day is not as per the provision in the law. According to our respondents, as per their agreement employment agencies are required to supply a certain number of workers to undertake a given task for a payment of a certain amount. However, two of the agencies in this study tend to under supply labour and exploit workers by making them work longer hours without or little extra payment. In so doing these agencies tend to receive payments indicated in their contract at the expense of their workers. For example, AX agreed to supply about 145 persons but the number of workers on job is not more than 110. In FX, it was revealed that about 28 security guards reported to be assigned to work full time with its two different clients and paid two 'salaries'. This means, the employment agency supplies same workers for different branches of outsourcing companies. In such arrangement, the agency only pays salary and it may take all the benefits associated with workers (e.g. uniforms, pension, etc.). In addition, the rate of payment for extra work is not also according to the law. This is also mentioned by the staff of BoLSA who informed us the case of an employment agency which supplied workers to a government organization. They said, an employment agency agreed to supply 1000 workers but only supplied 500 workers who work for extended hours to meet the labour requirement.

The study also indicates that especially security guards may take their own initiatives to engage in additional works to augment their income. As indicated earlier, this is another reason why some respondents indicated that they work 24 hours, in some cases for 30 days per month. A shift supervisor at AX also noted that he works 24 hours for 30 days because the agency asked him to cover another shift supervisor position without payment for extra works. It is worth noting, however, that this supervisor is on duty for 24 hours a day and cannot live with his family because the agency expects him to rest and sleep in the workplace. This

may not mean, however, that the person does not sleep or does not have free time but it means that he is at the work place 24 hours.

In addition, as mentioned earlier workers often work more than the normal working hours per day (also per month) or during weekends or holidays but the agencies hardly pay overtime for the extra-hours worked. It was only one in-depth interview participant who mentioned that her previous employer (employment agency) paid her extra payment for works done in a weekend.

The implication for those who work for more than eight hours a day for a month means workers may not have time to involve in part-time works in other place to supplement their meager income or have enough resting or family time.

The finding of this study shows that even if the law has set a standard about a maximum working hours per day/per week, the conditions at which extra hours of work is allowed and related payment rate, employees work more hours per day/week than what is set by the law, without any lawful reason and extra payment or payment rate not in accordance with the law.

The horrifying experience of respondents in this study demonstrates that workers are forced to all kinds of exploitation despite meager remuneration. This extreme exploitation is referred by some key informants and respondents as “modern day slavery”.

3.3.5 Occupational safety and health

Ethiopian Labour Proclamation no. 377/2003 article 92 (1) states that employers should “take the necessary measure to safeguard adequately the health and safety of the workers”. In line with this, the study assessed respondents’ exposure to health and security hazards due to their works. The health and security hazards stated by the respondents include dangerous medical waste, which may include contaminated blood, sharp materials (e.g. needles), toxic chemicals, working for extended hours, working at night, etc.

As shown in Table 12, about 46% and 24% of the respondents reported that they were exposed, respectively, to health and security hazards. Whereas 54% to 76% of the respondents reported that they were not exposed to occupational hazards.

Respondents' exposure to hazard is found to vary among respondents working in the three employment agencies. Exposure to both health (over work, exposure to medical waste) and security (working at night) hazards is mostly reported by about 45% to 61% of respondent from FX, by 23% to 48% of respondents from AX and 3% to 27% of the respondents from CX. This shows that exposure to the aforementioned hazards is less widespread at CX. Working long hours with little resting time may be the reason for more exposure to health problem particularly at FX for security guards and medical waste at AX for janitors working in a hospital.

Table 12. Respondent's exposure to health and security hazard.

Exposure to	Response	Employment Agencies							
		FX		AX		CX		Total	
		n	%	n	%	n	%	n	%
Health hazard**	Yes	29	61.3	15	48.4	8	26.7	42	45.7
	No	12	38.7	16	51.6	22	73.3	50	54.3
	Total	31	100	31	100	30	100	92	100
Security hazard***	Yes	14	45.2	7	22.6	1	3.3	22	23.9
	No	17	54.8	24	77.4	29	96.7	70	76.1
	Total	31	100	31	100	30	100	92	100

Source: Survey 2019

*** Significant at 1% level; ** significant at 5% level

The qualitative data demonstrate that employees particularly janitors working at health facilities (AX) are exposed to health hazards associated with dangerous medical waste, which may include contaminated bloods, sharp materials (e.g. needles), toxic chemicals, etc. According to some informants, safety materials such as gloves are supplied but not in sufficient quantity. As a result, workers feel unprotected if they encounter an accident.

Almost all respondents from FX are security guards and they feel they are exposed to security problem due to the nature of their work which is done also in the evening. This is particularly a serious problem for female guards at FX who are expected to work until midnight. In addition, the health hazard mentioned by the respondents in the same

agency could be associated with the prevalence of extended working hours which may cause stress and sleeping disorder.

Despite a provision in article 12 (4) of Proclamation no. 377/2003, which obligates the employer to provide the necessary occupational safety and health measure to safeguard workers from injuries or accidents, workers are not sufficiently protected. Coupled with the absence of health insurance, workers exposure to harmful and toxic materials may adversely affect them. According to an informant from AX, workers are not entitled to compensation at times of accident or death at work.

3.3.6. Working and safety material/equipment

Article 92 (3) of the Ethiopian Labour Proclamation no. 377/2003 states that employers shall provide workers with protective equipment, clothing and other materials and instruct them of its use. However, as we can see in the following paragraph there is limitation in the provision of personal protective equipment.

The research also assessed if respondents have access to personal protective equipment, working equipment and the necessary attires. The findings indicate that only less than a third (29%) of the respondents accessed personal protective equipment compared to 71% who reported otherwise (Table 13). There is significant variation among workers of the three employment agencies in terms of access to personal protective material.

The largest proportion (68%) of the respondents who reported to have access to personal protective equipment was reported by AX followed by CX (20%) while none of FX workers reported about such protective equipment. The reasons for the larger proportion of AX respondents to report access to personal protective equipment is due to the nature of their work, i.e. cleaning, which exposes them to needles and contaminated blood/fluid in the hospital they work.

In addition, about 38% of the respondents reported that they accessed working equipment and materials whereas about 62% reported otherwise. Similar to the above finding, there is significant difference among employment agencies where again about 68% of AX and 40% of CX respondents reported accessing working equipment and materials as compared to only 7% of the respondents from FX who

reported the same. The reason for less protective and working equipment reported by FX respondents could be due to the nature of the work at FX, i.e. security, although they may require raincoats to protect themselves from rain while on duty.

The majority (87%) of the respondents said that they are provided with working attire or gown and about 13% reported not receiving working attire or gown. Almost all respondents from AX (100%) and FX (97%) reported that they access working attire in contrast to about 63% of respondents from CX.

The above results show that the majority of the workers are not protected from danger while working and also that they are not provided with the necessary equipment or materials. On the other hand, significant proportion of respondents indicated that they have access to working attires. The results also differed among the three employment agencies.

Table 13. Working and safety equipment/facilities

Access to	Response	Employment Agencies						Total	
		FX		AX		CX			
		n	%	n	%	n	%	n	%
Personal protective equipment/materials ***	Yes	0	0	21	67.7	6	20	27	29.3
	No	31	100	10	32.3	24	80	65	70.7
	Total	31	100	31	100	30	100	92	100
Working equipment and materials***	Yes	2	6.5	21	67.7	12	40	35	38
	No	29	93.5	10	32.3	18	60	57	62
	Total	31	100	31	100	30	100	92	100
Working attire ***	Yes	30	96.8	31	100	19	63.3	80	87
	No	1	3.2	0	0	11	36.7	12	13
	Total	31	100	31	100	30	100	92	100
Office Space ***	Yes	12	38.7	24	77.4	6	20	42	45.7
	No	19	61.3	7	22.6	24	80	50	54.3
	Total	31	100	31	100	30	100	92	100

Source: Survey, 2019

*** Significant at 1% level; ** significant at 5% level

The qualitative inquiries revealed work related communication costs that are incurred by those in administrative works. A site leader and a shift supervisor in two of the employment agencies reported that business related cost of telephone calls and transportation fees are often unpaid by the company or paid in part. For example, one of these informants said that he calls his employer at least three times on weekly bases for reporting which may increase depending on the need for cleaning supplies but the agency does not cover his cost. The other informant noted that he spends up to ETB 350 for business related telephone call expenses but his employer only pays ETB 50 per month. This means, workers in leadership position may be obliged to cover business expenses from their own meager income.

3.4. Gaps in the law (labour) and other concerns

3.4.1. Minimum wage

Ethiopia has not ratified ILO's 1970¹⁵ Convention (C131) for minimum wage fixing with a justification that fixing minimum wage rate may aggravate unemployment in the country given the national context as well as global economic crises. According to ILO 2014 report,¹⁶ the government of Ethiopia asserted putting efforts to increase employment opportunity through attracting foreign investment but allowing flexible wage system. The report indicated that in the private sector wages are fixed through collective agreements. However, in the absence of workers' unions or associations, collective bargaining over minimum wages and labour right becomes unthinkable.

The absence of a minimum wage has been at the center of labour right advocacy agenda for longtime. A legal advisor at the Confederation of Ethiopian Trade Union (CETU) noted the Confederation's increasingly strident call for legislation for minimum wage in the country. In this study, fixing minimum wage is the most widely raised rights issues. The Ethiopian government has been strongly criticised by research informants and participants for being mute regarding the problem and

¹⁵ ILO (1970). Minimum Wage Fixing Convention, 1970 (No. 131).

¹⁶ ILO (2014). Minimum wage systems, International Labour Conference, 103rd Session, 2014. ILC.103/III/1B General Survey of the reports on the Minimum Wage Fixing Convention, 1970 (No. 131), and the Minimum Wage Fixing Recommendation, 1970 (No. 135), Report III.

for reinforcing low payment in its investment promotion. The government, however, has enacted a new Labour Proclamation¹⁷ which gives direction on the matter. The absence of legal minimum wage has led to the exploitation of workers by employment agencies via outsourcing schemes including the government itself. The absence of a legal minimum wage coupled with the absence of legal framework for outsourcing businesses have resulted in the exploitation of workers by employers in the process of profit maximization.

The recently introduced Labour Law (July 2019) has considered the long overdue minimum wage question in Ethiopia. Setting and periodically revising minimum wage is sought to be done through a Wage Board, which will be established consisting of representative of governments, employees and trade unions, and other stakeholders.

3. 4.2. Recourse mechanisms

The study shows that workers are less aware of their labour rights. This is more pronounced given the absence of written work agreement. In addition, a written or an oral work agreement may not also give details of workers' rights and obligations. All these make workers to be in a disadvantage position as they have no evidence to pursue legal action at times of right violation. On the contrary, informants from Addis Ababa BoLSA, accuse some employment agencies for presenting written records, which may sometimes include fake documents (e.g. warning letter to employee, employment contract), often well prepared to avoid any loophole that might be against the law. According to our informants, some employment agencies do not give such documents, including employment agreement, to employees.

Furthermore, employment agencies tend to employ different subtle mechanism to stop workers from pursuing legal actions. In this regard, there has been a concern by the study participants about employment agencies' *plot to halt workers'* complaints. Our informant from CETU noted that raising any complaints with employers can cost workers their jobs. Some employment agencies often transfer complaining workers to different locations with the intention that workers may voluntarily quit their jobs. As one of our interviewees, a shift supervisor, puts it, "if

¹⁷ FDRE, 1156/2019.

any one claims a labour right issue, the person will be transferred to other locations including to regions". As a result, workers are said to live in fear of being transferred or losing their jobs. An informant from CETU vividly described the situation of such workers in Amharic as, "*wondim kelelew yabede wondim linorew yigebal*" literally means 'better to have a mad brother than none.' Furthermore, according to informants from CETU and BoLSA pursuing such cases at the court is another challenge for workers because it may take over one year before the court renders a verdict.

In addition, there are several cases where workers were fired or forced to quit their jobs when they are absent from their duty for various reasons including mourning and sickness. This means, workers' rights to special leaves (e.g. marriage, mourning) and sick leave which are indicated in Proclamation no. 377/2003 article 81 and 85 are trampled. Furthermore, the dismissal of employees is against Proclamation no. 377/2003 article 24 (1-5) that provides a list of reasons for termination of contract including 1) the expiry of the period or on the completion of the work where the contract of employment is for a definite period or piece work; 2) the death of the worker; 3) retirement of the worker in accordance with the relevant law; 4) when the undertaking ceases operation permanently due to bankruptcy or for any other cause; and, 5) when the worker is unable to work due to partial or total permanent incapacity.

At the time of this study, a female security guard, who was a single mother of two girls, told us her plan to quit her job because the employer obliged her to work in the evening shift. Though this worker asked her supervisor to let her work during day time because of the vulnerability of her daughters at night time, her request was rejected. It is worth nothing that FX has 12 female security guards working in the study areas, half of them single mothers. They all are expected to work both in the day and the night shifts (until midnight).

According to our qualitative inquiries employers seemed to exploit the legal ignorance of their workers. Employers are aware of workers' inclination to quit their jobs than pursuing legal actions. Furthermore, given the widespread labour right violation and low wage, continuing working for the employment agencies is a last resort but crucial sources of income for many. Also, there are workers who consider their current job as a temporary stepping stone for a better job, particularly to be

employed at the place where the work is done (outsourcing organization).

3.4.3. Law enforcement mechanism

Key informants from BoLSA indicated that their office is responsible for monitoring the activities of employment agencies. They said that they raise awareness of agencies about government rules and regulations, handling complaints, and filing cases at the court. Key informants also noted that the office does not have work relation with prosecutor office, and it is labour inspectors who are expected to take care of court cases. However, inspectors tend to be reluctant to handle such cases because their office hardly gives them guarantee while pursuing the cases. Our key informants identified several problems related to employment agencies in general and outsourcing service providers in particular which result in weak law enforcement. First, there is insufficient legal framework. In this regard, key informant from BoLSA asserts that they do involve in labour dispute settlement without clear legal ground. Second, the penalty provided by the law, which is a fine of ETB 1500, is found to be unsatisfactory. Third, there are illegal employment agencies, which are involved in providing outsourcing services. The problem is that some agencies do not have work address and/or often change their office locations. Fourth, although the works of employment agencies may not be clean in terms of protecting the rights of their workers, they organize their filing systems as if they follow all the rules. This makes inspection difficult. The legal process also takes about a year before it is resolved which is also discouraging victims of right violations from pursuing legal actions. The labour law is regarded by one of our key informants as ‘toothless’, to indicate the weakness in law enforcement.

Due to the limitation of the law, concerned organizations (such as Addis Ababa BoLSA) have limited influence on monitoring such businesses.

3.4.4. Fraud

According to key informants and respondents, fraud and deception are the most unpleasant and widespread practices in employment agencies. A plethora of accusations against employment agencies were identified. It is worth noting, however, that this discussion may not necessarily be related or limited to the studied agencies but to others employment agencies involved in hiring or supplying labour to outsourcing or other

agencies. Many complain that some agencies deny workers' rights to pension including workers' own contributions. This means, some employers may not transfer pension contributions to the concerned agency. Employment agencies are also blamed for tax related fraud. Workers believe that some agencies refuse to provide letter of work experience to their workers for fear of divulging their failure to collect tax from employees or transferring tax deductions from payments made to employees to the tax office.

According to our respondents, employment agencies often deceive workers with oral promise of entitlement to leaves, overtime payment, and reducing workload. The promises, however, hardly materialize; workers endure constant exploitation due to employers' deceptive acts. Employees keep working longer hours without overtime payment, limited or no entitlement to leaves, and pension rights.

One of the employment agencies in this study, i.e. FX, not only deceives workers but also its client (the outsourcing organization). It is already discussed in the preceding section that this employment agency makes some of its security guards work for two colleges of the same university. In this arrangement, the workers are expected to work double of the normal hours because they are expected to work at two different job stations. They are only paid two normal salaries not at the overtime rate. This means, the agency takes all the other benefits (pension contribution, working attire) associated with workers working in the two sites.

3.4.5 Labour union

Key informants at CX noted that there are trade unions being established by its workers in many locations in the country. They argued that trade unions are not only helpful for workers to have a collective bargaining power with the employer specifying rights and obligations eventually raising workers awareness about their rights. The collective organisation of workers in trade unions enable workers to negotiate collective agreements with employers and raise their voices when their rights are violated. According to a legal advisor at the CETU (an alliance of trade unions in Ethiopia), trade unions are key to the protection of workers' rights. Nevertheless, he added that workers are often unable to organise themselves in trade union and their rights to form trade unions are severely violated. Workers are often unable to organise themselves in trade unions due to fear of employers' subtle

‘sabotaging’ and creeping attack. Even raising a question concerning collective agreement may subject workers to losing their job. Our key informant also noted that outsourcing organisations may also avoid the organisation of workers in trade union by getting the supply of labour from different vendors to discourage trade unions. In expressing the problem, a site supervisor said, “we cannot think of organising ourselves in trade union”.

3.4.6 The law and outsourcing organizations

The Labour Proclamation no. 377/2003 provides the legal framework for labour relations in the private sector. The law attempts to address the traditional labour relations involving an employer and an employee. The business outsourcing process, however, involves three parties i.e. an outsourcing organization (which outsources the work), an outsourcing service vendor (supplier employees) and an employee (who does the outsourced work but employed by a vendor). Such complex labour relation is not the subject of the existing law. This means the law is not comprehensive enough to deal with labour right issues specific to business outsourcing process in Ethiopia. However, the new Labour Proclamation considers the rights of workers hired by employment agencies engaged in outsourcing services.

The qualitative inquiry we made disclosed that sometimes workers are confused about the line of command as both the employer and workers at the outsourcing organization give them orders. There were also cases where an outsourcing agency collects attendance sheet every day from site supervisors, and based on that it deducts from the monthly payment to the outsourcing service provider or employment agency. The later in turn, deducts from the salary of the employee who was not on duty, even when there is important reason or medical certification for being absent from duty. Informant in one of the outsourcing service providers in this study noted that recently it negotiated with the outsourcing organization (a bank) various benefits to its workers, including salary adjustment, insurance, bonus, etc. We were informed that the starting salaries of the employees of the employment agencies were made equivalent with the starting salaries of outsourcing companies for similar job. In addition, the negotiation also resulted in payment of ETB 2000 bonus to workers of the employment agencies. Such negotiation may be possible due to the fact that CX was established as a private limited company by the outsourcing company.

3.4.7. Evaluation criteria in labour outsourcing

The evaluation criteria used in the selection of outsourcing service vendors is another problem that contributes to exploitation of workers. There are complaints that both outsourcing organizations and outsourcing service vendors are only concerned about the financial aspect of their business, i.e. cutting cost and maximizing profit. This, coupled with the absence of a minimum wage, in the country, paves the way for vendors who supply the cheapest labour to win a contract as the outsourcing organizations are also interested on the cheapest bidder. Most consider this as ‘modern day slavery’ where private companies engage in trading in human beings. Government organizations fare no better in this regard as most of them are engaged in outsourcing security and cleaning works for cheapest vendors becoming instrumental in the exploitation of workers. Outsourcing agencies seem to be less concerned about the profile of the vendor, ethical background, its technical capacity, experiences, workforce, infrastructure and technologies, capital, etc. An informant shared his experience that winning a contract becomes a challenge for those who are fair in protecting labour rights due to the entire focus of outsourcing agencies on financial proposal and the preference of vendors who provide cheap labour.

3.4.8 Outsourcing as a “politicized” industry

There is strong speculation that outsourcing agencies were promoted in Addis to benefit certain political elites (particularly former military officials). According to informants, many government organizations outsource tasks in order to benefit such elites. This has been mentioned by representatives from CETU, government office and employees. According to CETU legal advisor, such a politically driven arrangement has allowed the proliferation of employment agencies engaged in providing labour outsourcing services but without sufficient legal framework to protect the rights of workers. In addition, the government has been at the fore front in outsourcing by allowing its institution to outsource certain tasks to private enterprises when deemed “necessary”. This is stipulated in Federal Civil Servants Proclamation no.1064/2017 article 22 (1). Also, the proclamation stresses outsourcing should not “compromise public interest to private

enterprises or to other institutions”¹⁸. This law is relevant given three of the outsourcing companies/organizations (a university and two hospitals) were governed by the civil service law. Nevertheless, despite the fact that outsourcing involves a complex arrangement comprising employees, employment agencies and outsourcing company, the legal frameworks do not sufficiently address the situation. Such gap in the legal framework could be a reason for poor labour right protection. Many of the informants question why government organizations continue outsourcing works and see workers being extremely exploited. The government should have provided the legal framework and ways of enforcing it.

3.5. Summary, conclusion and recommendation

3.5.1 Summary and Conclusion

This study attempted to understand and identify key labour right issues pertaining to outsourcing in Addis Ababa. There are over 300 employment agencies in Addis Ababa, including those providing outsourcing services (supply labour) and hiring workers on behalf of other organizations in the labour market. The study focused on three purposely selected employment agencies which are engaged in supplying labour to organizations and companies that outsource their non-core business activities.

The study explored labour right issues pertaining to work contract, right to various types of leaves, working hours, and health and safety practices in the context of Proclamation no. 377/2003. The result showed that most employment agencies did not provide their workers a written employment contract. As a result, several workers seemed to be unaware of labour rights arising from employment relation and contract renewal.

Workers’ right to leave was widely violated by most of the agencies under this study. Workers had either incomplete or no entitlement to annual leave, sick leave and maternity leave. Also, some workers are unaware of their entitlement to different types of leaves. Most employers are found to have violated labour rights by making

¹⁸ Federal Democratic Republic of Ethiopia, FDRE (2017). Federal Civil Servants Proclamation no.1064/2017. Federal Negarit Gazeta.

employees work for more than eight hours a day, including during weekends. Most workers are unpaid for extra hours they worked.

Workers' exposure to health and security hazards was found to be a widespread phenomenon. However, the prevalence depends on the nature of the job and the employment agency. These problems are often caused by the lack/shortage of protective equipment (e.g. gloves) in the cases of janitors working at a health facility, and over working was a pervasive right violation experienced by many workers.

The study identified some gaps in the law that reinforce labour rights violations. The absence of minimum wage fixed by the government had subjected workers for exploitations. There is insufficient legal provision to govern outsourcing related labour relations despite the complexity of the relation. Despite a provision in the law to form trade unions or professional associations, the workers in most agencies were hindered from exercising their rights to be organized in subtle way. Furthermore, fraud and deception are reported to be widespread practices by some employment agencies. There were complaints that some agencies abuse pension and tax funds, and deceive workers with false promises.

Victims of labour rights violations hardly pursue legal actions due to various reasons, including legal ignorance, economic problem, weak law enforcement, etc. The law enforcement mechanisms found to be ineffective in defending labour rights. Those workers who raise right issues are often silenced in different ways, such as transfer to other areas and intimidation.

The study showed that not all employment agencies are to blame for labour rights violations. At least one of the agencies covered by this study is found to put efforts in protecting labour rights by allowing workers to form trade unions, by improving pay by negotiating with outsourcing organizations, and by providing relatively better working arrangements.

In conclusion, the study showed that workers' rights are increasingly being violated by employers in many areas despite relatively adequate legal provisions. Legal ignorance on the part of the employees, lack of economic opportunities, gaps in the law, weak law enforcement mechanism, fraud and deception were identified as the major contributing factors for violations of labour rights.

3.5.2 Recommendations

Minimum wage: in accordance with the new labour law (Proclamation No. 1156/2019), the government should hasten the establishment of Wage Board and the setting of a minimum wage, including to those in the tripartite labour relations. Also, the concerned government agency and trade unions should work together in creating legal awareness and ensure effective law enforcement.

Strengthening of labour inspection: effective enforcement of labour laws is crucial for the protection of workers' rights. This requires strengthening inspection capacities of concerned government organizations. In addition, a system should be in place so that inspectors periodically check the observance of labour rights by employment agencies and outsourcing organizations. Inspectors should collect evidence, e.g. payroll (bank transfer), maternity cover, overtime payment, purchase of protective equipment and working attires, tax and pension contributions, etc. The results of such inspection should be supplemented by input from the workers.

Legal framework governing the effect of BPO on the protection of the rights of workers: there is a need for a legal framework that governs labour rights in BPO. Such framework needs to specify the roles of different stakeholders in BPO including outsourcing agencies, employment agencies and employees. Organizations and companies that outsource their non-core activities must be encouraged to be sensitive to the labour rights of employees supplied by the employment agencies. There is a need for inspection related to activities of outsourcing organizations and employment agencies in the areas of labour rights.

Trade union: As per the law, workers' rights to form or become a member of trade union should be promoted, particularly in the employment agency relationship under consideration in this research. Government should recognize/incentivize organizations and companies whose workers' form/become members of trade union or workers' association. This can be considered as an aspect of Corporate Social Responsibility where by companies not only maximize their profits but also advance the rights of their workers.

Labour rights literacy: The concerned government organizations, NGOs and CETU in collaboration with its stakeholders need to

provide legal awareness to the general public through television, radio, etc. including the rights of employees in triangular employment relationship, which should be the same with other employees. The plights of these employees, many of which highlighted in this research, should also be made public, debated and addressed.

Legal aid help desk: strengthening the provision of free legal aid services to those who cannot afford hiring lawyers, including for the increasing number of workers in the vulnerable agency-employment relationship, is crucial if labour rights have to be protected. It should be noted that workers may not seek legal advice because of poor legal awareness and financial constraints.

Promoting industrial peace: In order to promote industry peace, there is a need to improve the understanding of both the employers and employees regarding their rights and obligations, particularly in agency-employment relationship. The employer should be aware of the consequences of violating the labour law.

Further research: there is limited literature pertaining to business process outsourcing in Ethiopia. In the contexts of business competition, the private sector strives to outsource their non-core activities. Expanding knowledge on business process outsourcing becomes crucial for informed law making. Therefore, further interdisciplinary research is needed in relation to outsourcing works, labour issues, etc.

4. Refugees as Migrant Workers in Ethiopia: Labour Rights Protection in Gambela Region, Ethiopia

*Yidneckachew Ayele Zikargie**

Abstract

Ethiopia has reformed its refugee law with broader employment and integration rights of refugees. Nonetheless, there are legal and practical limitations to implement these protections. The investment, trade or business-related laws and policies are aimed at generating employment opportunities for the growing number of unemployed citizens; the major source of employment opportunity in Ethiopia - civil service sector is reserved for Ethiopians only; the specific laws that govern work permit have restrictive conditions and procedures; and almost all small businesses are reserved for Ethiopian nationals. By taking these factors into consideration, this chapter intends to understand the status of refugee's labour rights and identify the available recourses in one of the highest refugee host regions - Gambela. The assessment employs qualitative research design by using methods such as semi-structured interview, focus group discussion, document analysis and observation in Gambela city and a refugee camp there. The findings indicate that the socioeconomic and political context of the host community define the status of labour rights of refugees. Formally, refugees in Gambela do not engage in wage-earning employment opportunity except as volunteer workers at refugee camps and self-employment opportunities within refugee camps. Their cases are not visible in the justice system; only wage related complaints are identified. However, informally, by concealing their refugee status, there are instances and forms where refugees participate in formal employment opportunities reserved for Ethiopians. Strong historical, biological, social,

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economic and political ties between refugees and the host community are the enabling factors of this informal employment relation. As the result, refugees present themselves as Ethiopians and seek labour protections accorded for nationals. Moreover, the Comprehensive Refugee Response Framework (CRRF), the Federal government's initiative to strengthen labour rights and integration of refugees with the host community, is not well received among Anywaa elites. They associate the expansion of Nuer demographic and political role in the region with the presence of Nuer refugees. Therefore, the protection of the socioeconomic rights of refugees in Gambela region should take in to account the existing realities, ethnic tensions, local politics and concerns of the host community.

Key Words: *Refugee, Gambela, Labour Right, Social Integration*

4.1. Introduction

Migration to countries where there exists better employment opportunity and security is one of the main options for improving livelihood for nationals of developing countries. However, usually, migrants are vulnerable to various rights abuses. In recent years, these human rights violations of migrant workers gained concern in the UN human rights systems, host and origin states.¹ Labour rights' violations of Ethiopian migrant workers in the Middle East, for example, is the dominant discourse of literature and media. Ethiopia is one of the origin states of migrant workers, mainly female workers travelling to the Middle East and the Gulf countries for domestic work and being exposed to various human rights violations.² As a result, there is a growing interest to safeguard citizens' rights through diplomatic

¹ Solimano, A., 2010. International Migration in the Age of Crisis and Globalization. Cambridge, UK: Cambridge University Press.

² Kidus Meskele (2016). Migrant Workers Rights under the Ethiopian Legal System, *Global Journal of Human and Social Science*. Volume 16 Issue 6 Version 1.0

negotiation, international human rights mechanisms, regulating private agencies, controlling illegal migration, etc.

Strangely again, Ethiopia is the second largest refugee hosting country in Africa with more than nine hundred thousand refugee population, who come mainly from South Sudan, Somali, Eritrea and Sudan.³ The country is showing greater commitment for refugees' protection by adopting a Comprehensive Refugee Response Framework (CRRF) following the New York Declaration for Refugees and Migrants. Ethiopia has revised its refugee law that adopts 'out-of-camp' policy, provides for access to (self-)employment opportunities for refugees, increased school enrolment of children in refugee camps, local integration scheme, and improved access to basic services.⁴

With the adoption of this refugee law, it seems, there is an anticipation of the potential vulnerability of refugees to labour rights abuse. Accordingly, this field assessment intends to understand the status of refugee's labour rights and identify the available formal and informal recourse mechanisms in Gambela Region. Yet, conceptually, there is a controversy on the legal status and relation between 'migrant-worker' and 'refugee'. Questions are often asked, such as who is a migrant worker or refugee and can we accord a migrant worker rights akin to any worker for those with work permit holders? The International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families define the term migrant worker as 'a person who is to be engaged, is engaged or has been engaged in a remunerated activity in a State of which he or she is not national'.⁵ United Nations High Commissioner for Refugees (UNHCR), by considering the UN refugee convention, defined refugees as 'people who fled war, violence, conflict or persecution and have crossed an international border to find

³ UNHCR, Regional Refugee Coordination Office (RRC), January to December 2018, Integrated Response Plan for Refugees from Eritrea, Sudan, South Sudan and Somalia found in Ethiopia, Nairobi.

⁴ Refugee Proclamation no. 1110/2019

⁵ UN, 1990: Article 2(1).

safety in another country'.⁶ The cumulative readings of article 2(7) and Article 5 of the Refugee Proclamation 1110/2019 of Ethiopia expound that a refugee is a person who evacuated from his country or residence due to a well-founded fear such as persecution, aggression, occupation or political domination and found in other countries. Technically, the two terms are different, their implication and the legal status of a migrant worker and refugee are not the same. However, once a refugee has a work permit in the host state, the rights accorded to migrant workers is applicable to the refugee. In Ethiopia, the wider recognition of refugee's rights to obtain work permits, access to primary education, obtaining driving licenses, legally register life events such as births and marriages and open up access to national financial services like banking and insurance invite the protection accorded to migrant workers. Hence, based on the domestic and international legal documents and practices in Gambela Region, the researcher considered refugees as migrant workers and demanded the legal protection of the migrant worker for refugees too.

The research employed qualitative research design by using methods such as interview, focus group discussion (FGD), document analysis and observation in Gambela city and a refugee camp. In Gambela's context, refugees and refugees' rights protection in general and refugees' labour rights, in particular, are highly politicized issues and sometimes a source of ethnic conflict often between competing ethnic groups such as Anywaa and Nuer. The researcher would like to underline that the recent political crisis between these groups affected the process of the empirical data investigation and ultimately the data itself. Consequently, the finding of this report on the status of refugees' labour rights, possible protection mechanisms, way outs and policy approach is highly defined by their relations and political context of the host community. This research report is presented in five sections, where the first two sections are introductory that assess the research theme and the methodological approach. The third section defines the

⁶ UNHCR, What is Refugee, <https://www.unhcr.org/what-is-a-refugee.html>, accessed on May 2019.

context and assesses the available literature. The fourth section discusses the major findings including the legal and practical status of refugees' labour rights, abuses and possible recourses. Finally, the research report winds up with concluding remarks and recommendations.

4.2. Methodological Approaches

4.2.1. Methods Used

This research adopted a qualitative research design by employing unstructured interview with key informants, document analysis, focus group discussion and somehow personal observations. The data collection process relied on interview with individual refugees and experts and officials of relevant institutions found in Gambela Region, including Labour and Social Affairs Bureau, Labour Relations Board, Agency for Refugee and Returnees Affairs (ARRA)-Gambela Office, the regional First Instance, High and Supreme Courts, Ethiopian Human Rights Commission- Gambela Office, Gambela University Law School, UNHCR, World Food program (WFP) and United Nations Development Program (UNDP)- Gambela Office etc. Hence, the researcher has conducted interviews with 20 key informants. In addition, as part of document analysis, the researcher collected some cases from the regional Labour Relations Board and Gambela City First Instance Court Refugee Camp Circuit Bench, apart from legal documents and reports. However, none of these sources clearly present the situation of refugee labour rights protection. As a result, the researcher was forced to conduct a focus group discussion among seven refugees to assess the reasons behind the absence of court cases relating to labour rights violations and the presence of other formal and informal recourses. Moreover, apart from these, the researcher observed the hostile relation between refugees and with Anywaa ethnic group of the host community. The observation involves a nearby refugee camp called Jewi, New Land areas of Gambela City and the work process of Labour Relation Department of Gambela Region Labour and Social Affairs Bureau.

4.2.2. Sampling Method

Initially, the key informants sampling technique was planned for a judgemental technique that would be determined based on relevance of the institution and individual responsibility. It was easier to judge and identify their relevance; however, latter with the change of plan to expand the representativeness of the various ethnic groups, identifying a refugee worker was a very complex task due to two main reasons. In Gambela city, it is difficult to differentiate refugees from host community and this challenged the process of identifying a refugee in labour relation. Later, the researcher noted that those who engage in labour relation do not identify themselves as refugees, rather they claim that they are Ethiopian citizen. Secondly, it is almost impossible to check the identity of somebody you suspect to be a refugee. Usually, people do not accept the inquiry about their identity kindly; they take it as harassment or insult to a particular group. Hence, the researcher had to make use of a kind of snowball sampling technic. Potential key informants who identified themselves as refugees were initially identified, with whom the researcher tried to establish a good rapport and communicated the purpose of the research.

4.2.3. Method of Data Presentation and Analysis

In this report, the researcher thematically transcribed, presented and discussed key informants' responses. Furthermore, the analysis process identifies major issues relating to labour rights of migrant workers, existing recourse mechanisms, potential way outs and policy approaches to intervene for the protection of the rights of workers. Accordingly, the analysis triangulates key informants' responses with data from FGD, legal documents, reports and observations.

4.2.4. Methodological Limitations and Reflexivity of the Researcher

During the investigation process, the researcher noted the limits of qualitative research design including individual bias and the role of the researcher and the research assistant. First, the researcher noted that the

research assistant's ethnic background and social relation has affected the key informants selection process. The research assistant, a woman, is supposed to identify, introduce the researcher with key informants and assist the interview process such as through translation to and from the language of the interviewee. During the first three days, she guided the researcher to government institutions to conduct interviews. Yet later, the researcher learned that Anywaa and Nuer are in conflict and the refugee situation in the area is one of the key causes of the conflict. The two groups live in different parts of Gambella city and the situation is tense. The research assistant, an Anywaa woman, could not cross Jejebe River, found in the middle of the city. She directed and cross-connected the researcher with institutions found in Anywaa villages and Anywaa officials. This, as the researcher noted, shaped the prevalence of a single narration that manifests multifaceted challenges created by refugee against the host community. Hence, the researcher had to look for other means to get the other side of the story through the instrumentality of UNHCR, UNDP, Refugee Camp Administration, ARRA and Ethiopian Human Rights Commission Gambela Office. Second, on the Nuer side, people were not willing to cooperate in the study due to the nature of the study. The refugee issue is extremely politicised and people are not much willing to cooperate. Despite their refugee status, some get offended with a simple question like 'asking if he/she has refugee status' and they respond offensively. Refugees who live nearby the city do not accept or disclose their refugee status; they show the researcher their Kebele ID card and claim for Ethiopian citizenship even if their friend identifies them as a refugee. Let alone refugees, ARRA workers were not willing to record their interview and mention their names.

4.3. The Refugee Context in Gambela: Review of Available Literature

Gambela is one of the nine regional states found in the south-west of Ethiopia. It shares a border with Benishangul and Oromia region in the north, Sothorn Nations Nationalities People Region (SNNPR) in the east and south, and South Sudan in the west. It is the home for five indigenous ethnic groups including Nuer, Anywaa, Mezhenger, Opo

and Komo, and to a various other Ethiopians and refugees from South Sudan. The Central Statistical Agency of Ethiopia (CSAE) population projection indicates that the region has a total population of 358,511, of which 48 % are female.⁷ The region has three administrative zones and a city administration namely Anywaa Zone, Nuer Zone, Majang Zone and Gambela City Administration. Agriculture is the backbone of the regional economy, where farming and agro-pastoralism activities are dominant. The area is lowland, where 63.9% of the total area is grassland, 23.6% natural forest, 7.3% swampland, 2.5% with bush and the rest 2.7% used for agricultural production.⁸ Due to the suitability of the grass and swamp areas for commercial agriculture and the availability of irrigable rivers such as Baro, Alwero, Gilo and Akobo Rivers, a number of agricultural investments are going on in the region.

As of 31st January 2018, the total population of refugees in Ethiopia is 910,711 and 372,500 of them are found in the Gambela region.⁹ They live in eight refugee camps found in the region including Pugnido [66,479 refugees], Pugnido II [17,334 refugees], Tierkidi [71,691 refugee], Jewi [60,289 refugees], Akula [1,680 refugees], Kule [53,374 refugee], Nguenyiel [87,970 refugee] and Okugo [13, 665 refugee].¹⁰ ARRA Gambela Zonal Office administers and coordinates seven of them except Okugo Camp, which is inaccessible from Gambela Town and coordinated by a liaison office based at Tepi.¹¹ All refugees are South Sudanese people, who are formally registered as refugees, and closer to 65% of them are female and children. Even if the population index does not define their ethnic background, the interview with UNHCR and ARRA officials indicates that majority of the refugees [close to 90 to 95 percent] are Nuer; and the rest 5 to 10 percent are

⁷ CSA (2016) Population Projection Based 2007 population census.

⁸ Gambela Region Economic and Finance Bureau (2015). Gambela Region Situational Analysis Report.

⁹ ARRA, About ARRA, <https://arra.et/>, accessed on May 2019.

¹⁰ Ibid.

¹¹ Interview with XYZ, Protection Officer, Agency for Refugee and Returnee Affairs, Gambela Zonal Office, 10th May 2019.

Anywaa, Murule and other people.¹² ARRA, a federal government agency, assumes the primary responsibility to guarantee basic human rights protection, provide physical protection and coordinate camp management and provision of food, health and education services in collaboration with UNHCR and more than 30 international organizations.¹³

The researcher noted a growing hostile relation between refugees and host community, mainly with Anywaa. Some key informants showed their grievances in relation to the administration of the refugees and refugee camps. They mention a coercive role of ARRA, limited participation of the regional government and little attention given to reduce social, environmental, economic and political impacts of refugees against the host community. Some key informants openly explain the fear and sense of vulnerability of Anywaa people with the augmentation of Nuer refugee and their demographic dominance. Anywaa people are against the presence of a large number of South Sudanese Nuer refugees that have strong identity, language, culture and blood tie with Ethiopian Nuer people, who were small in number originally and difficulty of differentiating the two people.¹⁴ Further, they argue against easy accessibility of ID card for refugees from Kebele, corrupt practices and poor check-up system in providing services such as education and issuance of passport.¹⁵ They attribute the increasing number of ethnic Nuer South Sudanese refugees to the rise in the number of the local ethnic Nuer community and their influence in the local and national politics. This, they argue, has resulted in the marginalisation of local people such as Anywaa.¹⁶

¹² Interview with XYZ, Protection Officer, Agency for Refugee and Returnee Affairs, Gambela Zonal Office, 10th May 2019.

¹³ ARRA, About ARRA, <https://arra.et/>, accessed on May 2019.

¹⁴ Interview with ABC, Head of Gambela Region Labour and Social Affair Bureau, 9th May 2019; Interview with MNK, Dean, Gambela University School of Law, 11th May 2019; Interview with UUD, Gambela City High Court President, 10th May 2019.

¹⁵ Ibid.

¹⁶ Ibid.

The researcher noted the situation in Gambela town, especially the place called New Land – a predominantly Nuer populated area. It is found in Kebele 01, where the researcher met and talked to a few refugees. The researcher learned that refugees come and go or stay there, but it is difficult to differentiate refugees from the local people, some of them have families, rented house and attend school. During field stay, in May 2019, there was a tension between Anywaa and Nuer, the people from each side were not crossing Jajabe River. The researcher met a young man, who sat with his friends and chew *chat*, a local stimulant leaf, in a cafe in New Land area. He identified himself and most of his friends and people living there as refugees. He mentioned that most refugees living in the area have two or three ID cards including refugee identification card, South Sudanese passport or ID card or identification paper, and/or Ethiopian ID card.¹⁷ During the discussion, his friends were listening passively and sometimes they were nodding as an approval of his reply.

However, reports and key informants' response indicate that refugees' presence in the area is not a new phenomenon and they used to come in the area since the 1960s. Following 'Anyanya Movement One' of the 1960s, a small number of freedom fighters against the British colonial dominance came in and settled.¹⁸ Then in the 1980s, Sudanese People's Liberation Movement (SPLM) fighters and their followers came as refugees and settled mainly around Etang and Pugnido.¹⁹ Over a long process of social interaction and change of nationality, many of these refugees have already integrated and mixed with their own ethnic groups like Nuer refugees with Nuer Ethiopia and Anywaa refugees with Anywaa Ethiopia.²⁰ Later, especially in the 1990s and 2000s, the presence of a huge number of new refugees increased due to civil war in Sudan and post-independence political crisis and civil war. ARRA

¹⁷ Interview with RGC1, Refugee Living in New Land, Gambela City, 16th May 2019.

¹⁸ Interview with MNK, Dean, Gambela University School of Law, 11th May 2019.

¹⁹ Ibid.

²⁰ Interview with ABC, Head of Gambela Region Labour and Social Affair Bureau, 9th May 2019; MNK, Dean, Gambela University School of Law, 11th May 2019.

and UNHCR key informants replied that refugees who came in later were separately stationed in the refugee camp.²¹

In 2018, the CRRF and UNHCR refugee profile report indicates that almost 85 % of refugees live in refugee camps of the region.²² Key informants from Gambela University, who are educational scholarship recipients, verified these facts, denounced the presence of refugees outside their camp and referred similar claim as 'politically motivated'. They stated that refugees live in the camp, they are not allowed to live out of the camp, they may go out of the camp with permit paper from camp administrators to visit their family, access bank and education services and the like.²³ The FGD respondents at Jewi refugee camp provided that they are eager for out of camp life, but the restriction from camp administration, the presence of a hostile relationship with the host community and expensive house rent around New Land area of Gambela city would not allow them.²⁴

In all these competing and conflicting narrations and controversies, the researcher observed a hostile relationship between the refugees and host community, mainly with Anywaa people. Sporadic conflicts flareup between refugees and the host community. CRRF and UNHCR reports indicate the unpredictability of the security situation in the region; as the result they were forced to set up new camps and move old ones to areas inhabited by Ethiopian Nuer'.²⁵ Coupled with the least development of the region with difficult weather conditions, poor infrastructure and development indicators, sense of exclusion, conflict

²¹ Interview with KGL, UNHCR Litigation Officer, 11th May 2019; Interview with XYZ, Protection Officer, Agency for Refugee and Returnee Affairs, Gambela Zonal Office, 10th May 2019.

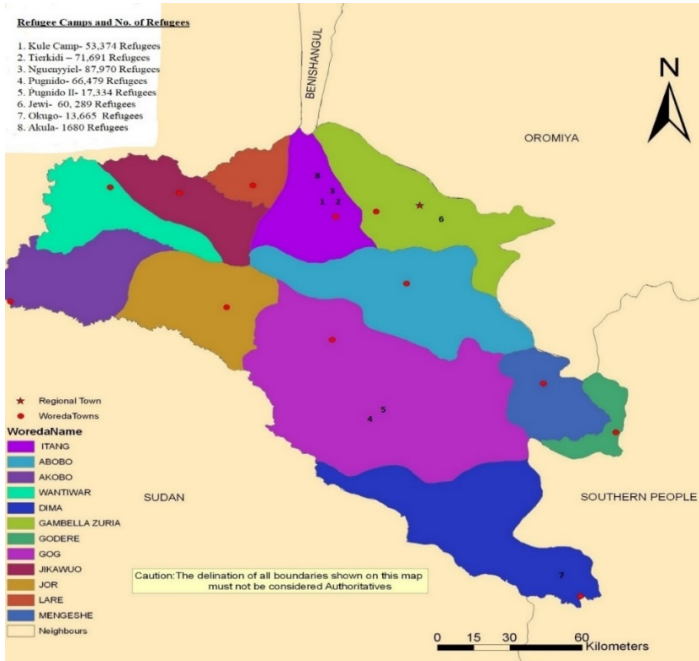
²² CRRF and UNHCR Ethiopian Office (2018). Ethiopia Refugee Profile, http://www.globalcrrf.org/crrf_country/eth/, accessed in May 2019.

²³ Interview with RGC1, Refugee Living in New Land, Gambela City, 16th May 2019; Interview with RGC2, Refugee Living in New Land, Gambela City, 16th May 2019; Interview with RGC3, Refugee Living in New Land, Gambela City, 16th May 2019.

²⁴ FGD with Refugees, Jewi Refugee Camp, 20th May 2019.

²⁵ CRRF and UNHCR Ethiopian Office (2018). Ethiopia Refugee Profile, http://www.globalcrrf.org/crrf_country/eth/, accessed in May 2019.

of interest and competition over resources between dominant ethnic groups in the region have hampered the relation of refugees with the host community.



*Administrative Map of Gambela Region and Location of Refugee Camps*²⁶

4.4. Literature Review

The researcher witnessed the absence of literature in relation to refugees' labour rights protection in the context of Ethiopia. Most researches and literature focus on the migrant workers' rights in the Middle East and they tend to see Ethiopian legal protection system in the context of originating state than a hosting state. The researcher identified research conducted by the Ministry of Labour and Social

²⁶ This Administrative Map is Adapted by amalgamating the map used by the regional economic and finance bureau and UNHCR Information Management, Gambela.

Affairs on expatriate workers. In 2012, the FDRE Ministry of Labour and Social Affairs hired a consultant that assessed 'Expatriate Work Permit Service in Ethiopia'.²⁷ The study focused on the regulation of expatriate employment, institutions responsible for the service and the available legal frameworks. The purpose of the assessment was to generate policy options for regulating expatriate employment in the country. As a result, the study presented the legal and institutional frameworks in administering the relation with migrant workers, but it does not explicitly address the issue of protection of migrant workers' rights in Ethiopia. The study highlighted the advantages and disadvantages of having migrant workers from the host country's perspective. It underlined that the proper management of expatriate employment will contribute to the technology, knowledge and skill transfer for the host countries. On the other hand, if not properly managed it may generate unemployment, deskilling of local talents/skills, security problems, capital repatriation and brain drain of local human capital. The study came up with significant gaps in the legal framework and implementation. Some of the gaps are associated with communication and transparency of the service provision, clarity about the legal requirements, collaboration and integration among stakeholders, reporting and communication framework, comprehensiveness of the directive governing expatriate employee licensing, skills in excess or deficit, inspection service, employment policy, labour proclamation, aligning expatriate work permit service with the existing policies etc. In addition, the study recommends for a focused solution on the observed gaps, revisiting the work permit service in a way that it plays a role towards the realization of the GTP, formulation of national employment policy, amendment of the current labour law, and customization of best practices from the benchmarked countries.

Other available literature is limited to explaining refugees' status and their social and environmental impact and legal relation with the host states. The available literature neither expound refugees' labour rights

²⁷ MOLSA, (2012). 'Expatriate Work Permit Service in Ethiopia'.

nor issues related to issuance of work permit. However, following the 2016 Ethiopian government pledge to expand the rights and privileges refugees are entitled to in Ethiopia, integrated plans and responses are being reported. For instance, the 2018 Integrated Response Plan for Refugees from Eritrea, Sudan, South Sudan and Somalia found in Ethiopia aims to preserve and enhance ‘the protection of environment and living conditions for refugees and the promotion of peaceful coexistence; strengthening refugee protection through the expansion of improved community-based and multi-sectorial child protection and SGBV [Sexual and Gender-Based Violence] programmes; strengthening access to basic services; expanding labour opportunities; supporting the implementation of the government of Ethiopia Pledges to expand access to rights, services, and self-reliance opportunities in the longer-term, in line with the Comprehensive Refugee Response Framework (CRRF); contributing to the development of linkages to local and national development interventions; and expanding access to solutions when feasible and legal migration pathways’.²⁸ This plan confirms that by the end of 2018, Ethiopia hosted 919,134 refugees, 485,000 of them are from South Sudan and 85% of them reside in refugee camps found in the Gambela Region.²⁹ Further, the plan ascertains the unpredictable security situation of the region, fragile natural environment, limited access to alternative energy for cooking and the increasing number of Nuer refugee among new arrivals. In addition, it recommended the expansion of camps within areas inhabited by Ethiopian Nuer in addition to implementing peaceful coexistence, security programmes and the promotion of respect for the rule of law.³⁰

²⁸ UNHCR, Regional Refugee Coordination Office (RRC), January to December 2018, Integrated Response Plan for Refugees from Eritrea, Sudan, South Sudan and Somalia found in Ethiopia, Nairobi.

²⁹ Ibid.

³⁰ Ibid.

4.5. Data Presentations, Key Findings and Discussions

4.5.1. Who is a refugee and asylum-seeker? Towards status determination in Gambela Region

People move and cross international boundaries due to economic, social, political or environmental factors. States have the sovereignty to allow or preclude foreigners' entry into their territory. International and domestic laws define the modality of determining the status of persons crossing international border. 'Refugee', which denotes a person in need of international protection, is the common designation given to such persons upon fulfilling certain conditions prescribed by the laws. The 1951 UN Convention Relating to the Status Refugees and its Protocol adopted in 1967 provides the grounds to determine the status of a person as refugees. First, the existence of a well-founded fear of persecution for reasons of race, religion, nationality, membership of a particular social group or political opinion. The second ground is if he/she is outside his/her country of nationality and is unable or, owing to such fear, unwilling, to avail himself of the protection of that country. The third condition relates to a person who does not have nationality and is found outside the country of his/her former habitual residence and he is unable, or owing to a well-founded fear of being persecuted for reasons of race, religion, membership of a particular social group or political opinion, s/he is unwilling to return to it. Further, regionally, the 1969 Organization of African Unity (OAU) Convention Governing the Specific Aspects of Refugee in Africa adopted these grounds by adding a ground that considers the regional political circumstances. Hence, even if a person lacks a well-founded fear of persecution, he/she can claim for refugee status, if he/she has crossed international border owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his/her country of origin or nationality. Particularly, the Refugee Proclamation 1110/2019 defined refugee by adopting the grounds established by both the 1951 UN Convention, the 1967 protocol and the 1969 OAU

convention.³¹ Hence, in Ethiopia, a person could be regarded as a refugee if he meets any of the grounds recognized under the 1951 Refugees Convention and the 1969 AU Refugees Convention.

Furthermore, in international and regional laws, an asylum seeker is any person who applied for refugee status and waiting for a response or in the process of applying and have a temporary living permit. Under the Refugee Proclamation of Ethiopia, yet, "Asylum-seeker" means 'any person or group of person who presents himself or themselves at the border or frontier or within the territory of Ethiopia seeking refugee status in accordance with provisions of [the] Proclamation'.³² Additionally, the law defines the registration process, requirements, decision-making process, recourses and complaint procedures for grievances in the asylum process and decision.

However, even if the law does not provide for automatic refugee status determination of the asylum-seekers, the practice in Gambela Region exhibits automatic refugee status determination. The Refugee Proclamation uses the phrase 'refugee or asylum-seeker' in many of the rights it stipulates. Further, the interview with ARRA Gambela Office Protection Office and UNHCR Gambela Office Litigation Officer expounds that the determination of refugee status is determined by the principle of *prima facie* status of refugee, where everyone from South Sudan is considered a refugee.³³ Accordingly, when someone appears in the border posts and reports that he is South Sudanese and wants to live in Ethiopia, he will automatically acquire refugee status by going through three phases of registration.³⁴

There is no individual case assessment and determination of the status of refugee due to the predominant political and social crisis in South

³¹ Refugee Proclamation 1110/2019: article 2(7), 5 & 6).

³² Ibid, article 2(8).

³³ Interview with XYZ, Protection Officer, Agency for Refugee and Returnee Affairs, Gambela Zonal Office, 10th May 2019; Interview with KGL, UNHCR Litigation Officer, 11th May 2019.

³⁴ Ibid.

Sudan. Hence, in practice, only registration define the status of refugee automatically. Registration is an important element in defining refugee status in Ethiopia. The law requires any person who is at the frontier, any other entry point or within Ethiopia and who wishes to remain within the country as a refugee to apply to the nearest office or branch office of Agency for Refugee and Returnee Affairs (ARRA) or police station within thirty days.³⁵ ARRA has the mandate to examine and decide on this application within six months after verifying the criteria adopted under article 5 of the Proclamation.³⁶ An asylum-seeker aggrieved by the decision of the National Intelligence and Service, within sixty days of the date of decision, may appeal to the Appeal Hearing Council, which may provide a final decision on the fact-finding; on questions of error of law, a party may proceed to the Federal Supreme Court.³⁷ Yet, the practice in Gambela Region presents registration, guided by *prima facie* refugee status as a key for qualifying as a refugee.³⁸ Accordingly, the presence of a South Sudanese at the Ethiopian border with intention to remain within Ethiopia as a refugee is the evidence of refugee status. To formalize the process, the asylum seeker will have to pass through three levels of registration. The first two levels are routine processes; the third level of registration is introduced since 2018 following the comprehensive and integrated service packages for refugee.

Level one registration is a first household or per-household recording of name, family, origin or nationality, the route they travelled and the like of a newly arriving asylum seeker at the border or entry posts such as Akobo, Page, Barbe etc.³⁹ Following the registration at the point of entry, IOM will transport them to their designated camp. The second level of registration involves the collection of detailed data about the

³⁵ Refugee Proclamation 1110, 2019: article 15.

³⁶ Ibid.

³⁷ Ibid, article 17, 18 & 19.

³⁸ Interview with XYZ, Protection Officer, Agency for Refugee and Returnee Affairs, Gambela Zonal Office, 10th May 2019.

³⁹ Interview with KGL, UNHCR Litigation Officer, 11th May 2019.

refugee: educational background, recording picture, specific needs of the refugee and family [if there are unaccompanied families left behind] and designation of refugee campsite and block that will be their permanent address.⁴⁰ The third level of registration commenced with the introduction of a comprehensive and integrated data recording system based on Biometric Identity Management System (BIMS) registration including ten-fingers and iris. Accordingly, every detail information of a refugee including skills, experience, family, background and status are recorded.⁴¹ It is an efficient system of profiling refugee, with proper intervention of various relevant actors, such as ARRA, WFP, IOM, UNHCR and governmental and non-government organizations. In Gambela region, this registration commences the status of a refugee.

4.5.2. Labour rights accorded to refugees

In relation to the refugees, the 1951 UN Refugee Convention, along with its Protocol adopted in 1967 and the 1969 OAU Refugee Convention protect refugees' labour and related rights. At the national level, chapter four of the Refugee Proclamation No. 1110/2019 protects refugee from labour exploitation and ensures related fundamental rights. The Conventions and Protocol provide fundamental principles on non-discriminatory practices, voluntary repatriation, right to movement, property ownership, travel documents and identification card, registration of vital events, right to association, access to justice, and socioeconomic rights including education, food, shelter, health, water etc. Specifically, the UN Convention defines refugee's gainful employment opportunities in three contexts. One, it obliges states to provide better wage-earning employment opportunities to refugees in comparison with foreign nationals participation.⁴² In addition, refugees are permitted for self-employment opportunity equally or not less than

⁴⁰ Ibid.

⁴¹ Ibid.

⁴² UN Refugee Convention 1951, Article 17.

what is permitted for foreign nationals.⁴³ Third, states parties to the Convention are obliged to provide professional, trained and certified refugees equally or not less than what is permitted for foreign nationals.⁴⁴

Ethiopia is a signatory to both conventions (UN & OAU). Most importantly, the country is showing greater commitment for the CRRF following the New York Declaration for Refugees and Migrants. It has pledged to expand the 'out-of-camp' policy for all refugees in Ethiopia, provide work permit, increase school enrolment of children, avail irrigable land, local integration scheme, employment in industrial parks, and enhance access to basic services. In January 2019, as part of this pledge, the parliament adopted a new refugee law: Refugee Proclamation No. 1110/2019. In principle, this law recognises refugees' rights established under the UN and OAU Conventions as legally enforceable rights in Ethiopia.⁴⁵ In addition to this basic principle, in relation to refugees' labour rights protection, it envisages protection for related rights in general and right to work in particular. The related relevant protections include access to education, access to health service, right to association for a non-political and non-profit purpose, the right to liberty of movement and freedom to choose a residence within the national territory, right to acquisition and transfer of property.⁴⁶ Further, it recognises the right to access to justice, to have driving license, provision of identity paper and travel documents, coverage by the national vital events registration system, access to telecommunication and banking services, local integration and naturalisation services. Generally, equal treatment of refugees with Ethiopian nationals and non-discrimination is the principle of the law.

Specifically, it redefines and contextualises three major refugee gainful employment opportunities stipulated under the UN Refugee

⁴³ Ibid, Article 18.

⁴⁴ Ibid, Article 19.

⁴⁵ Refugee Proclamation No. 1110, 2019, article 22.

⁴⁶ Refugee Proclamation No. 1110, 2019, article 25-29.

Convention and adds one additional commitment.⁴⁷ First, in relation to wage-earning, refugees have the right to employment opportunity as the most favourable treatment accorded to foreign nationals. Second, refugees can organise and engage themselves individually or in-group in self-employment activities including agriculture, industry, small and micro-enterprise, handcrafts and commerce with the most favourable treatment accorded to foreign nationals. Third, trained professionals are accorded the most favourable treatment given for foreign nationals and can be engaged as an expatriate. Moreover, the law envisions the designing of joint [the Ethiopian government and international community] rural and urban development projects to support the development and integration of refugee. In these projects, refugees have right to the job opportunities on equal terms with Ethiopian citizens. In this regard, ARRA is required to issue a residence permit to the beneficiary refugees, which is subject to renewal every five years.⁴⁸ Accordingly, the recent change in policy towards refugees in Ethiopia aims to seize the refugees as one vehicle to boost the socioeconomic and political integration of East African Countries and enhance the goodwill of Africans and neighbouring countries. For instance, employment restrictions on foreign nationals for the protection of national labour market is inapplicable for a refugee who is married to an Ethiopian national or has one or more child in possession of Ethiopian nationality.⁴⁹ Some concluded that asylum seekers or refugees enjoy a similar treatment accorded to Ethiopian diaspora.⁵⁰ UN organizations and members of the international community are hailing the new law.

However, practically speaking, refugees' right to work is very much limited due to different reasons. The main source of employment opportunities is the civil service sector; yet the civil service law

⁴⁷ Ibid, article 26.

⁴⁸ Ibid, article 26(6).

⁴⁹ Ibid: article 26(9)

⁵⁰ Mehari Tadelle (2019). In Depth: Unpacking Ethiopia's Revised Refugee Law. <https://www.africaportal.org/features/depth-unpacking-ethiopias-revised-refugee-law/>

reserves employment in the civil service sector only to Ethiopians.⁵¹ In addition, the law that governs the acquisition of work permit further complicates the situation of refugees. The labour proclamation adopted a mandatory requirement of work permit for a foreigner to be employed in Ethiopia.⁵² The responsibility of issuing work permit for an expatriate is vested in the Ministry of Labour & Social Affairs (MoLSA).⁵³ In February 2010, MoLSA issued a directive that addresses the scope of application of the requirement of having a work permit, conditions, procedure and manner of presenting an application for work permit etc. However, the procedure and preconditions are restrictive to the majority of refugees except for those who have a training in a profession. Further, the researcher has found out that, there are no records of work permit request by a refugee in Gambela Regional State Labour and Social Affairs Bureau. Similarly, laws that govern investment and industrial parks open up employment opportunity for foreigners only in higher managerial or special positions that require technical control and training skills.⁵⁴ The desire for technology transfer and knowledge generation are the primary consideration behind the policy to allow the employment of expatriates and the law does not consider permanent positions. Hence, it is unlikely that refugees will pass this hurdle and be employed for indefinite duration to support their livelihood. The desire to retain employment opportunities for local citizens also shaped investment laws. For instance, small businesses such as retailing shops, barbershop, beauty salon, broker, pension, motel, bakery, cafeteria, car maintenance and washing services etc. are limited for Ethiopian nationals only.⁵⁵ Such restrictions did not permit refugees to engage in small business and support their livelihood. Therefore, changes introduced under the new refugee law requires further harmonization with the other laws and

⁵¹ Federal Civil Servants Proclamation No. 1064, 2010, Article 15.

⁵² Labour Proclamation No.377, 2003: article 174 (1).

⁵³ Proclamation No. 471/2005 and Proclamation No. 377/2003.

⁵⁴ Investment Proclamation No.769, 2004, article 30 & 37 and Industrial Parks Proclamation No. 886, 2007, Article 13 & 14.

⁵⁵ Council of Ministers Regulation, No. 270/2005.

policies, defining a clear policy direction on the national labour market and coordination with relevant federal and regional government offices such as Ministry of Labour and Social Affairs and Labour and Social Affairs Bureau.

4.6. Exercise of Refugees' Right to Work in Gambela

4.6.1. Refugees in wage-earning employment

The application of the new refugee law has not commenced so far. This research has uncovered that refugees in Gambela town do not engage in wage-earning employment opportunity formally. However, respondents claim various instances and forms of refugees' informal engagement in wage earning employment. The information gathered are contradictory. Respondents from ARRA, international NGO and Nuer community members indicated that except for some in-camp jobs, refugees do not work at all and they all are required to stay in their camps. Informants from ARRA and UNHCR explain the presence of separate camps, registration of refugees based on BIMS and provision of refugee identification cards. However, other respondents mainly those from the Anywaa community stress unchecked engagement of ethnic Nuer refugees in public and private employment. They mention a huge number of Nuer South Sudanese refugees that have a strong bond with Ethiopian Nuer. And, for some, owing to their prolonged stay in the region since the 1970s; refugees' penetration of the formal education system; easily accessibility of ID Cards from Kebele for refugee; corruption; and, weakness of the refugee administration system, have facilitated informal naturalization and access to political power and public offices.⁵⁶ Despite these politically polarized narrations, the research identified the presence of the following category of wage earning refugees in informal wage-earning employment.

⁵⁶ Interview with ABC, Head of Gambela Region Labour and Social Affair Bureau, 9th May 2019; Interview with MNK, Dean, Gambela University School of Law, 11th May 2019; Interview with UUD, Gambela City High Court President, 10th May 2019.

A. In-camp Workers – Volunteer/Incentive Workers

In the refugee camps, refugees work as volunteers, based on their prior work/professional experience and earn a small payment as an incentive.⁵⁷ They engage in the job opportunities available such as serving as camp security personnel, providing camp administration support, language translation, social mobilization, as a community worker in education, health and other social service provision. These incentive-based workers identify themselves as incentive teacher, health officer, community worker, translator or security.⁵⁸ They are hired by ARRA and other international organizations such as UNHCR, who work with ARRA based on Project Partnership Agreements (PPA). They acquire the position with competition following an open vacancy, application, taking exam and interview. Those who have prior experience and relevant training either in the country of origin or host country get priority for engagement as incentive workers. They are not required to have work permit since it is in refugee camps and a volunteer work.⁵⁹ Incentive workers' position is considered as a volunteer post and they receive the same amount of incentive money irrespective of their level of experience and expertise. The payment rate was 700 birr/month, but later there has been an increment of the fixed salary and per diem rate.

B. Commercial Farm Workers

Closer to refugee camps, there are commercial farming investments. Especially, in Abobo and Akobo areas where most of the refugee camps are found. There are more than one hundred commercial farm

⁵⁷ Interview with KGL, UNHCR Litigation Officer, 11th May 2019; Interview with TWG, UNHCR and UNDP, Safety, Security and Accesses to Justice Project Coordinator, Gambela, 13th May 2019; Interview with FAH, WFP-Gambela Office, Human Resource Administration, 14th May 2019.

⁵⁸ FGD with Refugee, 20th May 2019, Jewi Refugee Camp.

⁵⁹ Interview with KGL, UNHCR Litigation Officer, 11th May 2019; Interview with TWG, UNHCR and UNDP, Safety, Security and Accesses to Justice Project Coordinator, Gambela, 13th May 2019; Interview with FAH, WFP-Gambela Office, Human Resource Administration, 14th May 2019.

projects.⁶⁰ The interviews with Labour Relations Experts at Gambela Regional Labour and Social Affairs Bureau and ARRA Refugee Protection Officer and FGD with refugees depict the presence of refugees employed in and living by commercial farms.⁶¹ Labour Relations Experts at Gambela Regional Labour and Social Affairs Bureau said that he has noticed during supervision work the presence of refugee-workers in the commercial farms. He noted that they have received informal reports about the engagement of refugees as workers in commercial farms; however, he does not think that they are engaged in significant numbers and for the same reason the Bureau has not found monitoring the situation necessary.⁶² The Regional Labour and Social Affairs Bureau has been engaged in bringing farm labourers from Amhara, SNNPRS and Oromia regions to work in the commercial farms in the region and supervising their situation in the farm sites. The Bureau, however, was not involved in issuing work permit or supervising the working situation of refugees in the farms even if they were informed about the presence of working refugees in some investment areas. Similarly, the Protection Officer at ARRA acknowledged the movement of refugees, some of them camped nearby the commercial farms and participated in informal employment relations.⁶³ Further, the presence of permanent settlement of refugees around commercial farms is noticeable.⁶⁴ Apart from engaging as daily labourers, some refugees, according to this key informant, have established farming-based permanent livelihood and claim Ethiopian citizenship.

⁶⁰ Interview with SGU, Director for Rural Land Administration and Utilisation and Agriculture, Gambela Region, 13th May 2019.

⁶¹ Interview with ABC, Head of Gambela Region Labour and Social Affairs Bureau, 9th May 2019; Interview with XYZ, Protection Officer, Agency for Refugee and Returnee Affairs, Gambela Zonal Office, 10th May 2019.

⁶² Ibid.

⁶³ Interview with XYZ, Protection Officer, Agency for Refugee and Returnee Affairs, Gambela Zonal Office, 10th May 2019.

⁶⁴ Interview with XYZ, Protection Officer, Agency for Refugee and Returnee Affairs, Gambela Zonal Office, 10th May 2019; Interview with SGU, Director for Rural Land Administration and Utilisation and Agriculture, Gambela Region, 13th May 2019.

C. Establishing Formal Labour Relations Outside of Camp by Concealing Refugee Status

The host communities mainly from Anywaa people allege the presence of refugees who conceal their status and get employment. This narrative has some truth. But due to the stated methodological limitations of this research and politically and ethnically polarized narrations, the researcher noticed the complexity and difficulty of ascertaining this allegation. However, the following facts hint the possible presence of refugees in the labour market in Gambela by concealing their status as refugees. Refugees, who came between the 1960s and 90s, have stayed there for a long time and interacted with the host community and gone through the informal naturalization process.⁶⁵

Second, the presence of ethnic tie between the host [Ethiopian Nuer community] and majority of the refugees [ethnic Nuer from South Sudan], ethnically charged competition for power, absence of adequate institutional control and regulation and corrupted practices have enabled refugees to exploit the opportunity to engage in gainful economic activity by concealing their refugee status.⁶⁶ Third, some key informants have described the presence of practice of concealing refugee status to take employment opportunities reserved for Ethiopian nationals. There are refugees living in urban areas and they may permanently settle or frequently move between camps and urban areas including 01 Kebele or New Land area of Gambela city.⁶⁷ Even a refugee witnessed the accessibility of Ethiopian ID cards for refugees and the possibility of having multiple identity and nationality documents, which may be used to seek some economic advantage such as employment opportunity.⁶⁸ On this ground, some key informants

⁶⁵ Interview with ABC, Head of Gambela Region Labour and Social Affair Bureau, 9th May 2019.

⁶⁶ Interviews, FGD and personal observation, Gambela, May 2019.

⁶⁷ Interviews, FGD and personal observation, Gambela, May 2019.

⁶⁸ Ibid.

note the prevalence of refugees working for NGOs operating in the refugee hosting areas.⁶⁹

4.6.2. Refugees in self-employment

The researcher has witnessed the engagement of refugees in self-driven income generating activities through engagement in small businesses both in and outside of camps. The last story the researcher observed was on the way back to home from the research field. The researcher met a man at Gambela Airport and flew together and chatted all the way to Addis Ababa. He came to Ethiopia as a refugee back in the 1980s, stayed for a while in a camp and later joined his family who were living in Ethiopian Nuer Zone. He got Ethiopian passport in the 1990s without formal naturalization process with the production of Kebele ID Card and did not mention his refugee status or show up his card so far. Then, he lived in Addis Ababa, got married to an Ethiopian woman with whom he has three children. His children are in their 20s. Following the independence of South Sudan, he went back to Juba and got South Sudanese passport, but he did not abandon the Ethiopian passport even if he knew that dual citizenship is illegal in Ethiopia. He acknowledged that he is not an exception, and there are many South Sudanese, who hold identity documents from both countries. Second, the researcher met and discussed with a retailer, who runs a small shop, in New Land area of Gambela City. He came to Ethiopia after the 2005 crisis in South Sudan, registered as a refugee, stayed in the camp for a while and joined his family at Nuer Zone. Later he moved to Gambela City New Land area, stayed there, acquired friends, and got addicted to chewing *chat*. Before two years, with the support of his close family living abroad, he rented a shop and started retail business by selling various goods including *chat*. He brought his close family members from the refugee camp, who are now assisting him. However, they all conceal their refugee status, identify themselves as Ethiopian and duly cooperated

⁶⁹ Interview with HCG, Public Relation Officer at Human Rights Commission, Gambela Office, 15th May 2019; Interview with ABC, Head of Gambela Region Labour and Social Affair Bureau, 9th May 2019; Interview MNK, Dean, Gambela University School of Law, 11th May 2019.

with the researcher informally, by supporting the purpose of the research and with a motive to explain their wish for local integration.

Outside the camp, it is quite common for refugees to run their life and participate in self-employment opportunities at various levels. In urban areas, mainly in Gambela City, the researcher has noted their commitment as merchants through the distribution of goods, owning small vendor shops, cafeteria and restaurants. Even if it is not endorsed by the government, the UNHCR Litigation Officer recognises the role of some refugees in small business in supporting their families or friends from South Sudan.⁷⁰ In rural areas, especially those refugees who live by the commercial farms, support their livelihood by engaging in farming.⁷¹ Within the refugee camps, refugees are involved in various self-employment endeavours such as selling goods, clothes, prepared food, charcoal, firewood etc in various small street shops.⁷² The researcher has observed refugees small business such as street markets, barbershops, small cafeteria and the like in Jewi Refugee Camp.⁷³

4.6.3. Expatriate job opportunities for professional refugees

Despite claims to the contrary by key informants, the researcher did not come across refugees engaged as expatriate staff in Gambela city. Some key informants allege the existence of refugees in expatriate positions mainly in NGOs and Gambela University.⁷⁴ However, the discussion I

⁷⁰ Interview with KGL, UNHCR Litigation Officer, 11th May 2019.

⁷¹ Interview with ABC, Head of Gambela Region Labour and Social Affair Bureau, 9th May 2019; Interview with KGL, UNHCR Litigation Officer, 11th May 2019; Interview with SGU, Director for Rural Land Administration and Utilisation and Agriculture, Gambela Region, 13th May 2019.

⁷² Interviews, FGD and personal observation, Gambela, May 2019.

⁷³ Ibid.

⁷⁴ Interview with ABC, Head of Gambela Region Labour and Social Affair Bureau, 9th May 2019; Interview with MNK, Dean, Gambela University School of Law, 11th May 2019; Interview HCG, Public Relation Officer at Human Rights Commission, Gambela Office, 15th May 2019.

had with UNHCR official and WFP human resource department, confirms the fact that there is no such employment opportunity at UNHCR and most NGOs operating in Gambela.⁷⁵ There may be international expatriates, but they are hired through the main office and compete internationally, which is inaccessible for refugees. A case mentioned by informants from the Labour and Social Affairs Bureau does not identify the employee as a refugee.⁷⁶ Rather, the case relates to an Ethiopian citizen, whose employment in a certain was unlawful terminated. It was very hard to follow the case due to ethical issues and lack of cooperation on the parts of the NGO and the employee.

4.7. Refugees Labour Rights Exploitation and Available Recourse Mechanisms in Gambela

In principle, it is hardly possible to tell the presence of refugees' labour rights abuse due to their legal status. However, the story and their context vary from actor to another actor. To begin with, the assessment at the formal institutions such as the Labour and Social Affairs Offices, First Instance Court, High Court, Regional Supreme Court and Refugees Circuit Bench depict the absence of refugees' labour exploitation due to their refugee status in Gambela City. Almost all of them replied that they have not come across labour rights exploitation case relating to refugees. All labour right abuse cases coming to the court of law or before the labour and social affairs offices are presented as cases by any Ethiopian. The interviewed judges at various levels noted the absence of practice of checking the nationality of an employee and the difficulty of differentiating refugees from Ethiopians. The judges interviewed replied that rape, homicide, physical assault, robbery and early marriage, and education related cases are common in the Circuit Court for the refugee camps.⁷⁷ In the complaint-hearing

⁷⁵ Interview with KGL, UNHCR Litigation Officer, 11th May 2019; Interview with FAH, WFP-Gambela Office, Human Resource Administration, 14th May 2019.

⁷⁶ Rebeca Meer vs. International Medical Corps, Miyazia 15/2011, Gambela.

⁷⁷ Interview with TGG, Gambela City First Instance Court, Judge, 13th May 2019; Interview with MDD, Gambela City First Instance Court, Refugee Camp Circuit

department of Labour and Social Affairs Bureau, the researcher inspected written complaints submitted over the last two years and none of them relate to refugees' labour right abuse. During the interview, the officer stressed that there is no claim lodged by individuals who identify themselves as refugees and noted that there is no association between labour rights abuse with refugee status.⁷⁸ The officer, however, noted that they suspect the refugee status of some of their clients, but they did not make further inquiry to ascertain actual refugee status for a labour rights case.

ARRA and some NGOs' narration totally rejects the allegation that refugees are engaged in gainful employment in Gambela City and denounce the possibility of refugees' labour right exploitation outside of their camp. They stress on the policy and practice of restricting refugees in camp and provision of basic services and reject the possibility of establishing employment relation outside the camp so far.⁷⁹ However, the Protection Officer at ARRA has said that he witnessed payment related complaints and abuse of refugees, who work in commercial farms as a daily labourer.² ARRA does not acknowledge and support refugees in the legal proceeding since their engagement is informal.⁸⁰ On the extreme side, however, some informants stress the counterproductive role of refugees in Gambela City. Rather than encountering labour rights abuse, as per some key informants' claim, refugees are abusing the loophole created by the system and enjoying double status: the protections accorded to them as refugees and the

Bench Judge, 13th May 2019; Interview with HYO, Gambela Supreme Court-Refugee Camp Circuit Bench Coordinator, 14th May 2019.

⁷⁸ Interview with ABC, Head of Gambela Region Labour and Social Affair Bureau, 9th May 2019.

⁷⁹ Interview with XYZ, Protection Officer, Agency for Refugee and Returnee Affairs, Gambela Zonal Office, 10th May 2019.

² Interview with XYZ, Protection Officer, Agency for Refugee and Returnee Affairs, Gambela Zonal Office, 10th May 2019.

⁸⁰ Ibid.

benefits they reap by disguising themselves and acting as Ethiopian citizens.⁸¹

So, once a refugee is outside his camp, there is no special recourse mechanism to protect abuse of refugees' labour rights. The government institutions that deal with labour disputes do not look into the (non-)refugee status of parties before them in dealing with cases. Informal movement of refugees outside of camps is common and refugees do not disclose their status. In addition, there is communal interdependence between ethnic Nuer refugees with ethnic Nuer locals and ethnic Anywaa refugees from South Sudan with ethnic Anywaa. It seems each of them do not interact outside their ethnic circle both in social life and in business and they live in different villages and Kebeles though they are in the same town. Even if the new refugee proclamation recognizes wider protection of refugees' right to work, out of camp movement and integration with the local community, ARRA, which is in charge of enforcing the protection and providing detail recourses, is not implementing it. ARRA officials at Gambela Zonal office are expecting specific regulation or directives that guide the implementation of the new refugee law.

Furthermore, this research has revealed the importance and necessity of a further discussion with the regional government in general and Anywaa political elites in particular. They must reach a consensus on the relevance of the legislation and method of implementation. The local administrative units, courts and security bodies including the regional militia and police are relevant structures to implement the legal protections. Most importantly, the function of ARRA and the regional Labour and Social Affairs Bureau should be consistent and coordinated. So far, the Labour and Social Affairs Bureau does not provide specific labour inspection, supervision and follow-up function for refugees,⁸²

⁸¹ Interview with MNK, Refugee-Scholarship Student at Gambela University, 17th May 2019.

⁸² Interview with ABC, Head of Gambela Region Labour and Social Affairs Bureau, 9th May 2019.

yet it is very instrumental to ensure the realization of the protection accorded under the new refugee law.

Key informants from the camps noted instances of refugees' labour rights abuses in the camps. A commonly reported labour rights abuse in the camp is the low payment. Incentive workers hired by ARRA and other international organizations such as UNHCR have a fixed salary, which was 700 birr per month initially and later increased to 800 Birr for every type of service rendered. Yet for a small specific period of the function, the daily payment rate is 70 birr. Almost all refugees have a complaint about the inadequacy of the salary rate by comparing it with the labour they exert and the cost of living. For instance, the key informant from UNHCR Litigation Office encountered controversy in relation to payments rates for security guards he recruited.⁸³ He offered a contract drawn to all incentive workers based on a newly adopted per diem rate, which is 70 birr per day. However, his boss from UNHCR argued security guards' payment should be a fixed price per month as usual and decided to pay them 800 Birr. It was a point of controversy, where the security guards claimed remuneration on per diem basis since they are the ones who suffer day and night. They went through UNHCR administrative hierarchy, camp chairperson and finally ARRA office, which decided in favour of the security guards. Nonetheless, ARRA and the NGOs denounce the low payment and abuse of refugees' labour by stressing the voluntary nature of incentive workers role.

In the camp, refugees are well informed about the complaint handling mechanisms and the procedures to be followed.⁸⁴ During FGD, they explained the procedures they go through to bring their case to the attention of ARRA and the relevant NGOs that is consistent with the working procedure of these institutions. For any kind of rights violation or abuse, in the beginning, refugees are required to report to their zonal coordinator, who is in charge of administering the zone (a division of the camp), hear and resolve complains amicably. If it is beyond the

⁸³ Interview with JKL, Refugee-Scholarship Student at Gambela University, 17th May 2019.

⁸⁴ FGD with Refugee, Jewi Refugee Camp, and 20th May 2019.

zonal coordinator, he/she should report to the camp chairperson, who is the head of the camp and should be able to resolve the case. If not, the camp chairperson should report to the Refugee Camp Coordinator of ARRA, who should bring the matter to the attention of ARRA and UNHCR [if necessary]. Apart from this, the refugee can bring their case to the attention of courts mainly to the circuit bench for the refugee camps. However, so far, the circuit bench for the refugee camps did not encounter any labour-related case.

4.8. Findings and Conclusion: Key Policy Issues in Defining the Refugee Right to Work

Consistent with the UN Convention, the new refugee proclamation recognises broader protection of refugees' gainful employment opportunities and integration with the local community. It ensures refugees right to work as the most favourable treatment accorded to foreign nationals. In addition, it accords refugees the most favourable treatment accorded to foreign nationals to organise and engage themselves individually or in-group in self-employment activities such as agriculture, small and micro-enterprise, handicrafts and commerce. Further, trained or professional refugees are accorded the most favourable treatment given for foreign nationals. Most importantly, it proposed a win-win opportunity to reinforce integration with the host community and enhance the socioeconomic opportunity of refugees by designing rural and urban development projects, where refugees have equal employment rights with the host community.

However, there are legal and practical limitations to enforcing these refugees' labour right protection. Frequently, investment, trade or business-related laws and policies are shaped by the desire to generate employment opportunities for Ethiopian citizens. The main source of employment opportunity in Ethiopia is the civil service sector, which is reserved for Ethiopians only. Second, the MoLSA's directive, which define the work permit conditions and procedure, sets restrictive preconditions on the majority of refugees except for a few trained professionals. Likewise, the investment and industry parks laws limited the scope of the employment opportunity for foreigners to the higher

managerial or technical control positions. For instance, small businesses such as retailing shops, barberry, beauty salon, broker, pension, motel, bakery, cafeteria, car maintenance, washing services and the like are limited for Ethiopian nationals only. These limited legal spaces could not afford the opportunity to implement and protect rights defined under the new refugee proclamation thereby to provide a permanent income to refugees and support their livelihood.

Practically, the socioeconomic and political context of the host community determines the protection of the labour rights of refugees in a given area. Formally, refugees in Gambela City do not engage in wage-earning employment. Yet, in the refugee camps, refugees work as incentive workers, who volunteer and provide support based on their prior experience and earn a fixed amount of payment. They are offered employment opportunity by ARRA and other international organizations such as UNHCR. The low wage has been the critical issue for incentive workers. In addition, in their camp, refugees support their livelihood through various self-employment opportunities including small businesses, such as barbershops, small cafeteria, restaurants, selling goods, clothes, prepared food, charcoal, firewood and the like.

However, informally, there are instances where refugees engage in formal employment opportunity designated for Ethiopians, commercial farms or self-employment opportunity by concealing their refugee status. Some Anywaa community members complained against refugees' engagement in the formal labour market by concealing their refugee status. This claim may have some truth in it since refugees who came to Ethiopia between the 1960s and 90s had the chance to intermingle with the host community for long period and went through the informal naturalization process. In addition, the presence of ethnic tie between a section of the host community and South Sudanese Nuer Refugees, ethnically charged competition for power, absence of adequate intuitional control and corrupted practices may assist the formation of formal labour relation by concealing refugee status. Further, this research has uncovered a few circumstances of participation of refugees in informal labour relations in Gambela city. Moreover, there is much interest and pressure from the refugees to

formally integrate with the host community, live outside the camp and engage in self-employment opportunities. In Gambela city refugees live around a place called 'New Land' area and support their livelihood through small businesses such as retailing goods, owning small vendor shops, cafeteria, restaurants, barbershop and the like. In addition, refugees, who live close to commercial farming sites are engaged as daily labourers. Some refugees have made informal settlement around the commercial farms, where they have employment opportunity. Some key informants identified that payment-related labour disputes and labour abuse claims are common issues in relation to commercial farms.

This research recommends the following policy interventions to improve the realization of refugees labour related rights:

- Recognition of refugees right to work, out of camp policy, integration of refugees with host community and mainstreaming refugee development responses in government plan should consider the host nation's socio-economic and political reality. The policy choice should consider the local politics, nature of the existing ethnic tension, the impact or meaning of the increasing the population of a particular refugee group for other competing group, methods of reconciling differences, reducing fears including demographic and political domination, economic and natural resource competition and the like for the host community. In the process, the assessment, the rationale behind the comprehensive road map, commitment the country entered and the legal protection accorded are well understood and defined in the context of the country, Horn of Africa and the wider continent among ARRA and international NGOs. However, they are not well digested, communicated and negotiated among the host community found in Gambela Region. The existing anger and polarized narrations and wrong perceptions towards refugees require looking for way out. In other words, the researcher suggests, refugees' right to work in Gambela should be contextually articulated and defined.

- The strategy adopted by the CRRF to expand refugees' camp and out-of-camp livelihood activities closer to Nuer Zone and Woreda is not a long-term option to sustain peace and collaboration with the host community. This approach by itself is creating misunderstanding and activating mistrust among Anywaa elites.
- Moreover, other particular laws that governs the employment of foreigners in Ethiopia should be reconsidered in light of the new refugee law since their cumulative reading restricts refugees' right to work. Hence, the new refugee law necessitates reconsideration of the policy desire to retain employment opportunities for Ethiopian nationals only.
- The interventions to be designed should consider presenting refugees' right to work in the context of migrant workers demand. Hence, possibly, the intervention to protect refugees' right to work can exhaust the legal protection accorded to migrant workers and its justifications.
- Even if ARRA or the Federal Government has the legal authority to protect and ensure refugees right to work, various regional actors such as the regional Labour and Social Affairs Bureau, Zonal, Woreda and Kebele administrations and bureaucrats, courts, police and security structure have practical relevance in determining realization of refugees' rights on the ground in the day to day interaction. Hence, the expected directive or regulation to implement the new Refugee Proclamation should consult these actors, take into account their concerns and expectations with a view to ensure the effectiveness of the interventions. The engagement of various international NGOs and other human rights works should promote understanding about refugees' rights among the host community and enhance refugees' capacity to claim enforcement of their rights. For instance, the existing UNHCR and UNDP 'Community Safety, Security and Access to Justice' project should aim for the promotion of refugees rights among

the host community before or parallel to their plan to provide legal support, enhancement of rule of law, accessibility of justice and strengthening the mobile courts. Further, most importantly, the researcher noted the need for a coordinated and concerted effort to strengthen human rights awareness works in the region.

5. Labour Rights Implementation in Afar Region of Ethiopia: Evidence from Semera

Tadesse Melaku*

Abstract

The Ethiopian law governing labour relations is embodied in international labour and human rights treaties as well as national laws. Arguably, the country has favorable legal framework to safeguard workers' rights which include rights to favorable working conditions, limited working hours, fair wages, decent living and safe work environment, just to mention a few. True, some of these rights require resources, thus, their full realization takes time. This research is informed by qualitative data. It draws on legal and document analysis, information gathered through focus group discussions, key informant interviews and personal observation. Two economic sectors, hotel and sugarcane plantation, were selected as focus areas of the study considering their relative importance in Semera, the capital of Afar Regional State. The study found a significant gap between the legal stipulations and the practice. Hotel employees are forced to work for long hours than that stipulated by law and without pay for the overtime service. Plantation workers are not provided with safety equipment despite the hazardous nature of their job. Furthermore, working families in both sectors (though not unique to them) struggle to make ends meet with low wages in the face of rising cost of living. Considering the magnitude of poor implementation of the law, a concerted effort should be exerted by stakeholders

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including national and state governments, employers and CSOs to improve living and working conditions of employees in Semera.

Key words: Afar region, hotel workers, labour rights implementation, occupational safety, wages, working hours.

5.1. Introduction

This research investigates the state of labour rights implementation in Semera (the capital of Afar Regional State) and its surroundings. The study employs qualitative approach which is suitable to research issues having an ‘emerging’ nature. As such, it has drawn on literature review, legal and policy analysis and empirical data (focus group discussions, interview and personal observation).

The study found that Ethiopia has overall relevant legal regime that can protect labour rights. To begin with, the Constitution enshrines many labour rights including freedom from slavery and servitude (and forced labour with some exceptions),¹ the right to association, equal pay for equal work, the right to strike, limited working hours, rest, leisure and periodic leave and healthy and safe work environment.² The UDHR and human rights treaties and ILO conventions ratified by Ethiopia stipulate a number of labour-related rights. The ICESCR in particular provides for rights to ‘fair wages’, ‘decent living’ conditions for workers and their families and ‘safe and healthy working conditions’.³ Moreover, the labour law contains a comprehensive list of rights and obligations of both employers and employees. Furthermore, the establishment of ILO in 1919 and the adoption of numerous labour conventions are underpinned by the need “to promote fair and humane conditions for workers through legal mechanisms and monitoring

¹ Constitution of Federal Democratic Republic of Ethiopia (1995) (hereafter, Constitution of Ethiopia), Art 18.

² *Ibid.*, Art 42.

³ International Convention on Economic, Social and Cultural Rights (ICESR), Arts 7 & 8.

procedures”.⁴ The vision of ILO itself is to bring about durable and worldwide peace through decent treatment of workers.⁵

This research concentrates on two specific economic sectors that employ, in relative terms, the most workforce in the Semera area. These sectors are the hotel industry and the Tendaho Sugar Factory (TSF), a public enterprise, which also has a sugarcane plantation.

The rest of the Chapter is organized as follows. Section 5.2. provides a description of the research site with the view to contextualize the research. The research methodology including sources and types of data is outlined in Section 5.3. Section 5.4. examines the academic literature and international and national legal frameworks focusing on identified labour issues, that is, occupational safety and health, wages and working hours. Section 5.5. discusses the state of implementation of the legal standards with respect to the key labour issues identified in Section 5.4. Finally, the Chapter closes with concluding remarks.

5.2. Overview of Research Site

The focus of this research is to examine the state of labour rights implementation in the city of Semera, the capital of the Afar Regional State which is one of the nine federal units in Ethiopia. With its 1.4 million inhabitants, the Afar region accounts for nearly 2 percent of the Ethiopian population.⁶ Semera was founded as the capital of the regional government in 1995 and has remained mainly an administrative city to this day. Situated not far from the hottest place on earth, Dalol, the city has an extremely hot climatic condition. During the time of data collection in May, 2019, the temperature hit 43°C. In

⁴ Apsel, Joyce, The Right to Work in Dignity: Human Rights and Economic Rights <<http://www.nyu.edu/projects/mediamosaic/thepriceoffashion/pdf/apsel-joyce.pdf>>; accessed on 26 October 2019.

⁵ Ibid.

⁶ United Nations Population Fund. (2008). *Summary and statistical report of the 2007 population and housing census*, Addis Ababa. <<http://unstats.un.org/unsd/censuskb20/Attachment489.aspx?AttachmentType=1>> accessed on 11 August 2019

spite of the extreme weather, Semera has a good urban planning with clusters of modern offices and hotels. Most people who work in Semera have their residence in a nearby old town called Logia. Apart from a handful hotels, not more than five to be precise, there is minimal private investment. The hotel sector is the main employment generator in comparative terms. The weather appears to have clear negative effect on private enterprises' engagement, employment and settled life there. Many employees expressed their plan to leave the area because of the hot temperature. Manufacturing activity is virtually nonexistent in Semera.

In the year 2010 E.C., 250 medium and large enterprises on the regional level employed a total of 56,302 workers of which 35,952 were male and 20,350 female workers.⁷ Agriculture (sugarcane plantation and production) is the leading sector in employing the most workforce in the Afar Region, followed by the mining and construction and hotel sectors, respectively.

5.3. Research Methodology

The research employed qualitative approach as was set out in the original proposal. This approach is suitable to conduct studies on issues having an 'emerging' nature. As such, it was informed by legal and document analysis and information gathered using focus group discussions (FGD), interviews and personal observation. The researchers were not able to find literature specific to the research area. The empirical data was collected in two rounds. The first one was conducted by the principal researcher together with his assistant. However, since the data was collected during the Muslim fasting month coupled with the hot weather there, we had to postpone some of the interview for another time. Consequently, the assistant researcher carried out another round of interview.

⁷ Interview with Bogale Tassew (2019), official at the Afar Regional State Bureau of Labour and Social Affairs.

In-depth interviews and FGDs were held in Semera and in a nearby site where the TSF is located. TSF is a public enterprise engaged in sugarcane cultivation and sugar production. Open-ended questions were used to hear the views of participants about their individual and collective experiences. Nine individuals from the hotel sector participated in the first FGD; hotels employing less than 10 workers were excluded from the sample. The second group comprised 12 sugarcane plantation workers. Each FGD lasted roughly an hour. Another 14 participants took part in the third round of FGD. Moreover, five key informants from the judiciary and regional Bureau of Labour and Social Affairs were contacted for face-to-face interview; the informants were selected having regard to their expertise and experiences. The interviewees included judges from the Regional State's Supreme Court, officials from the State Labour Relations Board and Labour and Social Affairs Bureau and employees and trade union leaders.

The empirical data came from focused group discussions and interviews. Open-ended interview questions were crafted considering the main issues in the labour proclamation. The plan was to contact and interview employers, victims of labour rights abuses, officials of Labour and Social Affairs Bureau, judges, practicing lawyers, officials of Women, Children and Youth Affairs Bureau, NGOs working on labour-related projects. However, only one hotel manager consented for interview. Labour rights NGOs and victims of labour rights abuses were not available for interview. The interview questions were organized under five headings. The first group contained general questions for all interviewees, the second, for judges; the third, for practicing lawyers; the fourth, for employees and the fifth, for officials from the region's Women, Children and Youth Affairs Bureau and the Labour and Social Affairs Bureau. Interviewees and FGD participants were selected from hotels having ten or more employees. The purpose of the discussion and of the research was communicated to the participants in advance.

5.4. Literature Review and Labour Relations Standards

The conventional view considers labour rights and human rights as separate legal regimes but this view has lost currency in recent times.⁸ According to the new approach, labour rights and human rights rather go hand in hand and labour activists are increasingly resorting to human rights in their campaign for better working conditions.⁹ In other words, labour rights are considered part of human rights with the same level of protection as human rights themselves.

The interdependence and interrelatedness of human rights is an established principle in the human rights law.¹⁰ In this regard, the comments of the Committee on Economic, Social and Cultural Rights (CESCR) adopted the standards set by the ILO conventions on the right to work and the duties they entail.¹¹

The law governing labour relations in Ethiopia is found not just in the labour legislation but also in the constitution and numerous international treaties including numerous ILO conventions, the Universal Declaration of Human Rights (UDHR) and International Covenant on Economic, Social and Cultural Rights (ICESCR). Since these laws contain similar rights, the research did not discuss all rights under each legal instrument.

The UDHR, which is also a bench mark in the interpretation and application of fundamental rights in Ethiopia,¹² guarantees a number of

⁸ Sevrine Knuchel. (2015). "Examining Workers' Rights in International Human Rights Law: The Fast-Food Workers' Movement in the United States" in *Hofstra Labour & Employment Law Journal*, Vol. 33, Issue 1.

⁹ Ibid.

¹⁰ UN Human Rights Office of the High Commission. (1993). Vienna Declaration and Program of Action. Adopted by the World Conference on Human Rights. Vienna. <<https://www.ohchr.org/en/professionalinterest/pages/vienna.aspx>>; accessed on 28 June 2019.

¹¹ Gillian Macnaughton and Diane F. Frey. (2011). Decent Work for All: A Holistic Human Rights Approach in *AM. U. INT'L L. REV.* Vol. 26, No. 2.

¹² Constitution of Ethiopia, note 2, Art 13(2).

work-related rights. In Art 23(1), the UDHR stipulates the rights “to just and favorable conditions of work and to protection against unemployment”.¹³ Sub-article 3 of the same Article expresses the right “to just and favorable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection”. Furthermore, ICESCR provides for work-related rights. The list includes the right to work,¹⁴ right to fair conditions of employment,¹⁵ right to form and join trade union,¹⁶ right to social security,¹⁷ family rights¹⁸ including protection of the family, particularly while responsible for care and education of children; right to an adequate standard of living, including the right to food, clothing, and housing¹⁹ and right to health²⁰ including right to industrial hygiene; right to prevention and treatment and control of occupational diseases; right of women to special protection before and after childbirth; right of working mothers to paid leave or leave with social security benefits; right of children and young people to be protected from economic and social exploitation; right to education²¹ — right to technical and vocational secondary education; right to continuous improvement of material conditions for teaching staff; cultural rights²²— right of author to protection of interests resulting from scientific, literary or artistic production.

True, not all labour rights can have automatic effect. Like other socioeconomic rights (e.g. rights to education and housing), some labour rights take time to fulfill. Such entitlements include right to just

¹³ Universal Declaration on Human Rights (1948).

¹⁴ ICESCR, Art 6.

¹⁵ *Ibid.*, Art 7.

¹⁶ *Ibid.*, Art 8.

¹⁷ *Ibid.*, Art 9.

¹⁸ *Ibid.*, Art 10.

¹⁹ *Ibid.*, Art 11.

²⁰ *Ibid.*, Art 12.

²¹ *Ibid.*, Arts 13 & 14.

²² *Ibid.*, Art 15.

and favorable remuneration and safe work conditions and social protection for employees and their families.²³ On the other hand, the ‘first generation’ rights (e.g. maternity leave, equal pay for equal work and right to strike) have immediate effects as their enforcement does not demand much resource.

In what follows, three themes emerging from the study are considered and this will be followed by a discussion on implementation of international and national standards.

5.4.1. Occupational safety

Occupational safety and health (OSH) is defined as “the science of the anticipation, recognition, evaluation and control of hazards arising in or from the workplace that could impair the health and well-being of workers, taking into account the possible impact on the surrounding communities and the general environment”.²⁴ Occupational accidents and diseases are hampering economic development around the world. The injuries and loss of lives have strained greatly national economies and organizations.²⁵ Studies estimate the costs associated with non-fatal workplace accidents alone account for 4 percent of world gross domestic product (GDP) each year.²⁶ As reported by ILO, about 270 million occupational accidents, fatal and non-fatal, occur annually on the global level.²⁷ Occupational injury rates have risen in low and middle-income countries but have declined in high-income countries mainly due to the exporting of labour-intensive and more hazardous industries to the former where salaries are lower and working condition

²³ UDHR, note 4, Art 23.

²⁴ Benjamin O. Alli. 2008. Fundamental principles of occupational health and safety. 2ndedn. International Labour Office. Geneva.

²⁵ International Labour Organization. (2013). Safety and Health at Work: Hopes and challenges in development cooperation. Geneva.
<https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---safework/documents/publication/wcms_215307.pdf>; accessed on 26 October 2019.

²⁶ International Social Security Association (ISSA) as cited in World Bank (2017). *Occupation and Risk for Injuries*. <https://www.ncbi.nlm.nih.gov/pubmed/30212110>>

²⁷ Hämäläinen, Takala & Saarela as cited in Alli, note 24.

are less regulated.²⁸ Thus, globalization has played a role in the new development.

The literature reveals that occupational injuries and fatalities are prevalent in emerging economies where a large portion of the workforce is engaged in the informal sector as a result of which developing economies are losing 10 percent of their GDP.²⁹ Latin America, Middle East, South Asia, South-East Asia, the Pacific and Sub-Saharan Africa are the most high-risk areas.³⁰ Studies also reveal that women are disproportionately affected by workplace accidents and diseases in the Middle East, North Africa and Sub-Saharan Africa. As Alli observed, “In sub-Saharan Africa, the fatality rate per 100,000 workers is 21 and the accident rate 16,000. This means that each year 54,000 workers die and 42 million work-related accidents take place that cause at least three days’ absence from work”.³¹ According to World Bank, about 151 workers sustain work-related accident every 15 seconds.³²

Among different economic activities, agriculture remains the leading sector in terms of job creation worldwide. Currently, it employs about 1.3 billion people. The sector is also tainted with work-related accidents and fatalities. If we see the statistics from Europe and North America, agriculture registered “high rates of both fatal and non-fatal injuries and fatality rates” far exceeding the average rates in the same regions.³³ A report by the World Bank reveals that the leading risk factors for injuries and fatalities include operation of farm equipment and machinery, work performed at height and falling objects.³⁴ The sector is one of the least regulated sectors. Employment related injuries in the

²⁸ World Bank, note 26.

²⁹ Alli, note 24.

³⁰ World Bank, note 26.

³¹ Alli, note 24.

³² World Bank, note 26.

³³ Alli, note 24.

³⁴ World Bank, note 26.

agricultural sector are under reported in developing countries where the vast majority of this workforce is located.³⁵ The unique nature of many farms helps explain the increased risk for workers. Farm work is seasonal and labour intensive; workers are exposed to adverse weather conditions and subjected to concentrated periods of work that cause time pressures and stress which contribute to increased risk for accidents and injuries.

It is also worth noting that impact of accidents and diseases is often not well understood, mainly because of the difficulty to quantify it or because of lack of knowledge about its cost.³⁶ According to ILO, the direct costs to the companies include payments made by firms to workers without work due to injuries and diseases or to medical costs and insurance premiums. The good news is, if the right precautionary measures are put in place, most accidents and diseases can be avoided.

Acknowledging the risks and costs emanating from unsafe working conditions, the international community has, through the ILO, adopted a number of conventions and recommendations. This Section discusses the relevant treaties and recommendations, both ratified and unratified by Ethiopia, in order to highlight occupational safety standards at the international level. ILO has adopted the Safety and Health in Agriculture Convention specific to agriculture in view of the high level of hazard and risks involved in agricultural activities. Today, a total of 17 countries have ratified the convention but Ethiopia is not a party to it. In Art 4, the Convention requires ratifying States to designate a competent authority for enforcement of occupational safety standards and specify the respective rights and obligations of agricultural employers and workers.³⁷ Art 7 of the same Convention requires employers to carry out appropriate risk assessment on the safety and

³⁵ Alli, note 24.

³⁶ Ibid.

³⁷ International Labour Organization (ILO) (2001). Safety and Health in Agriculture Convention, No. 184.
https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_IL O_CODE:C184 Accessed on May 15, 2019.

health of workers and adopt preventive and protective measures. Furthermore, in Art 21, it envisions the establishment of (considering national law and practice) insurance or social security scheme for agriculture workers against fatal and non-fatal occupational injuries.

5.4.2. Labour wages

The Plantation Convention of 1958 was adopted with the view to regulate the conditions of employment of plantation workers. The Convention urges governments to fix minimum wages through “collective agreements freely negotiated between trade unions which are representative of the workers concerned and employers or employers’ organizations”.³⁸ Where this is not possible, it recommends setting minimum standards through national laws after consultation with stakeholders “on a basis of complete equality”.

5.4.3. Working Hours

The limitation of hours of work is central to labour regulation. The medical literature indicates that working beyond 50 hours per week is detrimental to health, physically and mentally.³⁹ Excessive working time has adverse effect on workers’ health and well-being and their family and social life.⁴⁰ It has also unintended consequences on productivity and labour cost for employers. A report by ILO pointed out, “Measuring the level and trends in working time in a society, for different groups of persons and for individuals, is therefore important when monitoring working and living conditions as well as for analyzing economic and broader social developments”.⁴¹ As Lee, McCann and

³⁸ International Labour Organization (ILO) (1958). Plantations Convention, No. 110, Art 24(1).

³⁹ Sangheon Lee, Deirdre McCann and Jon C. Messenger. (2007). *Working time around the world: Trends in working hours, laws and policies in a global comparative perspective*. London: Routledge, p. 8.

⁴⁰ *Ibid.*, p. 9.

⁴¹ ILO (n.d.). Indicator description: Hours of work. <https://ilostat.ilo.org/resources/methods/description-hours-of-work/>, accessed on June 14, 2019.

Messenger observed, “Weekly hour limits... make a substantial contribution towards preserving health and safety and permitting workers to strike an acceptable balance between paid work, domestic and caring labour and other aspects of their lives.”⁴² In view of this, international treaties call for allocation of leisure time for working people.

A binding treaty concerning working hours was agreed upon by the international community at the beginning of the 20th century. The standard, incorporated into the ILO establishment convention, provides for an eight-hour a day and 48-hour a week rule. Later, ILO shortened the maximum ceiling to 40-hours following the example set by United States and some European states in order to stem the widespread unemployment in the wake of WWI.⁴³ The 40-hour limit is also believed to give employees a balanced work and personal life. The ILO Forty-Hour Week Convention of 1935 has been ratified only by fifteen states and Ethiopia is not one of them. The introduction of limits on daily and weekly working hours is considered central to decent work.⁴⁴ Any work beyond the 8-hour per day or 48-hour per week limits amounts to overtime. However, there are some exceptions permissible under the Convention, provided that the “daily working time remains not higher than ten hours, and weekly working time not higher than 56 hours”.⁴⁵

5.5. Data analysis and findings

The labour law covers wide-ranging issues including employment contract, probation, the respective rights and duties of the employer and employee, wages, labour union, right to strike, collective agreement, etc. Because the subject touches so many areas, the study had to first

⁴² Lee, McCann and Messenger, note 40, pp. 7-8.

⁴³ *Ibid.*

⁴⁴ ILO, note 41.

⁴⁵ International Labour Organization. (2004). International Labour Organization (ILO). 2004. *Overtime*. Information Sheet, No. WT-2; <https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---travail/documents/publication/wcms_170708.pdf>; accessed on 10 July 2019

and foremost identify ‘emerging’ issues during the ‘field’ visit. Consequently, agriculture and the hotel industry which are in relative terms the main employing sectors in Semera and its surroundings are selected for investigation. The research focuses on the law and practice regarding occupational safety, wages, working hours and overtime pay.

We start with TSF which is located in Dubti, about ten kilometers from Semera. Twelve employees from the TSF’s sugarcane plantation participated in the FGD discussion. FGD participants pointed out high managerial turnover thereby hampering the enforcement of their rights. When a new management takes over, the labour union is forced to start over again its demands on issues agreement had already been reached with a previous management.

The company has permanent and temporary security workers despite the fact that both groups work on a permanent basis. The practice of hiring on temporary basis for a continuous job is inconsistent with the Labour Proclamation. According to the Proclamation, employment contracts should be, in principle, for indefinite time except where the job is of casual or seasonal nature.⁴⁶ On top of job insecurity, temporary employment has another practical implication in the sense that workers classified as such are excluded from some benefits, notably, medical insurance.

5.5.1. Occupational safety

Although Ethiopia is not a party to the Safety and Health in Agriculture Convention of 2000, its Labour Proclamation has provisions to that effect. In other words, Ethiopia has favorable legal and policy framework on occupational safety and health.⁴⁷ In Art 92, the Labour Proclamation expresses the obligation of employers to take proper measures to ensure the health and safety of workers. It also requires

⁴⁶ Labour Proclamation No.377//2003, Arts 9 & 10.

⁴⁷ Abera Kumie, Tadesse Amara, Kiros Berhane, Jonathan Samet, Nuvjote Hundal, Fitsum G/Michael and Frank Gilliland (2016). “Occupational Health and Safety in Ethiopia: A Review of Situational Analysis and Needs Assessment” in *Ethiop J Health Dev*, 30(1 Spec Issue).

employers to properly instruct and notify workers “concerning the hazards of their respective occupations; and assign safety officer; and establish an occupational health and safety committee; provide workers with protective equipment, clothing and other materials; keep record of employment-related accidents and diseases and report the same to the labour inspection service; cover medical examination of newly employed workers and for those workers engaged in hazardous work.”⁴⁸ The Ministry of Labour and Social Affairs (MOLSA) (and its regional counterparts) is responsible for enforcing workplace safety and health standards, both in private and public enterprises.

Researches on the Ethiopian agriculture reveal that workplace accidents and deaths are common.⁴⁹ Accidents are the main factors for extended workers’ leave of absence. Occupational safety and health services are poorly implemented and little effort is made on exposure assessment and inspection. The sector is also characterized by the absence of inspection and limited information about accidents and injuries. The situation in the Afar Region is not any different. The Region has a large number of workers from neighboring regions as well as Southern Nations, Nationalities and Peoples’ Region (SNNPR).

In regard to safety and health, TSF workers revealed the lack of safety equipment such as crash helmets, gloves, eyeglasses, workplace overall and boot. As FGD participants stated, the lack of safety equipment has exposed them to hazardous objects and poisonous animals like snakes and scorpions and have experienced accidents. In addition, workers mentioned repeatedly poor workplace organization and lack of job satisfaction during the discussion. Financial constraint is cited by the enterprise for not providing the necessary safety equipment. The labour union has a court case pending against the company on this issue. Concerning safety of hotel employees, some hotels provide cleaners

⁴⁸ Labour Proclamation No.1156/2019, Art 92.

⁴⁹ Abera, Tadesse, Kiros, Samet, Hundal, Fitsum & Gilliland, note 47.

with gloves but the high temperature renders them unusable. Apart from this, no other safety issues were raised by hotel employees.

5.5.2. Labour wages

The challenges facing low-paid workers is at the center of the protection of economic and social rights in ICESCR which envisions minimum wages.⁵⁰ As stated by CESCR, decent work “includes the right to a decent income “allowing workers to support themselves and their families”.⁵¹ However, the push for legally binding minimum wages has not materialized in Ethiopia to date. TSF workers expressed their grievances about the low wages that ranges from ETB 36 to 55 a day. On the positive side, the enterprise has pledged to raise the hardship allowance from its current rate of 30% of the salary of an employee to 40%. Medical allowance was also recently raised from ETB 70 to 150 per day. However, as noted above, temporary workers do not benefit from medical insurance. This should be a source of concern because the permanent-temporary dichotomy is arbitrary and contrary to the labour legislation. The story of hotel employees is not any different. Their monthly salary ranges from ETB 1000 to 1860 and with this amount, they are unable to meet their basic needs. Like their TSF counterparts, the participants of FGD have strong dissatisfaction with what they consider very low income in the face of the rising cost of living.

5.5.3. Working hours

As for working hours, the eight-hour rule is generally respected at TSF. The new labour law (as well as its predecessor Proclamation 377/2003) contains provisions that in principle exonerate employees from working beyond the normal working time. However, like the ILO Forty-Hours Week Convention, the labour law has permissible exceptions, that is, in the event of an emergency, force majeure or

⁵⁰ Gillian Macnaughton and Diane F. Frey. (2011). Decent Work for All: A Holistic human rights approach in *AM. U. INT'L L. REV.* Vol. 26, No. 2.

⁵¹ CESCR as cited in *ibid.*

substitution of absentee workers performing a continuous work.⁵² Even in such cases, the amount of overtime cannot exceed four hours a day and twelve hours a week. This will raise the maximum amount of working time to 60 hours. Both the daily and weekly overtimes in the labour law departs from the Convention as they push the limit up. According to the Convention, the total working hours in a day cannot exceed 10 hours and 56 hours a week. That working 10 hours daily will add up to the maximum weekly obligation of an employee by working 10 hours for five days each and 6 hours on the final day. The Ethiopian law exceeds the maximum limits under the Convention by 2 hours per day and 4 hours per week. Thus, the Proclamation is inconsistent with the treaty standard.

As for working hours, the practice in Semera varies from one hotel to another. Some observe the eight-hour-per-day rule while others violate it by a significant margin. Some hotel employees work for 63 hours weekly which is still way beyond the legally permissible limit. One hotel has only two security personnel who have to work 12 hours running each day and 84 hours a week. The most extreme case is the one female hotel employee (she works for a hotel where the researcher was lodged) said she spent as many as 20 hours daily on her job, especially during weekends.⁵³ What is more, she is not given weekly rest or overtime pay.

Under the Proclamation, workers are entitled to overtime pay for “all hours worked in excess of the normal hours”.⁵⁴ According to Art 68, the rate of pay for overtime work is 1½ of the ordinary hourly rate for work performed between 6:00 a.m. and 10:00 p.m.⁵⁵ The rate increases for work done during night, weekly rest days and public holidays. While the TSF employees are not generally required to work overtime (thus, cannot have overtime pay claims), some hotels require

⁵² Labour Proclamation No.1156/2019, Art 67.

⁵³ Interview with hotel waitress (Semera city), 7 May 2019.

⁵⁴ ILO, Indicator description, note 42.

⁵⁵ Labour Proclamation No.1156/2019, Art 68.

employees to work beyond the normal working time. No employee is paid overtime pay. Thus, the practice concerning working hours contradicts with two legal limits: one, it exceeds the permissible limit and second, workers are not paid for the overtime service. This is in clear violation of both treaty obligation of Ethiopia and its labour legislation.

5.6. Conclusion

Ethiopia has the necessary legal and policy framework that can protect labour rights. However, there is substantial gap between the legal standards and the reality on the ground. In other words, implementation of the law remains a huge challenge. The study has found that, in the context of limited employment in the area, there are certain practices that reveal poor implementation of the labour rights. The highest level of non-compliance with the law is observed in the hotel sector where workers have minimal awareness about their rights and are the least organized and, by extension, lack bargaining power. Some hotel workers are subjected to excessive and unpaid overtime work. On the other hand, exposure to workplace accident and risk are the main pressing issues faced by sugarcane plantation workers. Finally, (although not certainly unique to the study area), workers from both sectors have strongly aired their frustration with the subsistence, low wages they receive. In spite of rights violations, labour cases are quite rare. The researcher unable to find a single labour case during his visit to the State's High Court and Supreme Court. However, participants of the focused group discussion from TSF told the researcher they had a case pending in court. A concerted effort should be made among stakeholders, notably policymakers, employers and CSOs, to address the low level of labour rights implementation thereby improve the condition of workers in the Region.

Employers in Semera are generally reluctant to respect workers' rights and, in this regard, the TSF fares better than the hotel sector with respect to workers' awareness about labour rights, working hours and job security. On the other hand, hotel employees have little awareness

about their rights and they are not organized. Some are forced to work excessively long hours without overtime pay.

There is little court litigation among hotel workers and TSF workers usually resort to out-of-court dispute settlement mechanisms including complaining to supervisors, the labour union and the Regional Labour Relations Board and, occasionally, the court system for redressing their concerns and grievances. As one hotel manager puts it, “Employees do not seek judicial remedy except shedding their tears in the event of rights abuses”.⁵⁶ The regional government is taking measures to address this practice.⁵⁷ In this regard, Semera University Law School has played a positive role in addressing the awareness gap through awareness raising campaigns and legal counseling. Overall, the research identified a few pressing challenges in the enjoyment of workers’ rights in the study area, i.e. low wages, unsafe working conditions, excessive working hours and absence of overtime pay.

⁵⁶ Interview with hotel manager (Semera City), May 8 2019.

⁵⁷ Interview with judges (Semera City), Afar Regional State Supreme Court, 10 June, 2019.

6. Labour Right Issues in the Private Sector of Ethiopia: Experience from Adama City Hotel Industry

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Abstract

Ethiopia has been taking various reform measures to expand employment opportunities by increasing the role of the private sector in the economy. While some of these measures contributed to unlocking the potentials of the labour force in the economy, they also presented some challenges related to labour rights violations. The study assesses the labour right issues and the recourse mechanisms based on data from two selected hotels at Adama city, Oromia Regional State, Ethiopia. Data were collected using surveys, key informant interviews, in-depth interviews, case and document reviews and analyzed by using descriptive statistics and narrations. The findings show that about half (53%) of workers are females, indicating equal labour participation by both sexes in the hotel sector in general. However, disaggregation of data by job category reveals female dominance in housekeeping (86%), food preparation (73%), and waiting (60%), which may indicate the traditional care taking role of women mirrored in the hotel sector. Also, male workers reported that in the majority (72%) of cases they bring labour rights violations to justice. Age-wise, 70% of the sample workers are youth in the age range of 22-34 indicating the potential role of the hotel industry for reducing youth unemployment. The estimated average monthly salary of about Birr 1553 is considered as low, by majority (57%) of the sample workers, given the escalating cost of living. Due to lack of law for minimum wage, differences are observed in minimum wages between the hotels. The finding of no significant mean difference in the aggregate reported labour rights violations

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between the two hotels ($p < 0.05$) indicates that the magnitude of the labour rights violations is not necessarily linked to the magnitude of reporting to government offices. The study also identified labour rights issues such as low salaries (57%), lack or inadequate compensation for overtime work (100%), promotion/salary raise denied (43%) or delayed (50%), cutting of salary/benefits (20%), health and safety issues at the work place (10%) and imposition of additional tasks (3.3%). Potential factors for labour rights violations include lack of clear job description in the work contract, fear of losing job for voicing violations, lack of trade unions, and favoritism and employing by kinship. As a recourse procedure, workers approach their immediate supervisor and if solution is not obtained, they take their case to hotel administrative body, the Adama city Labour and Social Affairs Office. Where trade unions exist, workers enjoy better platform to collectively voice labour rights concerns and negotiate their cases with greater bargaining power at various fora within and outside the company. In addition, the legal aid center at Adama city provides support, ranging from legal advice to legal representation to enhance access to legal services, to vulnerable groups.

6.1. Introduction

Poverty reduction through increasing labour productivity and employment generation is placed among the key focus areas of the five-year Growth and Transformation Plan (GTP II). In line with this, increasing the role of the private sector in the economy and women and youth employment were among the focus areas. The various reform measures taken have started to stimulate the role of the private sector in the economy by attracting foreign and domestic investments.¹ The

¹ MoFED. 2010. Growth and Transformation Plan (GTP) (2010-2015). Main Text Vol.1. Addis Ababa, Ethiopia.

ensuing dynamism in the labour market presents the economy with both opportunities and challenges.

The expansion of employment opportunities due to the growing role of the private sector fosters economic transformation and growth by unlocking the potentials of the labour force in the economy. It also contributes to reducing inequality if youth and women labour forces are particularly targeted. On the other hand, it presents challenges pertaining to the potential increase in the vulnerability of workers due to the diverse forms of non-standard and vulnerable employment that are introduced into the labour market dynamics. Such phenomenon has attracted the attention of researchers and policy makers. However, our knowledge is still limited about the actual manifestations of non-standard and vulnerable employment, labour rights issues and recourses surrounding such employment patterns in the Ethiopian labour market context.

In particular, evidence-based research is scanty. The little research that has been conducted is largely focused on the role of the private sector for employment generation, labour force participation, and wage differentials across diverse social profiles².

Hence, the present research assesses the status of workers and employee-employer relationships in selected Hotels at Adama city, Oromia Region, Ethiopia. The Hotel sector and the site is selected for the study because (i) of the increasing role of the service sector and the

² World Bank. 2007. ETHIOPIA Urban Labour Markets in Ethiopia: Challenges and Prospects. Volume I: Synthesis Report Poverty Reduction and Economic Management Unit Africa (Region); Sosena Demessie and Tsahai Yitbarek. (2008). "A Review of National Policy of Ethiopian Women." In Taye Assefa (ed) *Digest of Ethiopia's National Policies, Strategies and Programs*. FSS, Addis Ababa: Ethiopia; Getachew Adem Tahir. 2009. Macroeconomic and Labour Market Policies for Growth and Resilience to the Global Economic Crisis. A Background Paper Prepared for the Symposium Organized at the Occasion of the Celebration of the 90th Anniversary of the International Labour Organization (ILO). March 30, 2009 Addis Ababa; Fitsum Dechasa Kibret. 2014. Unemployment and Labour Market in Urban Ethiopia: Trends and Current Conditions. *Sociology and Anthropology* 2(6): 207-218; World Bank. 2015; Ethiopia: Urbanization Review. Urban Institutions for a Middle-Income Ethiopia. Washington D.C.

hotel industry in particular in major cities in Ethiopia and hence the need to examine how labour issues are evolving in this industry; (ii) Adama city is increasingly becoming a city for hosting conferences, events and tourism which has led to the rapid expansion of the hotel industry³; (iii) potential labour issues in other sectors such as agriculture and manufacturing are covered by other contributors in this edited volume.

The study mainly describes the status of employment, benefits, and issues of labour rights and job security and quality based on proxy indicators identified to track the same. In doing so, it identifies labour rights issues, recourse mechanisms in place, and practical challenges workers face in pursuing legal and other remedies in the private sector (in particular in hotel industries) in the study area and identifies policy implications to improve the promotion and protections of labour rights.

6.2. Method and Limitations

The assessment consists of a deskwork and fieldwork component. During the deskwork, relevant literature and secondary data were used and the field instruments were designed. The fieldwork involves conducting a survey of workers from selected hotels and key informant and in-depth interviews. The actual fieldwork started by consulting experts from Adama City Labour and Social Affairs Office and Adama legal aid provision center of the Center for Human Rights on labour rights issues that are commonly reported by hotel workers at Adama, reported violations, and functional labour unions. Accordingly, two hotels, namely, Ginger⁴ and Sugar were purposively selected, for a larger survey of workers, based on the criteria of having some records of labour rights violations and no records of violations, respectively. In addition, a third hotel, Spice Hotel, was identified to gain an insight from a longstanding and relatively successful trade union for which key

³ Ethiopian Cities Association. 2013. Adama. Available on: www.ethiopancities.org/index.php/en/adama. Retrieved on January 27, 2020.

⁴ For reasons of confidentiality, all names of hotels and informants are replaced by pseudonyms.

informant interview was conducted with the head of the Union⁵. This is followed by contacting the management of the selected Hotels and requesting their collaboration in the study by providing relevant information as key informants and availing the list of workers for drawing sample for the survey and making appointments. The purpose of drawing sample workers from the selected hotels is to obtain a representation of workers from the various departments to be able to capture as many labour rights issues as possible. Following this, survey data was collected with the help of a questionnaire and an enumerator who was hired for the purpose.

Parallel to this, key informant interviews were conducted with representatives from Adama City Labour and Social Affairs Office, Adama City Women and Children and Youth Affairs Office, a legal aid center, management of the hotels and a labour union as well as in-depth interviews with selected workers. The purpose of the interviews was to gain some insights on the labour issues surrounding specific employment processes, working arrangements, employer-worker relationships and available recourse.

Overall, the assessment is conducted by drawing on data from a survey consisting of 60 hotel workers (30 per Hotel), in-depth interviews with 4 workers (two per Hotel)⁶, interviews with 7 key informants, 2 cases⁷ reviewed, and secondary sources. The data obtained from the five

⁵ The head of the trade union was interviewed in order to gain some insight and learn from the experience of a longstanding and relatively successful trade union. This is decided based on the information obtained from the Adama City Labour and Social Affairs office. The Chairperson of the union is in his third year in position. The term is three years with a possibility of reelection. This person is the head of the technique department of the Hotel besides being the head of the union.

⁶ Some challenges were faced in conducting the in-depth interviews, although it all started with the permission of the management at both Hotels. Initially workers were willing to participate in the in-depth interviews but later on, when they are contacted again for clarification on some items, they started to become uncomfortable for reasons they did not want to explain. This may have to do with job insecurity.

⁷ The cases are obtained from those reported at a legal aid center in Adama run by Center for Human Rights of Addis Ababa University under the project: Support the Human Rights Teaching, Research and Community Engagement of Center for Human Rights (Project STRACE-CHR).

categories of sources are intended to complement and triangulate each other to enable a better understanding of the labour rights issues and recourses. The data from the survey of workers and secondary sources are intended to show the extent of the problem and establish some trends in the violations whereas the data from the in-depth interviews, cases reviewed, and key informant interviews were intended to gain a deeper insight on the specific labour issues and recourses and triangulate data from the larger survey and secondary sources. Secondary sources include data from Adama City Labour and Social Affairs Office and those from the legal aid center mainly on reported cases of violations over time. The quantitative analysis involves descriptive (e.g., frequencies, percentages) and inferential statistics to examine the relationship between labour rights issues faced by workers and some key demographic and enterprise characteristics.

The study is limited to drawing on data collected from the hotel industry. This is because, given the current trend of expansion of the service sector in general and the hotel industry in particular in major cities in Ethiopia, it is important to examine how labour issues are evolving in this industry. In line with this, being advantageously placed in proximity to Addis Ababa and hence to the pool of regional and international organizations, Adama is increasingly becoming a city for hosting important conferences, events and tourism which has led to the rapid expansion of the hotel industry. Moreover, potential labour issues in other industries such as agriculture and manufacturing are covered by other members of the research team who conducted similar studies in various cities of Ethiopia.

While the study is not intended to make generalizations based on a survey of workers in two hotels and interviews, the insight obtained from it is important for several reasons. First, it enables to see the magnitude of the labour rights violations, by taking into account workers in the various departments within the studied hotels, beyond anecdotes. Second, by comparing differences in the extent of labour rights violations between the two hotels (one with government record of labour rights violations and the other with no record), it gives an

insight into the potential link between experiencing violations and reporting them to government offices. Third, it indicates the potential labour rights issues to be expected with the growing expansion of conference hotels. This is more so, given the fact that Adama city is offering tremendous opportunities for conferences and conference tourism⁸.

Finally, the study has attempted to look beyond the two hotels by conducting triangulations with the help of interviews with key informants from relevant government offices, and representatives from a labour union and a legal aid center in Adama city. This has reinforced the findings and implications from the study.

6.3. Data Presentation, Findings, and Discussion

6.3.1. Trends in labour rights issues brought to the Legal Aid Center

Labour rights violation has continued to be an issue of growing concern with the expansion of the private sector. While underreporting of labour rights violations is a possibility, there are some evidences of violations reported at organizations working on labour rights advocacy and access to legal services. This section presents the trends in reported labour right issues by taking the example of the cases handled by Legal Aid Center at Adama City, i.e., Project to Support the Human Rights Teaching, Research and Community Engagement of Center for Human Rights (Project STRACE-CHR), in order to give an overview of the magnitude of the problem over time. STRACE-CHR has been instrumental in enhancing access to legal services to vulnerable groups. Results of interview with the project coordinator shows that the target group of the project includes women, children, employees of private companies, internally displaced individuals, persons with disabilities, those lacking court practices, and those whose rights cannot be protected unless they obtain legal aid. The services provided by the Center include free legal advice, legal information, conciliation,

⁸ Ethiopian Cities Association. 2013. Adama. Available on: www.ethiopiancities.org/index.php/en/adama. Retrieved on January 27, 2020.

preparation of pleadings, legal representation, and referral link (to the police, office of Labour and Social Affairs) as deemed necessary.

As given in Table 1 below, about 72% of the reported cases on labour rights issues are brought forth by males as compared to 28% by females. This may indicate a gender disparity in labour rights protection and awareness and reporting of violations which calls for further investigation. Moreover, results of in-depth interviews with female workers shows that females also face labour rights violations pertaining to salaries and benefits, promotions, and overtime payments, the reporting of which, according to in-depth interview results, may lead to losing one's job.

Table 1. No. of reported labour cases at Adama Legal Aid Center of Project STRACE-CHR, 2019

Month	No. of Reported labour rights issues		
	Male	Female	Total
January	3	2	5
February	8	1	9
March	44	11	55
April	37	7	44
May	3	10	13
June	14	8	22
July	25	11	36
August	4	2	6
September	10	3	13
October	47	22	69
Total	195	77	272
%	71.7	28.3	100

Source: summarized based on data from Project STRACE-CHR Adama Legal Aid Center⁹, 2019.

⁹ STRACE-CHR. 2019. Monthly Report 2019. Project to Support the Human Rights Teaching, Research and Community Engagement of CHR (Project STRACE). Adama, Oromia Regional State, Ethiopia.

Overall, number of labour rights cases reported to the Legal Aid Center has been rising over the past 10 months (i.e., January to October 2019) (see Table 1 above). Gender disaggregated data shows that the number of reported labour rights cases has been rising at a faster rate for males than females over the past 10 months although with some notable fluctuations (see Figure 1 below). The number of reported labour rights issues has also been trending upward at a slower but relatively steady rate among females. While this may be an indication of a rising awareness of labour rights and recourse mechanisms, among females with expansion of labour rights advocacy by various organizations, other explanatory factors may as well be important. This calls for conducting a more rigorous analysis by controlling for all potential factors affecting the reporting of labour rights issues.

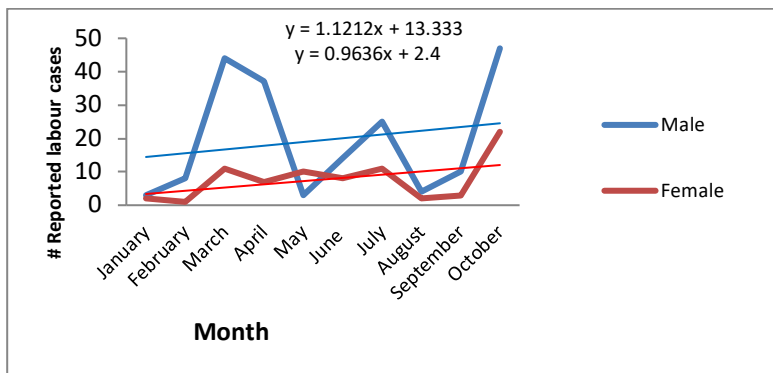


Figure 1. Trends in monthly reported labour rights issues at Adama Legal Aid Center of Project STRACE-CHR, 2019.

6.3.2. Profile of the hotels and workers

Establishment: Sugar Hotel is established 10 years ago and is currently a three-star Hotel. At the time of the study, the Hotel consists of a total of 138 workers of which 53% are female and 47% are male. It is rapidly growing through undertaking a number of expansion projects and activities both at Adama and Addis Ababa. It is rapidly expanding with the objective of upgrading itself into a five-star hotel. Key informant interview with Adama City Labour and Social Affairs Official asserts

that no complaints related to labour issues have been reported by the workers from this Hotel.

Established seven years ago, Ginger Hotel had a total of 84 workers at the time of the survey, of which 55% are female and 45% are male. Key informant interviews with representatives from Adama City Labour and Social Affairs Office confirm that there are some complaints filed by workers at Ginger Hotel. The complaints pertain to termination of work contract and denial of benefits.

Both hotels, and Sugar Hotel in particular, are mainly hotels for conferences and meetings; hence their revenues are mainly generated from hosting large conference guests rather than from daily walk-in customers.

Table 2. Sample respondents by job category

Department	Ginger Hotel		Sugar Hotel		Total	
	#	%	#	%	#	%
Front desk	3	10.0	2	6.7	5	8.3
Waiter/waitress	6	20.0	4	10.0	10	16.7
Head waiter			1	3.3	1	1.7
Bartender	2	6.7	1	3.3	3	5.0
Food preparation (cook+ others)	8	26.6	7	23.3	15	25.0
Pastry-bakery			2	6.7	2	3.3
Food and beverages control			1	3.3	1	1.7
Housekeeping	4	13.3	3	13.3	7	11.7
Laundry	3	10.0	2	6.7	5	8.3
General service	1	3.3	2	6.7	3	5.0
Life saver			1	3.3	1	1.7
Security guard	3	10.0	4	13.3	7	11.7
Total	30	100.0	30	100.0	60	100.0

Source: Survey by researcher, 2019.

Job category: as expected, majority of the sample respondents are in the food and beverages related activities (i.e., food preparation, pastry-

bakery, and food and beverages control, waiter/waitress, head waiter, bartender), constituting 53.4% of the total workers at both hotels (see Table 2 above). Of these, the major proportion (25%) of the sample respondents are engaged in food preparation followed by waiting (16.7%) and housekeeping (11.7%) and security guarding (11.7%).

The gender dimensions of job allocations: As presented in Table 3, about half (53.3%) of the sample workers are females, which shows that the sector is contributing to reducing gender inequality in terms of labour market participation. Looking at the gender dimensions of the major tasks, females dominate in housekeeping constituting 85.7%, food preparation (73.3%), and as wait staff (60%), whereas males dominate in security guarding (71.4%), bartending (66.7%) and front desk (60%) (see Table 3 below). On the rest of the activities, males predominate in general service (including maintenance), head waiting, life-saving, bartending, and laundry. The higher proportion of female workers in food preparation, wait staff, and in housekeeping may indicate that job allocation in the formal sector is mirroring the traditional role of women as care takers within the household.

Table 3. Sex disaggregation by job category

Department/job category	Total	% total workers	# Female	% female	# Male	% male
Front desk	5	8.3	2	40.0	3	60.0
Waiter/Waitress	10	16.7	6	60.0	4	40.0
Head Waiter	1	1.7	0	0.0	1	100.0
Bartender	3	5.0	1	33.3	2	66.7
Food preparation	15	25.0	11	73.3	4	26.6
Pastry-bakery	2	3.3	1	50.0	1	50.0
Food & beverages control	1	1.7	1	100.0	0	0.0
Housekeeping	7	11.7	6	85.7	1	14.3
Laundry	5	8.3	2	40.0	3	60.0
General Service	3	5.0	0	0.0	3	100.0
Life saver	1	1.7	0	0.0	1	100.0
Security guard	7	11.7	2	28.6	5	71.4
Total	60	100	32	53.3	28	46.7

Source: Survey by researcher, 2019.

Age distribution of workers: as given in Table 4 below, the average age of the sample workers is 32.4 years with a minimum and maximum age of 22 and 52 years respectively, of which 70% belong to the age category of 22-34. This shows that the hotel industry is predominantly staffed by the youth and hence has a potential to reducing youth unemployment.

Table 4. Age, education and years of service and daily work hours for sample respondents

	Ginger Hotel				Sugar Hotel				Total			
	Min	Max	Mean	Std.	Min	Max	Mean	Std.	Min	Max	Mean	Std.
Age	22.0	52.0	31.67	6.93	25.0	48.0	33.07	6.71	22.0	52.0	32.4	6.8
Education (in completed years of schooling)	8.0	13.0	10.47	1.75	8.0	13.0	11.07	1.95	8.0	13.0	10.8	1.9
Duration of service (years)	1.0	8.0	3.13	1.79	0.5	7.0	3.11	1.78	0.5	8.0	3.1	1.8

Source: Survey by researcher, 2019.

Educational attainment: The education level of workers ranges from 8 to 13 years¹⁰ with an average education level of nearly 11 years (Table 4 above). Only 25% of the sample workers completed various levels of vocational and higher education (Table 5). From this, the vast majority (75%) of the respondents are in occupations requiring less specialized human capital, which may be an indication that low skilled jobs dominate the sector's labour market.

¹⁰ Education level of 13 years is the same as 10+3, which includes completion of various levels of TVET (10+1 to 10+3) or completing one year university study following completion of Grade 12.

Table 5. Educational background of respondents

Education level	#	%
Second cycle (grades 5-8)	12	20.0
High school (grades 9-10)	18	30.0
Preparatory school (grades 11-12)	15	25.0
Diploma (10+1,2,3,4) TVET	15	25.0
Total	60	100.0

Source: Survey by researcher, 2019.

Duration of service in the company: the average duration of service by workers is 3.1 years with the minimum and maximum being 6 months and 8 years respectively (see Table 4). The maximum duration of service concurs with the age of the hotels. About 67% of workers served for not more than 3 years in the hotels and only 12% have served for more than 5 years of service (Table 6 below).

Table 6. Distribution of duration of service with current employer

Duration of service (in years)	#	%
Up to 1 year	7	11.7
1.1-2.9 years	21	35.0
3 years	12	20.0
3.1-5 years	13	21.7
5.1-8 years	7	11.7
Total	60	100.0

Source: Survey by researcher, 2019.

Salary and benefits: The average monthly salary of the overall sample workers is Birr 1553.3 (see Table 7 below) with about 62% of workers receiving not more than 1500 per month (Table 8 below). The minimum monthly salary of workers is Birr 800 and 1200 in Ginger and Sugar Hotels, respectively, whereas the maximum amounts is Birr 2500 and 2800 respectively.

Table 7. Salary, benefits and daily work hours of sample respondents

	Ginger Hotel				Sugar Hotel				Total			
	Min	Max	Mean	Std.	Min	Max	Mean	Std.	Min	Max	Mean	Std.
Salary (Br)	800	2500	1356.7	546.9	1200	2800	1749.9	437.7	800	2800	1553.3	529.6
Benefits in cash (Br) ¹¹	1200	2500	1586.7	415.0	1200	2200	1963.3	175.2	1200	2500	1775	368.5
Daily work hours	6.0	12.0	9.10	1.15	8.0	12.0	8.70	1.37	6.0	12.0	8.9	1.27

Source: Survey by researcher, 2019.

As can be seen from Tables 7 and 8 nearly all respondents are entitled to benefits, other than their salaries, paid in cash and in-kind. Cash benefits range from a minimum of Birr 1200 to a maximum of Birr 2500 received on a monthly basis, the average being Birr 1775. Nearly, half (48.3%) of the respondents reportedly receive additional monthly benefit of Birr 2000 paid in cash (see Table 8). These findings are corroborated by the qualitative analysis. Results of in-depth interviews with workers and key informant interview with the representatives of the hotels shows that the cash benefits are mainly generated from service charges, which are often shared among workers. In-depth interview with a worker shows that the practice of equal sharing of service-related cash benefits among all workers is unfair as it is not responsive to the differences in labour contributions in delivering the service. She thinks that such distribution of benefits rewards those involved in the less labourious jobs (e.g. cashier) while it penalizes those in the more labourious ones (e.g. food and beverage, waiters/waitresses). She also expressed her concerns over denial of service benefits to workers who are on sick leave.

¹¹ Benefits in cash do not include those in-kind.

Table 1: Distribution of benefits other than salary

Current cash benefits other than salary (in Birr)	#	%	Current in-kind benefits other than salary (in Birr equivalent)	#	%
Up to 1500	26	43.3	0	2	3.3
2000	29	48.3	600-1200	38	63.3
2100-2500	5	8.4	1300-1500	20	33.3
Total	60	100.0	Total	60	100.0

Source: Survey by researcher, 2019.

Respondents also reported in-kind benefits mainly in the form of at least one meal per day which is estimated at a maximum of Birr 1500 per month (see Table 8 above). Majority of the respondents receive a monthly in-kind benefit in the range of Birr 600 and 1200 and about a third (33.3%) receive roughly over Birr 1200 per month. In this respect a worker stated that she is entitled to only one meal per day, which she thinks is insufficient for a person spending 9 hours in the company and another worker indicated that the quality of the meals, breakfast in particular, should be improved as it is mainly bread and tea.

Daily working hours: as given in Table 7 above, the daily working hours ranges between 6 and 12 hours with an average length of 8.9 hours per day.

Employment procedure and contract: Results of the survey show that all workers are employed directly by the hotels without any intermediate agents. Results of key informant interviews with the hotels' administrators also shows that the employment at the hotels is conducted based on open job advertisement/posting on public places and submission of application by potential employees accordingly. The screening is based on a committee's assessment of the applicants' profiles against eligibility requirements listed in the advertisement (both with documentation and interviews). Triangulations of the information obtained from the employers with those of the employees' paints a slightly different picture. Results of in-depth interviews with a worker and the head of a trade union, reveals that jobs are often advertised. However, both informants agree that there are incidences of

non-merit-based employment and promotion on the basis of connections and kinships with members of the hotel management.

With regard to employment contract, qualitative analysis shows that the contract does not explicitly indicate the length of daily working hours and the job description although it is possible that this may have been communicated informally. This is in accordance with Article 4(2) of the Labour Proclamation. In-depth interview results indicate that up on employment, workers are only issued a letter that states the specific position, salary, and the requirement to abide by the rules and regulations of the hotels. Key informant interview with a hotel manager shows the presence of a formal employment contract signed by both the employees and the Hotel. However, neither the letter nor the contract clearly states the duration of the contract and the job description. This makes workers vulnerable to violation of rights such as forcing them to carry out multiple tasks and transferring them across jobs and departments without their consent and commensurate compensation and lack of (timely) renewal of contract.

Access to utilities and services: With regard to access to utilities/services at the workplace, all of the respondents stated that they have access to potable water, toilet, working uniform/gown, and working equipment and materials (see Table 9 below). On the other hand, a great majority (80%) of the respondents stated that they have no office space whereas the rest 20% stated that they have one. With regards to resting/sleeping room (if needed), 85% of the respondents stated that they have no sleeping rooms. In-depth study results show that not all workers need office space and sleeping rooms; but there are such rooms which workers could use in case of working late hours and need to spend the night at the hotels. The overwhelming majority (91.1%) of the respondents stated that they are entitled to break time.

Table 9. Access to utilities and services

Access to utility/service	Yes		No		Total	
	#	%	#	%	#	%
Potable water	60.0	100.0	0.0	0.0	60.0	100.0
Toilet	60.0	100.0	0.0	0.0	60.0	100.0
Working gowns	60.0	100.0	0.0	0.0	60.0	100.0
Working equipment & materials	60.0	100.0	0.0	0.0	60.0	100.0
Sanitary materials	0.0	0.0	60.0	100.0	60.0	100.0
Transportation service	0.0	0.0	60.0	100.0	60.0	100.0
Office space	12.0	20.0	48.0	80.0	60.0	100.0
Sleeping room	9.0	15.0	51.0	85.0	60.0	100.0
Break time	55.0	91.7	5.0	8.3	60.0	100.0

Source: Survey by researcher, 2019.

Workers perceived job security/ job quality: Table 10 below presents workers' perceptions of job security and job quality based on selected indicators. Respondents were asked to rate their satisfaction with the current employer. Majority (75%) of the respondents agree that they are satisfied with their employer whereas 23.3% are undecided. More than half (56.6%) of the respondents stated that they have a career in the company. In addition, respondents were also asked whether the working conditions are conducive to which more than two-thirds (68.3%) were affirmative.

Respondents were asked regarding promotion and more than half (55%) of them agree that they can get promotion by fulfilling the specified criteria. Nearly all (98.4%) sample respondents are affirmative about obtaining a leave whenever they ask for it. As far as access to training is concerned, 61.7% of respondents disagree that they have access to training opportunities of relevance to their jobs whereas 31.7% are not sure and only 6.7% agree. This is in line with the in-depth interview results with a worker, which indicated that he has never been offered any formal training relevant for the job; rather he had to learn the job by doing alongside his senior colleagues. Key informant interview with the head of a union also shows that some of the workers are assigned for a job without obtaining relevant training. A case in

point is the person who was transferred from a gardener to a bellboy position without being offered any training.

Table 10. Some indicators of workers' perceived job security/ job quality

	Strongly Disagree		Disagree		Neutral		Agree		Strongly agree	
	#	%	#	%	#	%	#	%	#	%
I am satisfied with my employer			1	1.7	14	23.3	17	28.3	28	46.7
I have a career in this company	1	1.7	11	18.3	14	23.3	26	43.3	8	13.3
My working conditions are conducive	2	3.3	2	3.3	15	25.0	23	38.3	18	30.0
I can get promoted if I meet criteria			6	10.0	21	35.0	19	31.7	14	23.3
I can take leave whenever I want to					1	1.7	19	31.7	40	66.7
I have access to relevant training	18	30.0	19	31.7	19	31.7	3	5.0	1	1.7
Staff turnover is high at technical staff level					29	48.3	1	1.7	30	50.0
Staff turnover is low at technical staff level	29	48.3	2	3.3	28	46.7	1	1.7		
Staff turnover is high at leadership level	57	95.0	2	3.3	1	1.7				
Staff turnover is low at leadership level					1	1.7	1	1.7	58	96.7

Source: Survey by researcher, 2019.

With regard to staff turnover, about half (51.7%) of the respondents agreed on the prevalence of high staff turnover at the technical level whereas 48.3% are not sure (see Table 10 above). On the other hand,

nearly all (98.3%) respondents disagree that staff turnover is high at leadership level whereas the remaining 1.7% are undecided¹². The finding on perceived staff turnover coupled with the fact that about 67% of workers served a maximum of 3 years in the hotels with only 12% having served for 5 to 8 years (Tables 4 and 6 above) is indicative of both a recently growing trend and some staff turnover in the hotels. The sizable staff turnover at the technical level and low staff turnover at leadership level may be indicative of the little accountability of management to workers' concerns in the absence of unions.

Leaves and their durations: The study assessed the existence of the different types of leaves and their durations and workers' awareness about it. All respondents reported that they are entitled to annual leaves, which starts with 14 days and increases by a day for each additional year of service in the company (see Table 11 below). On the other hand, the vast majority (95%) of the respondents stated that they have had sick leaves. With regard to the duration of sick leaves, the overwhelming majority (93.3%) of the respondents stated that it depends on the medical evidence presented. Majority (73.3%) of the respondents (both male and female) stated that female workers are entitled to maternity leave for the duration of 3 months. The other 26.7% of the respondents stated that there is no maternity leave, which may be due to lack of awareness of the right to maternity leaves among workers, which is an area for intervention.

In addition, results of in-depth interview with workers shows that the management allows some days for exams and make-up classes for workers who are studying in their own time. All respondents stated that they get the afore-stated leaves whenever they ask for it.

¹² Descriptive results are consistent for low staff turnover at both the technical staff and leadership levels.

Table 11. Leaves and their durations

Leaves workers are entitled to	Yes		No		Duration (days)	
	#	%	#	%		%
Annual leave	60.0	100.0	0.0	0.0	14+1 Each year	100.0
Sick leave	57.0	95.0	3.0	5.0	Based on medical evidence	93.3
Maternity leave	44.0	73.3	16.0	26.7	3 months	73.3
Study leave	0.0	0.0	60.0	100.0		
Obtaining leaves whenever one asks for it	60.0	100.0	0.0	0.0		

Source: Survey researcher, 2019.

Workers' associations and unions: In relation to forming social networks (e.g. unions), 30% of the respondents agree that the company allows workers to organize social networks whereas 65% of them are not sure about it and 1.7% disagree (see Table 12 below). In-depth and key informant interview results show that except in the presence of a labour union, the only networks that exist in the studied hotels is somewhat similar to the traditional *Iddir* and *Iqub*, which have no role in labour rights matters. Regarding the question of whether the workers' network is useful and responds to complaints, more than a quarter (26.7%) of the respondents expressed their agreement whereas 56.7% are not sure and 15% are in disagreement. The presence of such network, although currently not dealing with labour rights issues, can be considered as a useful platform to create awareness on workers' rights.

Table 12. Workers' social networks

	Strongly Disagree		Disagree		Neutral		Agree		Strongly agree	
	#	%	#	%	#	%	#	%	#	%
The company allows workers to have a social network (e.g. union)	1	1.7	2	3.3	39	65	15	25.0	3	5.0
The workers network is useful and responds to complaints			9	15	34	56.7	16	26.7	1	1.7

Source: Survey by researcher, 2019.

Results of key informant interview indicate that having a well-functioning union helps in voicing labour rights issues and protecting workers' rights thereby contributing to the growth of the company. The head of a trade union explained that it is those companies that have a strong workers' union, which are protected from destruction during mobs and riots. Having been established in 1964/65 E.C., when the hotel was government-owned, the Union is still known for its strength and hence is considered exemplary by Adama City Labour and Social Affairs office for its labour friendly approach. The union has survived government and private ownership regimes of the hotel.

Results further show that, apart from the union, which is included in the study, there are no functional trade unions in the studied hotels and in all the hotels in town at the time of the survey.

6.3.3. Labour rights issues

The key labour rights issues raised by the sample workers include low wages and salaries, lack or delay of promotion/salary raise after meeting criteria, working over eight hours per day, unexplained deduction of salary/benefits, assignment to tasks they are not employed for, health and safety hazards at the work place (see Table 13 below). These issues are quite serious having regard to the labour law which regulates the matters and confirms that these are labour rights which

need to be taken seriously by employers. Each of the labour rights issues are discussed in detail in Sections 6.3.1 through 6.3.6.

Table 13. Labour rights issues faced by sample workers

Rights issue faced by workers	Yes		No		Total	
	#	%	#	%	#	%
Low wages and salaries	34.0	56.7	26.0	43.3	60.0	100.0
Lack of promotion/ salary raise (after meeting criteria)	26.0	43.3	34.0	56.7	60.0	100.0
Delayed promotion/salary raise	30.0	50.0	30.0	50.0	60.0	100.0
Working over 8 hours a day	26.0	43.3	34.0	56.7	60.0	100.0
Payment effected for extra hours worked	0.0	0.0	60.0	100.0	60.0	100.0
Length of work hours is in accordance with work agreement	37.0	61.7	23.0	38.3	60.0	100.0
Cut of salary/benefit	12.0	20.0	48.0	80.0	60.0	100.0
Required to do work one is not employed for	2.0	3.3	58.0	96.7	60.0	100.0
Health hazards ¹³ at the work place	6.0	10.0	54.0	90.0	60.0	100.0
Safety issues at the work place	2.0	3.3	58.0	96.7	60.0	100.0

Source: Survey by researcher, 2019.

Comparison of the extent of violation of rights between the hotels shows that there is no significant mean difference in the aggregate reported labour rights violations ($p < 0.05$). This is so despite the fact that the hotels differ in terms of records of reported labour rights violations at the Adama City Labour and Social Affairs Office as given in Section 6.1.1. This is an indication of a possible lack or underreporting of labour rights violations for various reasons including fear of losing one's job, particularly in the absence of trade unions and in case of inadequate recourse mechanisms. From this, the magnitude of the labour rights violations is not necessarily linked to the number of

¹³ Health hazards at the work place refer to workers' perceived and self-reported exposure to health related risks, which may include exposure to chemicals used for laundry and cleaning rooms, availability of fire extinguishers, and safety of electric appliances.

reporting to the government offices. Hence, it may be misleading to describe the extent of violations, label the companies, and design interventions solely on the basis of number of cases reported to government offices.

6.3.3.1. Low salary and benefits

Results show that quite a number of workers raised the issue of low wages/salaries considering the escalating cost of living in Adama and payment in other similar jobs. More than half (56.7%) of the respondents consider their salaries/wages to be low given the high cost of living in Adama whereas the rest 43.3% do not see their salary as low (see Table 13 above). About 62% of the respondents agree that their salary and benefit packages are reasonable compared to other similar jobs whereas 17% and 10% of respondents disagreed on comparability of salary and benefits respectively (Table 14 below). Results of in-depth interview show that the increasing house rent is making it difficult for workers to survive on the salary from the hotel unless one engages in additional income earning activities.

Similarly, results of key informant interview with the union head shows that commonly raised labour issues by the union include salary raise and minimum wages. The union is reported to have had several appeals and discussions with the hotel management about the minimum wage. A case in point is the situation of some workers who are paid a monthly salary of Birr 650, which does not allow a person to lead a modest life given the current cost of living. Rather, only those who get subsidies in the form of rent (e.g. those who live in their parental or relatives' houses or share rooms with friends) can take up such jobs, according to results of the interviews. Such phenomenon encourages youth (worker) dependency thereby perpetuating working and inter-generational poverty. Although high rate of youth unemployment could be one explanation for the low wage, from the employers' perspective, it should not come at any cost. The informants also suggested that the government should enact a law on minimum wage rate. Although the new law recommended setting a minimum wage/salary based on relevant assessments, the fact that it is not put in to effect has led to the

observed differences in minimum salary between the hotels. With regard to timing of salary payments, almost all (96.7%) respondents stated that they receive their salary on time.

Table 14. Comparability of salary and benefits of sample respondents

	Strongly Disagree		Disagree		Neutral		Agree		Strongly agree	
	#	%	#	%	#	%	#	%	#	%
My salary is reasonable in comparison to other similar jobs	1	1.7	9	15.0	13	21.7	28	46.7	9	15.0
My benefit package is comparable with other similar jobs			6	10.0	17	28.3	34	56.7	3	5.0
I receive my salary on time					2	3.3	3	5.0	55	91.7

Source: Survey by researcher, 2019.

6.3.3.2. No or inadequate payment for overtime work

About 43.3% of the respondents stated that they work for over 8 hours per day and the rest (56.7%) stated that they are not working more than 8 hours per day (see Table 13 above). Of those who reported working over 8 hours per day, none reported receipt of payment for the extra hours worked.

Nearly 62% reported that the length of working hours is in accordance with the work agreement whereas the rest 38% reported that they did not agree on the daily working hours in the first place. Such reported average of 9 working hours per day with a maximum of 12 hours (Table 6 above) coupled with the finding that none of those who worked overtime have reported receipt of payment for overtime work (Table 13 above) warrants further scrutiny.

This is against the provisions of Labour Proclamation No. 377/2003 (Article 61(1)) for normal working hours not to exceed 8 hours per day or 48 hours per week, which is otherwise considered as an overtime

work in accordance to article 66(1) and entitles the worker to an overtime payment (Article 68)¹⁴. On the other hand, results of key informant interview with the management of both hotels shows that workers get paid for overtime work. In-depth interview results show that a number of workers in one of the hotels work 9 hours every day without any overtime payment for the extra hour. When workers raised the issue with the management, the response was that the extra hour makes up for the time workers spend in meals break.

Key informant interview with the union head demonstrated a case of violation of rights in relation to compensation for extra hours worked. For instance, Miazia 27, 2011 E.C. was a public holiday which occurred on a Sunday. The workers were entitled to have a holiday but they rather appeared for work knowing that weekends and holidays are good business days for the hotel. The workers assumed they would get paid for working on the public holiday. Knowing the provisions of the Labour Proclamation No. 377/2003 (article 68(1d)), which entitles workers to an overtime payment of 2.5 times the ordinary hourly wage rate for working on public holiday, the workers and their union management demanded to get paid. However, the management was unwilling to compensate workers for the holiday work with the excuse that workers should consider this as a campaign event and should not expect to get paid. Following this, the union management expressed their concern to the hotel management that they should have showed some respect for workers by discussing the matter and requesting them to work for free on that day. According to the informant, the workers might not have refused to work for free on the holiday if they were consulted and asked in advance. This confirms that the hotel management is heavy handed and is not worried much about labour rights.

6.3.3.3. No or delayed promotion/salary raise

The growth of the hotels and their profitability is expected to offer the opportunity for workers' promotion and/or salary raise. Results of key

¹⁴ Labour Proclamation, Proclamation No. 377/2003, Federal Negarit Gazeta 26th February 2004, Addis Ababa, Ethiopia.

informant interviews with the hotels' administrators and in-depth interviews with workers show that promotion and salary raise is effected depending on performance of workers, education level, duration of service, profitability of the company, and availability of vacant posts. Under normal conditions, a salary raise occurs annually whereas promotion may not be expected as often. Based on survey results, the amount of salary is significantly correlated with the duration of service ($p < 0.01$) and level of education ($p < 0.1$). Fifty percent of the respondents reported delay of promotion/salary raise whereas the rest 50% stated that there is no delay. About 43.3% of the respondents stated that there is lack of promotion/salary raise even if one fulfills the criteria set by the hotels whereas the other 56.7% reported the opposite (see Table 13 above). Also, half of the respondents raised delay of promotion/ salary raise as an issue.

The vast majority (80%) of respondents, who were asked whether there is a cut of salary/benefits, reported that they have not experienced cut in salary/benefits. The other fifth (20%) of the respondents raised salary/benefits cuts as an issue (Table 13 above). In line with this, in-depth interview with workers shows that they face salary deductions, including for absenteeism with authorized sick leaves, for reasons which are not clearly explained.

6.3.3.4. Imposition of additional tasks

About 3.3% of the respondents stated that they have been carrying out tasks they are not employed for (see Table 13 above). Results of in-depth interview with workers and union head shows that the absence of clear job descriptions in the employment contract has contributed to forcing workers, and particularly female workers, to undertake multiple tasks. The management does this without workers' consent and compensation commensurate to the additional tasks, which is in contravention to the provision on equal pay for equal work in the African Charter on Human and People's Rights.¹⁵ For instance, a

¹⁵ The right to work under equitable and satisfactory conditions and receive equal pay for equal work (ACHPR 1981; Article 15)

waitress may be ordered to carry out moving and arranging chairs and tables, cleaning, and catering etc. without consent and proper compensation.

Given the absence of clear job descriptions and labour unions, workers do not seem to have much choice but to carry out the additional tasks they are ordered to do without making claims for compensation. Such practices often go unnoticed as there are no mechanisms to hold the management accountable for their actions.

6.3.3.5. Health and safety issues at the workplace

A tenth of the sample respondents perceive exposure to health risks at the workplace whereas only 3.3% reported safety concerns (see Table 13 above). As far as issues surrounding workers' access to personal protective equipment is concerned, results of key informant interview with the head of a union indicates that it varies depending on the specific department. For instance, in the technique department, safety equipment is made available only partially. Moreover, some benefits seem to be withdrawn through time, for e.g., there used to be shoes and socks freely disbursed when the organization was State owned but this is not the case anymore as currently workers are only entitled to working gowns.

Both survey and in-depth interview results show that, except for some temporary disputes with fellow workers, there are no issues of harassment or assault; nor were there reported gender-based violence cases.

6.3.4. Potential factors for violation of labour rights

Lack of clear job description in the employment contract: in-depth interviews with workers reveals that there are no clear job descriptions in the contract of employment. This is against the Labour Proclamation which articulates the need for contracts to (i) be clear about rights and obligations of the employee and employer by leaving no ambiguity for the parties (Article 4(2)); and (ii) specify the type of employment, place

of work, the wage rate and how it is calculated, manner and interval of payment and duration of the contract (Article 4(3)).

Such gaps in the contract of employment makes workers vulnerable to violation of rights, such as forcing workers to carry out multiple tasks apart from those they are employed for, by inconsiderate management in the latter's attempt to maximize profit by minimizing labour costs. Furthermore, the absence of clear job descriptions enables the management to exercise hiring and transferring workers based on non-meritorious criteria such as networks, connections, kinships and affiliations without being held accountable for such actions.

Fear of reprisal for voicing labour rights violations: Results of key informant interview shows that there is a risk in raising labour rights issues by the workers. If a worker wants to raise any grievances or labour issues, the hotel management targets the person to make sure that she/he leaves the company. In the presence of a union, the management knows that it is not easy to fire a worker unjustifiably; but they do things to discourage him/her such as making him/her undertake tasks which the person is not employed for, bypassing the person and communicating with his subordinates. An informant used the following expression to describe the tactics the management uses for expelling the worker: 'Do not tell a person to leave but do things that make him/her leave'. Workers often avoid such risks of losing their jobs and hence refrain from voicing labour concerns.

The informant further indicated that the management also uses tactics, such as creating divisions among workers through effecting differential salary raises, to diffuse some grievances. Such preferential treatment enables the management to secure some support group, in the midst of grievances, which makes it difficult for workers to be unified thereby licensing the management to evade accountability for violating some labour rights.

Lack of trade unions: Key informant interview results indicate that availability of trade unions raises awareness about workers' rights and available recourses and enhances participation of workers (through

their union representatives) in the various decisions affecting their rights. The presence of unions helps to minimize rights violations during recruiting, promoting, penalizing, and dismissal of workers by influencing management decisions. This is done through the union's two representatives in each of the recruitment, promotion and disciplinary committees to act as observers during deliberations and decisions. Also, the formation of trade unions is in accordance with the Article 113(1) of the Labour Proclamation which recognizes workers' right to organize and participate in trade unions as well as with the ILO Convention on protection of the right to organize¹⁶ and collective bargaining.¹⁷ Note, however, that the presence of trade unions is not sufficient to address labour rights issues as there are still incidences of non-meritorious hiring (e.g. hiring without having to fulfill eligibility requirements such as passing assessments), promotion and transfers as noted by the key informants even in the presence of unions.

Lack of trade unions also implies workers' limited awareness of rights and access to recourses and hence vulnerability to violation of rights. In-depth interview with Aster indicates lack of workers' awareness about the amount of pension contribution from either the worker's salary or the company. Key informant interview with the officials at the Adama city Labour and Social Affairs Office shows that only one hotel in town has a functional labour union at the time of the study.

Favoritism and employment by kinship: results of key informant interview with the union head and a hotel manager indicates that some management personnel attempt to address potential disloyalty of workers to the company through hiring based on kinship and connections regardless of workers' competence for the job. This often comes at the expense of workers who are competent for the job but are not related to the management. That is, due to the management's choice to trust workers that come through kinship and connections, rather than those that come through open competition, qualified workers are often

¹⁶ Freedom of Association and Protection of the Right to Organize Convention (ILO 1948: No.87).

¹⁷ Right to Organize and Collective Bargaining Convention (ILO 1949: No. 98).

excluded. Such discrimination between workers is in contravention to the ILO convention.¹⁸ Cases in point are the person on the cashier's position and another who was recently transferred from a gardener to a bellboy position at one of the hotels, who were both offered the positions because of their connections with the management personnel. Apart from violating the rights of qualified workers, such practice compromises quality of work particularly if it is not accompanied by adequate training.

Reluctance to invest in training of workers: Survey results presented in Table 11 above show that 61.7% of the sample respondents disagree about having access to relevant training opportunities whereas 31.7% are not sure. This result is corroborated by results of in-depth and key informant interviews, which shows that some of the workers are assigned for a job without obtaining relevant training. The findings further indicate that profit maximization is misconceived by some of the hotels' management as avoiding current investments. In cases where the management is only concerned about the immediate cost implications of any current investment e.g., in training of workers, regardless of the future benefits, they tend to avoid taking risks associated with such investments. By so doing, the management attempts to advance personal interests by obtaining appreciation and benefits from the company owners, for reducing current costs. They may also advance their goal of maximizing profit through violation of workers' rights such as by engaging them in multiple tasks and overtime work without proper training and commensurate compensation. Such short-term orientation in the management of the hotel business impairs future productivity and growth of the hotel sector.

¹⁸ The Convention on "Discrimination (Employment and Occupation)" (ILO 1958; No. 111).

6.3.5. Available recourse upon violations of rights

6.3.5.1. Company level

The role of the company management: Respondents were asked about the complaint hearing procedure at the hotels. More than half (55%) of the respondents agree that the hotel has employee complaint hearing procedure whereas about 17% disagree and 28% are not sure (see Table 15 below). Majority (78.3%) of the respondents agree on being able to complain to their supervisors if they are harassed, 3.3% disagree and 18.3% are not sure. The vast majority (93.3%) of the respondents agree that the company penalizes gender-based violence whereas 5% of them disagree and 1.7% are not sure.

Table 15. Available recourse mechanisms

Available recourse procedure	Strongly disagree		Disagree		Neutral		Agree		Strongly agree	
	#	%	#	%	#	%	#	%	#	%
Company has employee complaints procedure	1	1.7	9	15.0	17	28.3	33	55.0		
I can complain to my supervisor if I am harassed			2	3.3	11	18.3	30	50.0	17	28.3
Company penalizes gender-based violence	1	1.7	2	3.3	1	1.7	30	50.0	26	43.3

Source: Survey by researcher, 2019.

Key informant and in-depth interview results indicate that whenever the workers have labour issues or any grievance they only have access to a complaint reporting mechanism, in the absence of a labour union in particular. Workers first raise their issues with the immediate supervisors and if solution is not granted, they report to a higher administrative body. Whereas workers may report issues they encounter, remedial solutions are not guaranteed. In line with this, a

worker mentioned that she knows the types of issues the administrative body acts on such as issues with meals, workplace hygiene and dispute with colleagues which herself and other workers often report to the immediate supervisor and hotel management. However, she refrains from raising sensitive labour issues pertaining to salaries, promotions, overtime payments etc. as she thinks that this may rather lead to losing her job.

The role of the trade union: where there is a functional trade union, workers may report labour issues and grievances to the union when solutions are not obtained at the hotel administrative level. Key informant interviews indicated that the management of the labour union conducts regular meetings to consider workers' issues e.g. written applications/complaints. Based on this, the union management may call for a meeting with the hotel management as deemed necessary.

The union head can write a letter to the hotel management to schedule a meeting in which the union management can raise the issues with the hotel management and seek for remedial solutions. A possible divergence between management's and owner's responsiveness to labour rights issues is also indicated. A case in point is a hotel owner who often listens to the union's voices and attempts to remedy labour issues on time whenever he is around. For instance, he quickly acted on the union's complaint regarding incomplete working uniforms and he often provides good bonuses to all workers during holidays as an incentive for more work effort. In such cases, there is high chance that labour rights issues can be resolved at the company level.

If the labour issues cannot be addressed at company level, the union has the right to call for a tripartite meeting where the concerned government body intervenes in addressing the issue.

6.3.5.2. Adama City Labour and Social Affairs Office

The Adama City Labour and Social Affairs Office has also been playing an important role in labour rights protection. Workers may report labour rights violations which the Office may resolve either (i) by holding discussions with the company owner(s) or management and,

if this does not work, or (ii) by creating a platform for discussing the issue in a tripartite manner by bringing the parties together and seeking voluntary settlement of the matter. A case reported at the Legal Aid Center (Project STRACE-CHR) and later referred to the Labour and Social Affairs Office illustrates this:

On March 2019, a group of workers from a certain privately owned hotel approached the Legal Aid Center with a petition signed by 14 workers to stop violation of labour rights. The violation consists of work place inconvenience, excessive workload, low salary, delayed payment of salary, forcing workers to multitask, verbal assault by supervisors which are against Articles 12(1), 12(2), and 12(3) of the Labour Proclamation. The Legal Aid Center referred the case to the City Labour and Social Affairs Office. The officers discussed the matter with the hotel owner who promised to address the issue as soon as possible. Then the owner acted by holding a meeting where hotel workers and management openly discussed the rights issues raised by the workers and resolved the matter.

While such action is commendable, gaps remain with regard to government role in conducting regular awareness training for workers and management regarding labour rights, available recourse mechanisms, and pushing for the establishment of labour unions in hotels and private companies in general. Little has so far been done to foster collaboration with the hotel management so as to enhance workers' rights, such as hosting awareness creation sessions, allotting time for workers to attend awareness sessions, and providing the necessary support for organizing labour unions. More importantly, the Labour and Social Affairs Office responds only when labour rights violations are reported directly by victims or their associates. As a result, some highly sensitive rights issues pertaining to sexual harassment tend to be underreported.

6.3.5.3. Other organizations

Other organizations such as Adama City Women and Children and Youth Affairs Office and the Legal Aid Center have been playing

important roles in addressing labour rights cases. The former mainly undertakes gender related advocacy activities and links reported labour rights cases to the Labour and Social Affairs Office. The Legal Aid Center (Project STRACE-CHR) at Adama city has also been assisting vulnerable groups obtain access to legal services and justice. Beneficiaries of the Center's assistance include victims of labour rights violations, family, criminal and other issues involving, individuals, households and companies. The case below illustrates the assistance the Center offered to a hotel worker in relation to labour rights violations:

Tsehay was the head of janitorial service in a hotel at Adama city and she was earning a monthly salary of Birr 2000 (excluding the benefits). After working for quite some time in the position, she was demoted from headship, with the excuse that the quality of her work has declined, and as a result her salary was reduced to Birr 1200. The decision was made without conducting formal evaluation of her work, providing warning or offering the necessary training to upgrade her capacity. The decision was unlawful according to Articles 28(1a), 39 and 41 of the Labour Proclamation. She then consulted the Legal Aid Center in July 2019 where she first obtained advice on constructive dismissal and then legal representation after taking her case to court.

6.3.6. Challenges to organizing trade unions

The preceding discussion shows the existence of only one functional labour union across the hotels in Adama City at the time of the study. Some of the challenges to the formation of functional labour unions at the studied hotels are discussed in what follows.

Lack of awareness on the benefits of organizing a trade union:

Results of key informant and in-depth interviews shows that lack of awareness about workers' rights and the benefits of forming unions is preventing workers from organizing themselves into unions. Hence, workers have limited themselves to organizing some informal

associations similar to *Iddirs* where they support each other in times of need and particularly during illness, mourning, and festivities.

Based on key informant interview with the union head, lack of awareness of workers on the role of unions is manifested by the reluctance of some workers to become members of the union. He reiterated that the current membership of 133 out of 141 workers is secured by providing various incentives, e.g., consumer items on credit to be repaid in several (e.g. 3-4) installments, to persuade workers into membership. The lack of workers' awareness is partly due to lack of access to awareness creation sessions.

Lack of support from the hotel management: The limited workers' awareness on labour rights issues is partly attributed to the hotel management's lack of willingness to host awareness creation meetings with the workers. Results of key informant and in-depth interviews indicates that private companies are reluctant to allocate time for awareness meetings organized by the City Labour and Social Affairs Office with the workers for fear of interference with working hours. Based on this, the union leader suggested for the concerned bodies, e.g., the Confederation of Ethiopian Trade Unions, to put a requirement for a regular meeting with the workers to enhance awareness on labour rights and related matters.

It is further reported that some of the hotels and private companies claim to have trade unions although in reality the claimed unions are often non-functional. Where there is a functional union, the hotel's support in terms of offering office space, furniture and facilities was instrumental for the functioning of the union. In line with this, key informant interview at one of the hotels shows that the hotel management sees the benefits of forming trade unions for both the workers and the hotel and is willing to support its formation; but it expects the initiative to come from the workers themselves.

Membership fee: given the low average salary of workers, the membership fee may limit the organization of a union and its membership base. It is indicated that members are required to pay 1%

of their monthly salary to the union of which 60% is paid to the Confederation of Ethiopian Trade Union through the union and 40% is allocated to cover the union's operational expenses. The 1% salary deduction is done by the hotel management directly from the salary of workers. Those workers who are aware of the benefits of unions noted that the hotel management is less willing to support the formation of unions to protect their rights and call for some pressure from the government on the hotel management.

6.4. Summary and Conclusions

The study is conducted with the aim of assessing labour rights issues and recourse mechanisms available for hotel workers in Adama town. Two hotels were selected for a survey of 60 workers and one additional hotel to gain an insight about the activities of its labour union. Data were collected by using surveys, key informant interviews, in-depth interviews, case reviews, and document reviews.

The fact that majority (about 70%) of the workers in the studied hotels are youth in the age range of 22-34 indicates that the hotel industry has a potential of reducing youth unemployment. However, due to low wages and salaries and high cost of living, it becomes difficult for the employees to start a decent and independent life away from their parental households, in particular where benefits are unpredictable. Moreover, due to lack of law for minimum wages, there are differences in the minimum wage/salary at the studied hotels. Hence, it is important that the government sets and enforces minimum wage rates for workers so as to reduce working poverty and youth dependency.

Gender disaggregated data show that females constitute about half (53%) of the workers at the study hotels which indicates absence of gender disparity in terms of labour force participation in the hotels. Findings further reveal that females dominate in tasks such as housekeeping (86%), food preparation (73%), and wait staff (60%) which may be an indication of the hotel sector mirroring the traditional role of women as care takers in the household. Also, majority (72%) of the reported labour rights issues are reported by male workers which

may be an indication of gender disparity in awareness of labour rights, willingness to report violations and in protection of rights which is an area for further investigation. The finding of no significant mean difference in the aggregate reported labour rights violations between the two hotels ($p < 0.05$) indicates that the magnitude of the labour rights violations is not necessarily linked to the magnitude of reporting to government offices.

Furthermore, the study came up with labour rights issues such as low salary and wages (57%), lack of or inadequate compensation for overtime work (100%), promotion/salary raise denied (43%) or delayed (50%), regardless of meeting the requirement, and cutting of salary/benefits (20%), imposition of (additional) tasks one is not employed for (3.3%), and health and safety issues at the workplace (10%). Addressing these labour issues entails addressing the underlying causes.

Some of the potential factors that may contribute to labour rights violations include lack of clear job description in the employment contract, risks associated with voicing labour rights violations, absence of labour unions, employment by kinship as a way of ensuring loyalty on key posts, and misconception of profit maximization as avoiding investment (e.g. on workers' training). Further research is needed to measure the magnitude of effect of the potential factors by controlling for the effect of all the variables that may have a bearing on labour rights violations. Addressing these underlying factors requires concerted efforts on the part of the workers, the hotel management, existing labour unions, Confederation of Ethiopian Trade Union, and relevant government bodies. The interventions may include enforcing the organization of labour unions in private companies, issuance of contracts with clear job descriptions, awareness training for workers and management on labour rights issues and recourse mechanisms through regular awareness meetings to be hosted by the hotels.

As far as the recourse procedure is concerned, workers are expected to report any rights violations to their immediate supervisor and where solution is not obtained, they take the case to the company

administrative body. In the absence of a trade union, workers are often reluctant to raise labour issues and express grievances with the management for fear of losing their jobs. With unions, workers enjoy a platform to claim for protection of rights by taking their cases to the union management, which is entitled to discuss the matter with the hotel management and seek remedial solutions. If this does not work, the union management may call for a tripartite meeting involving government bodies to address the issue.

It seems that voicing labour rights issues is a risky venture for the workers. Individual workers often refrain from raising labour rights issues for fear of losing their jobs particularly in the absence of trade unions. Hence, formation of unions is important to enhance protection of workers' rights, worker-employer relationships, and service of the hotels. However, organization of trade unions is challenged by lack of workers' awareness of their benefits, lack of sufficient support from the hotel management, and membership fee. This calls for collaboration on the part of the hotel management to host awareness creation sessions and provide the necessary support for the organization of labour unions. In some cases, this may entail putting pressure from the confederation and concerned government bodies to enhance establishment and functioning of unions in hotels and private enterprises in general.

It should, however, be noted that trade unions are not all it takes to successfully address labour rights issues. There are incidences of some labour rights violations even where there is a union. Hence, a strong union and regular meetings are needed in order to raise workers' awareness of their rights and existing recourse mechanisms and ensure that their rights are protected. Awareness sessions are better arranged in consultation with the hotel management and in such a way that they do not interfere with regular company working hours.

7. Women Labour Rights in Ethiopia: Case Study of Hawassa Industrial Park

Armaye Assefa*

Abstract

Majority of researches on gender and labour rights focus on the principle of discrimination and gender equality at work places in Ethiopia. However, the practical challenges that women face in the private labour market, especially in the recently developing manufacturing industries is not researched very well. In this study, it is observed that women face violation of different labour rights such as lack of decent work, poor working condition and low salary, denial of leaves, challenges to establish labour unions and so on. These challenges are aggravated by language barriers, lack of knowledge and inexperience of the girls working in newly flourishing industrial parks. Generally, it is observed that when labour rights are violated, existing remedies are not known, inaccessible and unaffordable for the girls. According to the study, many girls were either dismissed from their job, because they were ill and could not be accepted after few days of absence from work place or were forced to leave their job because they were dissatisfied by the working condition and the salary they are paid.

7.1. Introduction

The recent gender profile of Ethiopia shows that there are only few women in leadership in private manufacturing and very few women owned businesses.¹ It is always a question as to how women labour

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¹ Gender Profile of Ethiopia, 2018.

issues are understood and implemented in Ethiopia. In fact, the labour market is not gender friendly.

Data from the 2013 National Labour Force Survey shows that women constitute a higher proportion of the unemployed, unpaid family workers, and informal sector workers. Therefore, it can be said that manufacturing industries which are developing recently provide formal job opportunities for many women.²

The above data is also confirmed by the fact that out of the 22,000 workers, 19,000 are women at Hawassa Industrial Park and almost all of them are as machine operator, which is in the lowest status in the overall human resource structure.³

All workers, men and women, face challenges because of gaps in the law and inefficient redress mechanisms. In addition to the common challenges workers face in labour relation, women workers face specific challenges which emanate from the sex differences, gender inequality and stereotype existing in Ethiopia. The issue of labour and gender need to be well researched because women workers face two sets of challenges in the labour market. These challenges are violation of labour rights related to wage, working hours, etc. and gender-based violations such as discrimination, sexual harassment and so on.

Majority of researches on gender and labour rights focus on the principle of non-discrimination and gender equality at work places in Ethiopia. However, the practical challenges that women face in the private labour market, especially in the recently developing manufacturing industries is not researched very well.

Findings show that women face various violations of labour rights such as discrimination at times of employment and promotion, verbal

² UNDP, A Study on Women in Manufacturing in Ethiopia, Opportunities, Challenges and Strategic Intervention, 2018.
<https://www.et.undp.org/content/ethiopia/en/home/library/poverty/a-study-on-women-in-manufacturing-in-ethiopia.html>

³ Hawassa Industrial Park Development Commission, 2019.

and physical abuse, forced labour and pressure to meet targets, sexual harassment, violence on the way to home after night shift, denial of maternity leave, lack of hygiene in the work place, limited availability restrooms or breaks for menstrual hygiene, forced confinement at work places, denial of sick leaves, vulnerability to harassment because of nature of work such as hotel and tourism and the like.⁴

Though few studies have been done on gender and labour in Ethiopia, gender related challenges of women employed in manufacturing is not researched.

7.2. Methodology

This research used a qualitative research method. Accordingly, the researcher conducted unstructured interview with key informants, document analysis, and focus group discussion. The key informants for this research are fifty girls working for different companies in Hawassa Industrial Park. Individual interviews were done with the girls, human resource officers, lawyers representing different companies in the Park, cleaning company owner in the Industrial Park and judges working at different first instance courts in Hawassa city.

The other group of informants, with whom two focus group discussions was made, are two labour union representatives of different private companies, Confederation of Ethiopian Trade Unions (CETU) Hawassa Branch Office and coordinators of free legal aid centers of AAU Center for Human Rights and Hawassa University Law School.

7.3. Background of the Study

The International Labour Organization (ILO) has been striving a lot to improve the life and working condition of workers all over the world. More than 180 conventions are adopted by the ILO and these conventions have laid down several standards such as occupational

⁴ ILO, (2007). ABCs of Women workers' Rights and Gender Equality.

safety, working conditions, healthy and safe working conditions and social security. The ILO conventions further provided different protection protocols for vulnerable groups such as women and indigenous people. The following section elaborates the international and national standards governing working condition of female labourers.⁵

7.4. International and National Labour Standards for the Protection of Women Workers

The two essential principles that are considered as foundation for the works of ILO are non-discrimination and the promotion of equality. ILO, in addition to the general conventions, has specific conventions relating to gender equality. Discrimination (Employment and Occupation) Convention No. 111 (1958) is one of such conventions which provides for responsibilities of states to have a national policy that promotes non-discrimination in employment. The other important conventions are the Equal Remuneration Convention No. 100 (1951), the Workers with Family Responsibilities Convention No. 156 (1981) and the Maternity Protection Convention No. 183 (2000).⁶

The Decent Work Agenda of ILO also places the principles of non-discrimination and equality as an indispensable element. According to the Decent Work Agenda workers, especially women working in the formal and informal economy, have the right to decent work in conditions of equity, freedom, security and human dignity.⁷

The international labour standards adopted by ILO are primary means to advance the living and working situations of workers. They also promote equality in the work place for all employees. Apart from rights relating to maternity and women's reproductive health, the

⁵ Wolfgang Benedek, (2012). Understanding Human Rights: Manual on Human Rights Education.

⁶ Women's Rights are Human Rights,
<https://www.ohchr.org/Documents/Events/WHRD/WomenRightsAreHR.pdf>

⁷ Ibid.

entire ILO standards apply equally to men and women. Nevertheless, the practical situation of workers is not in compliance with national and international standards. Workplace rights and freedoms are not implemented mainly because of lack of awareness of these rights. Awareness creation and education about these rights is, therefore, a significant mechanism for promoting and improving gender equality.⁸

Workplaces are expected to be gender responsive and transformative. More women in an industry or company do not however mean there is gender equality; it can sometimes even be interpreted in an opposite way.⁹

The Convention on Elimination of all forms Discrimination against Women (CEDAW) is also among the important international standards which provide rights of women workers. According to Article 11 of CEDAW, States Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights, particularly in cases of retirement, unemployment, sickness, invalidity and old age and other incapacity to work, as well as the right to paid leave, and the protection of health and to safety in working conditions, including the safeguarding of the function of reproduction.¹⁰

The Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa (Maputo Protocol) is also one of the most progressive legal instruments providing a comprehensive set of human rights for African women. Accordingly, States Parties shall adopt and implement appropriate measures to prohibit any exploitation or degradation of women, shall adopt and implement appropriate measures to ensure the protection of every woman's right

⁸ ILO, 2007. ABCs of Women workers' Rights and Gender Equality.

⁹ Ibid.

¹⁰ Convention on Elimination of all forms of Discrimination Against Women, 1979, Article 11.

to respect for her dignity and protection of women from all forms of violence, particularly sexual and verbal violence.

The other important provision of the Maputo protocol is article 13, which talks about economic and social welfare rights. Pursuant to this article, state parties shall ensure transparency in recruitment, promotion and dismissal of women and combat and punish sexual harassment in the workplace.

Looking at relevant national laws, policies, regulations and selected programs from the perspective of gender, most of the existing policies and regulations are geared towards creating an environment that enables equitable participation and benefits for women in the workplace. Among others, the FDRE Constitution (1995), regional and international instruments including ILO conventions, Ethiopian Labour Proclamation No.377/2003, guarantee women's equal rights to employment, promotion, pay, and pension transfer entitlements, as well as the right to form unions, affirmative action provisions and prohibitions against discrimination.

Different gender focused national policies and strategies have been designed by the Ministry of Women and Children Affairs (MoWCA), with the aim of increasing participation and empowerment of women. These, among others, include the National Action Plan for Gender Equality (NAP-GE) and the National Women's Development and Change Package by which the Federal Democratic Republic of Ethiopia (FDRE) has declared its commitment to realize gender equality; the National Policy on Women adopted in 1993; the incorporation of gender issues in different national policies including Education and Training, Health, HIV/AIDS, Population and others formulated over the years; as well as adequately incorporating women's rights in the Federal Constitution of 1995.¹¹

¹¹ National Action Plan for Gender Equality (NAP-Ge) 2006-2010 Ministry of Women's Affairs (MoWA).

There are laws, regulations and policies that purport to increase women's fair participation and protect occupational health and safety. However, the implementation of these norms is a far cry.

This gap is mainly created by different factors such as lack of awareness, lack of efficient and effective implementation, inadequate support institutions and poor leadership commitment.¹²

Workers' freedom of association is one fundamental constitutional guarantee under the FDRE Constitution and the Labour law. If workers have to have social dialogue and collective bargaining, freedom of association must be promoted.

Despite the existence of this constitutional guarantee, the importance and functions of worker's association are deteriorating. These associations exist mostly in public enterprises and a survey done by UNDP shows that most workers employed in the recently established manufacturing industries do not freely enjoy their freedom to form association.¹³

Companies such as manufacturing industries may sometimes prefer to employ only women because Ethiopian boys have more access to education than Ethiopian girls. And majority of women are less educated than men, as it is evident from the statistics (UNESCO Global Partnership for Girls' and Women's Education). Furthermore, women are likely to accept low pay and poor working conditions because of lack of information and job opportunities.¹⁴

¹² UNDP, A Study on Women in Manufacturing in Ethiopia, Opportunities, Challenges and Strategic Intervention, 2018. P.14
<https://www.et.undp.org/content/ethiopia/en/home/library/poverty/a-study-on-women-in-manufacturing-in-ethiopia.html>

¹³ UNDP, A Study on Women in Manufacturing in Ethiopia, Opportunities, Challenges and Strategic Intervention, 2018. P.14
<https://www.et.undp.org/content/ethiopia/en/home/library/poverty/a-study-on-women-in-manufacturing-in-ethiopia.html>

¹⁴ J. Kercheval & D. Katherine, 2012. Research on Barriers to Employment and Decent Work for Women by Monson Blair Read Tufts University Medford, MA, USA.

7.5. General Overview of Hawassa Industrial Park

Free Trade Zones, also Termed Free Economic Zones are being widely developed in different countries with a view to ease the doing of business by facilitating access to license, utilities, customs and other government administrative services. However, such arrangements are misused and the application of international labour standards is being compromised.¹⁵ Ethiopia is also one of such countries and the rapid growth of the Ethiopian economy over the last decade has resulted in increasing women's participation in the labour force.

Though the overall participation of women in the labour market has increased and reached 77.8 percent, major percentage of this participation, i.e. 36 percent, is in the informal sector. Women who engage in the manufacturing sector are normally less educated, younger and earn less than their male counterparts with even similar level of education. Women working in the manufacturing sector also face lots of new challenges because majority of them migrated from rural areas.¹⁶

In Ethiopia, the labour intensive and low skill jobs in sectors such as garment and apparel and agro-processing are mainly dominated by women. The representation of women is very high in low-pay, low-skill jobs, clerical work, services and elementary occupations.¹⁷

It is however important to look at the positive impacts of the manufacturing sector in creating jobs and income. For the huge majority of respondents in the survey conducted by UNDP, the

¹⁵ Wolfgang Benedek, 2012. Understanding Human Rights, Manual on Human Rights Education, P.330.

¹⁶ UNDP, 2018. A Study on Women in Manufacturing in Ethiopia, Opportunities, Challenges and Strategic Intervention.
<https://www.et.undp.org/content/ethiopia/en/home/library/poverty/a-study-on-women-in-manufacturing-in-ethiopia.html>

¹⁷ Ibid. P.11.

standard of living of their family has been improved because of their employment in this sector.¹⁸

Hawassa Industrial Park, which was officially inaugurated in 2017, is one case example of the same which has a total of 22 companies operating in 56 shades (blocks). The total number of workers is 22,000 and among them 19, 000 are women.¹⁹

According to the human resource experts there, companies initially recruit employees through Zonal and *Woreda* level administration. The girls are registered in their respective *Woredas* by presenting their *Kebele* identification card and high school transcript. Once they fulfill these requirements, they are moved to Hawassa Industrial Park. They will be placed to different companies depending on the interest and demand of the latter.

7.6. General Profile of Respondent Girls

According to the interview conducted with the girls in Hawassa Industrial Park working for 10 different companies, majority of them are between the ages of 18-22. All of them completed grade 10 and they moved from rural or townships outside of Hawassa for very first time.

When we see the general profile, the girls are teenagers or at their early twenties, and are new to life in cities, employment and working with foreigners. Majority of them are from Sidama, Wolaita and Gedeo Zones of SNNPRS. Besides, majority of them do not even speak Amharic and we used their native languages and sometimes translators to understand their working situations.

The sub sections below discuss about the salary, living condition, lack of knowledge on sexual and reproductive health issues, working hours, shifts and safety, annual leave, sick leave, access to toilet

¹⁸ Ibid.

¹⁹ Hawassa Industrial Park Development Commission, 2019.

during working hours and unionization. The discussions show the practical challenges faced by the respondent girls on the listed issues and how the issues are addressed under labour law of Ethiopia.

7.6.1. Salary and living condition

In the normal course of things, salary has direct impact on the living condition of a person.

As shown in the general information, the girls working in the companies were not employed before they moved to Hawassa and they were promised a good salary and good living condition, including a free housing.²⁰ All these promises were not delivered and because of lack of remedies or institutions to resort to, the girls said that they are facing huge problems. Even some are going back to their homes.

The average monthly salary of the girls working in the park for jobs such as sewing and cutting cloth, which is commonly referred as operators, is 964 ETB. It is only few of them, three factories among the ten, which regularly give house allowance between 250-300 ETB. All of them live in private houses (services blocks) renting rooms which they share with friends. The minimum number of girls in a room is three and the reason they live in such suffocated situation and in group, in a single room is because they cannot afford to pay for the rooms alone.

According to personal observation, the housing situation, including the kitchen setup and toilet are mostly unavailable or when available they are in a very poor condition. In majority of the places, average of 20 girls share a single dry pit latrine with an informal slab. More than half of the key informants do not have tap water inside their compounds and they have to pay for drinking water. The major reason for the girls to live in such housing is that cheap rooms are found in the outskirts of cities, where there are informal settlements that lack

²⁰ Interview with girls working in Hawassa Industrial park, May 2019.

utilities such as tap water, kitchen and toilet. This situation is directly connected to the salaries they receive at the Industrial Park.

As per the respondents, the monthly salary they are receiving could only cover their room rent and they cannot even have basic food three times a day. For those where company does not provide for transportation, girls will walk very long distance because they cannot afford to pay for taxi. Though some of the companies provide free transportation, the girls have to walk at least 10-15 minutes even in late hours which, as they stated, made them face different violence including attempted rape.

7.6.2. Lack of knowledge on sexual and reproductive health issues

All of the girls are young and in sexually active ages, who are mostly inexperienced migrants from rural areas. They are not also informed about challenges on reproductive health and family planning issues. According to them, the clinics in the work places do not give services on reproductive health.²¹

7.6.3. Working hours, shifts and safety

Majority of our key informants live far from where they work, around newly established informal settlements, to avoid expensive housing. The distance from work to home is so exhausting for those who specially do jobs standing the whole time. The eight hours long and intensive working condition in addition to the long travel to home, as they said is directly affecting their physical and mental health. Most of the girls leave in far neighborhoods in order to get cheap house rent. Most of them have to travel long distance and it will be dark by the time they reach home. Because of this, they sometimes face violence, theft and sexual harassment on the way to home.²²

²¹ Interview with girls working in Hawassa Industrial park, May 2019.

²² Ibid.

Furthermore, they are expected to meet a target per day and if they fail to meet it, they will face different types of punishments ranging from verbal abuse to denial of incentives payments.

In half of the companies, girls working only in the day time and prolonged working hours is very exhausted after work and sometimes go home and sleep without having their evening meals.²³

7.6.4. Annual leave

Article 76 of the Ethiopian Labour Proclamation No. 377/2003 states that:

- 1. An agreement by a worker to waive in any manner his right to annual leave shall be null and void.*
- 2. Unless otherwise provided in this proclamation, it is prohibited to pay wages in lieu of the annual leave.*

Nearly half of the girls interviewed do not know about the idea of having an annual leave and they are not informed about how many days their annual leaves are.

However, few of them said that they have seven days of annual leave which they can only take if they have served for one and more years. Pursuant to the latter group, these days cannot even be taken consecutively,²⁴ which is against article 79 of the labour law that provides, *notwithstanding the provisions of Article 77, if a worker requests and employer agrees, his leave may be granted in two parts*. Close reading of this provision shows that such grants can be given only when the worker request but the practice seems that the modality depends on the interest of the employer. According to the girls, it is always in the convenience of the employer that they receive their annual leaves.²⁵

²³ Ibid.

²⁴ Interview with girls working in Hawassa Industrial park, May 2019.

²⁵ Ibid.

This data clearly shows that there are companies which contravene the labour law which says workers shall be entitled to uninterrupted annual leave with pay (Article 77/1).

7.6.5. Sick leave

Regarding sick leave, article 85 /4 of Proclamation No. 377/2003 states that *unless the collective agreement provides otherwise, a worker shall be entitled to a sick leave up on presenting a valid medical certificate given by a medical organization recognized by the government.* As far as this Proclamation is concerned, the certificate can be presented from either private or public medical organization as far as it is legally recognized.

For more than half of the girls, they can take sick leave for one or two days with medical/doctor's note, but if it is more than two days, there is always risk of being fired and verbal abused. For the rest, companies do not accept medical certificate for sick leave and if operators miss working days because of feeling ill, their salary will be deducted and if absent from work for more days due to ill health there is high risk of losing job.²⁶

The other situation that all the girls were mentioning was that the salary they are receiving is not enough for their basic needs such as renting house and food. Hence, going to clinic or hospital for medical treatment is unthinkable. When they go to the small clinics at their work place it is only painkillers that they can get and no sick leave notes. As one of the girls expressed it "I always pray not to get sick..."²⁷

7.6.6. Short toilet leaves at working hours

The Ethiopian Labour Law article 12 (3) & (4) provide that employers are expected to respect the workers human dignity and also to take all

²⁶ Ibid.

²⁷ Interview with girls working in Hawassa Industrial park, May 2019.

the necessary occupational safety and health measures. This provision can be interpreted in many different ways and it can include lots of obligations such as offering short toilet leaves when needed.

The first thought of the idea of leave for toilet at working hours may seem senseless. Unless someone has real experience in the Industrial Park, the situation cannot be imagined.

According to the girls, it was observed that bathroom facilities are often provided in a manner that may affect the moral of female workers; some bathroom facilities are closed or not usable; or their use is restricted by time and monitored by supervisors. All of our informants said that they are expected to ask for permission if they need to use the toilet in the working hours. All of them experienced denial of permission even at times of special need such as menstruation period. Most of them said they usually feel pain because they have to hold until official break is given for them or they have to beg supervisors in order to get short breaks for toilet. The supervisors deny permission because they are afraid that workers may misuse their breaks.²⁸

The worst thing the girls shared is, at times of their dignity period, they are not allowed to go to toilet as frequent as they like to change their sanitary pads and they really face discomfort which in turn affects their performance. In such situations, as most of them said, their performance will be compromised and they will lose their incentive payment because they cannot achieve the production targets set for them.²⁹

7.6.7. Labour unions

Article 113 of the Labour Proclamation provides that workers shall have the right to establish and form trade unions and the right to participate therein. Trade unions have to function by observing the

²⁸ Ibid.

²⁹ Ibid.

conditions of work and fulfill the obligations provided in the Proclamation as well as for ensuring respect for the rights and interests of members.

The information gathered during data collection shows that there are neither labour unions nor interest to have one in all the companies operating at Hawassa Industrial Park.

According to the focus group discussion done with representatives from CETU, and our respondents, companies are not interested and they tend to prohibit establishment of labour unions. According to them, though the girls are not aware about the overall importance and way of establishment of unions, some who have such clues were dismissed from work for initiating the idea to establish workers' unions. The rest do not even know what trade union is. The data clearly shows the overall working condition of the girls is highly at the mercy of the employers.

7.7. Other Related Challenges Faced by the Workers

7.7.1. Language barrier

Language barrier to communicate with supervisors and human resource officers is also another challenge for the girls. As mentioned above, almost all of the girls came from rural areas and are not native speakers of the working language of the companies and majority of them cannot communicate and express themselves with other languages other than their mother tongue. This by itself made them miss important information and they sometimes fail to understand their responsibilities.

7.7.2. Lack of knowledge and awareness

According to personal observation and the survey, the overall knowledge and awareness of the girls working in the park regarding international and national labour standards is very poor.

According to the information gathered from three court judges working at first instance courts situated at different districts, they have never received labour case from girls working as operators in the Hawassa Industrial Park. This, however, does not necessarily mean that they have no complaint; it rather shows lack of awareness, information and knowledge about their rights and remedies at times of violation of the same.

This is also related with the absence of labour union, which could have ensured that laws and regulations are known, observed and implemented. (Article 115 of Labour Proclamation No. 377/2003)

7.7.3. Cleaning companies in Hawassa Industrial Park

All the companies in Hawassa Industrial Park have outsourced the cleaning work. In this study, the writer managed to interview one owner of a cleaning company who is responsible for cleaning different shades (blocks) for five companies. According to the cleaning company, the workers have employment contract with the cleaning company and not directly with the company in the Park. According to the cleaning company, though workers' contracts have been terminated at different times, it has never received court summons regarding labour case. The researcher managed to interview only two workers of this cleaning company.

7.7.4. Recourse at times of violation of labour rights

Article 184 of Labour Proclamation No 377/2003 provides the measures that may be taken against employers at times of violation of labour rights. A worker will be fined if there is violation in relation to working hours, leaves and related issues. There shall also be punishment if the worker violates rights of workers provided under the same Proclamation. Hence, an employer who causes workers to work beyond the maximum working hours or contravenes in any manner the provisions relating to working hours, infringes the provisions regulating weekly rest days, public holidays or leaves; or contravenes the provisions of Article 19 of the Proclamation; shall be

liable to a fine not exceeding Birr 500(five hundred). If the violation is related with unlawful termination of employment contract, employer shall be liable to a fine not exceeding birr 1200 (one thousand two hundred).

Regarding the recourse mechanisms when labour rights are violated, the girls are not aware of the existing legal remedies. In the normal course of things, workers can initially present their complain for trade unions, which does not work in this case.

The other option is administrative, where workers can present claims to administrative structure already established within the administrative structure of the companies. The biggest challenge of the girls, as said above, is language barrier, lack of knowledge, and inability to express themselves. According to the girls, they usually communicate with their immediate supervisors and if they think their claim is beyond the capacity of supervisors, they may go to the human resource office. However, since supervisors are better heard and the girls lack communication skill, majority of complaints are not successful.

Given the financial constraints of the employees, it is not feasible for them to get the service of a lawyer and they have never contacted private lawyers.

However, employees, who got information only, contact legal aid centers to get advice and paralegals, have reported that they will require some kind of written notice and other documentary evidence to prepare statement of claim. Since the cases are few, we found out that all of them are not successful because terminations, specifically of those recorded legal aid cases were made orally.

Regarding violation of other rights, such as working condition and leave related issues, labour unions could have provided lots of remedies for workers. However, since there are no labour unions in all the companies, operators have no recourse at times of violations of labour rights.

In general, it is observed that at times of violation of labour rights, existing remedies are not known, accessible and affordable for the girls. According to the study, most of the girls know girls who have left work because they were ill and could not be accepted after few days or who left their jobs because they were dissatisfied by the working condition and salary of their companies.

7.8. Conclusions

The working situation in Hawassa Industrial Park is full of challenges. The working condition of the workers is below the standards specified in the labour law and policy of the nation and international codes. This research focused on the young girls working condition recruited from the surrounding rural communities and are subject to harsh working condition, and meager salary that does not go along with the rising cost of living. It is observed also that the outsourcing scheme has complicated the matters and absence of trade unions which could have worked with the employer and the government to improve the working condition needs urgent attention. The problems faced by the girls in relation to denial of annual and sick leaves, denial of toilet breaks, especially in their dignity period, violence they face on their way to home after night shifts, the inability to have a better diet to be fit for the physically challenging work needs to be revisited.

The above challenges faced by the workers is aggravated by the lack of support system which is devoted to raise awareness of the girls on the available labour standards and the language barrier from the side of the workers is also one aspect of the challenge which needs attention.

All in all, labour rights are not paid attention to and might in the long run damage the reputation and sustainability of the factories in general.

The overall finding of the research is that there are gaps in the observance of labour rights in Hawassa Industrial Park.

The fact that workers never applied to court do not necessarily mean that there is no violation of labour standards considering the complaints workers have in relation to wage and over all working condition, the high turnover, which is also affirmed by the fifty respondents or workers by themselves and the fact that more than majority of them are ready and willing to leave their jobs as soon as they get better chance show that there is problem in the working condition.

7.9. Recommendations

- The labour and social affairs offices must do inspections to improve the overall working conditions and safeguard welfare of workers. It must also work on pushing for the establishment of labour unions.
- A support system must be established devoted for awareness creation and training on national and international labour rights of workers and reproductive health and related issues for the girls working in the park.
- Legal aid clinics which can support the workers at times of unlawful termination and other labour rights violations must be established.
- Further research in the interplay between development, manufacturing and rights of women workers must be done.

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